DRN-3735207

The complaint

Mr S complains that HSBC UK Bank Plc rejected his claim under s 74 Consumer Credit Act 1974 in respect of a faulty car.

What happened

Mr S has submitted a detailed timeline of events which is not disputed, but for the purposes of this decision I will give a brief summary. In August 2021 Mr S bought a second hand car at a cost of £10,990 part of which was funded by his HSBC credit card. The car was a few months short of being 10 years old and had recorded mileage of 69,300. The advert stated it had "eight services recorded".

The dealer says that it arranged for the car to have a year's MOT, check the wheel alignment and fix the interior lights.

Within a few weeks Mr S identified a number of issues, a jammed window and a judder. He also was told one of the rear wheels was buckled and the other had tyre deformities. He took the car to the dealer and it swapped the wheels from another similar car. The car continued to judder and it was taken to two garages and the second resolved the problem by balancing all four wheels. He had the car checked again and the issue with the window occurred and this was repaired.

Mr S asked the dealer to refund his costs. Shortly afterwards the service light came on and asked the dealer to have the car serviced. When this didn't happen Mr S had the car serviced by an approved dealer. It found the car to be in generally really good condition according to Mr S, but it cost him £946.48. In an email from September 2021 to the dealer Mr S wrote: "*I genuinely thought [P] said the car had been recently serviced, but in any event assumed a high-end quality independent dealer of Porsche and Mercedes sports cars would service such a vehicle before delivery, or at the very least, feel obliged to disclose that a 'B Service' would be due within a month*.

As he remained unhappy with the dealer's response he took the matter to HSBC in September 2021. He says it delayed responding, but it did speak with the dealer and it offered to cover the cost of the wheel alignment and balancing. HSBC said that the last service had been carried out on 8 October 2020 when the car had covered 67,343 miles. It also noted that some of the work Mr S had done was not essential, but had been based on advisories from the main dealer. It credited Mr S's account with £50 as compensation for having mislaid his original letter.

Mr S brought his complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. Mr S disputed some of the factual details in our investigators original view which he readily accepted. Mr S felt the separation of breach of contract issues and alleged misrepresentation meant proper consideration of the dealer's behaviour was not given. He thought the dealer should have told him about the impending service. He also argued that the dealer fell foul of consumer law in its handling of the sale. He said he had been told the car would be serviced and he referenced a text exchange which he considered supported his recollections.

I issued a provisional decision as follows:

I explained that this complaint had been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

In considering what is fair and reasonable, I said I needed to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.
The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory*".

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history. Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

I noted there were two separate but connected issues in this complaint. One was the alleged misrepresentation concerning the service history and the other was alleged breach of contract due to the faults Mr S encountered not long after purchase.

I said a misrepresentation is when a false statement of fact has been made and that false statement of fact induced a consumer to purchase the goods or services. In order to find a misrepresentation has occurred, there must be proof that a false statement of fact has been made and it needs to be decided that that false statement induced the consumer to enter into the agreement.

The issue was, did the dealer tell Mr S about the service history and did that influence his decision to continue with the purchase? Recently Mr S had shared a text message dated 18 August 2021 which reads: "*wonder if I can pick the [car] up first thing fri morning, assuming it's got through mot, service and full alignment check as agreed*?' The response from the dealer was "*Hi [S] all good to go*."

That exchange indicated that Mr S was expecting the car to have been serviced. The dealer has said there was no discussion about servicing the car and its advert only referred to previous services. However, the text exchange does indicate that there was some discussion about the service which was due imminently. I thought there may have been a misunderstanding, but the key was whether the dealer gave Mr S cause to expect the car to have been serviced before the sale.

I noted Mr S didn't check whether the service had been done when he collected the car which was regrettable, but I didn't believe it was sufficient to change my view that Mr S was led to believe the car would be serviced before he collected it. I also thought it likely that the

dealer would have been aware the service was imminent and if it didn't offer to have it serviced it was reasonable to expect it to have brought that to the attention of Mr S.

Therefore, I thought it right that the cost of the service be covered by HSBC. I didn't consider that extended to the work done as a result of the advisories. It would not have been necessary for the dealer to have addressed those issues which were simply advisory. My understanding that the cost of this was £418.02 plus VAT.

On the matter of the breach of contract I didn't consider I could uphold this in full, but I did to the extent that that Mr S should be entitled to £151.20 in respect of work caried out to deal with the juddering.

The reality was the car was some 10 years old and would have suffered a fair degree of wear and tear. I was satisfied the dealer had the juddering looked at by a third party and it thought that had been resolved. It also changed the wheels so I believed it took reasonable steps to address the issues Mr S encountered. They did not of themselves amount to the car not being fit for purpose.

As for the bank's handling of the matter I didn't consider it was unduly slow apart from the period after the initial letter was mislaid. I considered the sum of £50 which it has already is a reasonable sum of compensation.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The bank accepted my provisional decision, but Mr S suggested that the redress was not sufficient. He said he would not have proceeded with the purchase had he been aware of the advisories relating to the tyres and brakes which were safety items. He referred to a couple of motoring organisation's advice on tyre safety levels. He suggested as a compromise that the cost of the rear tyres be covered by HSBC.

I am satisfied that Mr S believed or was led to believe that the car would be serviced before taking ownership of it. That does not mean that the dealer was obliged to carry out any additional work which was merely advisory. To meet the requirements of the implicit agreement it was sufficient for the car to have been serviced. The dealer was not obliged to change the tyres which had some wear left in them.

I would add that it was open to Mr S to inspect the tyres before purchase and satisfy himself that he was content with the state of them. If he had concerns given he was planning to make long motorway trips he could well have resolved the matter with the dealer at that point.

I appreciate that deeper tread is preferable, but that doesn't mean that the wheels were not legal or the car wasn't roadworthy. Nor does it mean that the dealer was under any requirement to cover the cost of new tyres or brakes.

As such my view as set out in my provisional decision remains unchanged

Putting things right

HSBC should cover the cost of the service and the repairs to address the juddering issue. It has already paid Mr £ £50 compensation

My final decision

My final decision is that I uphold this complaint and I direct HSBC UK Bank Plc trading as first direct to pay Mr S the cost of the service being £418.02 plus VAT (20% - £83.60), plus £151.20 for the costs to fix the juddering issue – this would bring the total left for us to pay of £652.82.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 November 2022.

Ivor Graham
Ombudsman