

Complaint

Mr T, who is represented by his wife, Mrs T, complains that FirstRand Bank Limited refused to pay for repairs to a faulty car.

Background

In June 2018 Mr T acquired a second hand car costing £19,990 funded by a deposit of £1,250 and the balance by a hire purchase agreement. It was some six years old and had done 32,000 miles.

Shortly after acquisition Mr T thought the car wasn't running properly and he took it to be inspected. A number of faults were identified and Mr T took it to another garage and further issues were found. He contacted the seller and FirstRand in September 2018. The former refused to assist and the latter asked for quotes so it could liaise with the selling dealer.

Mr T was due to go away on holiday and he had the repairs carried out. This meant FirstRand was unable to be satisfied that the faults had been present at the point of sale. It said that despite unauthorised repairs being carried out it offered to pay £580 towards the cost. It rejected Mr T's complaint and so he brought the matter to this service.

It was considered by one of our investigators who initially didn't recommend it be upheld. Mrs T submitted further evidence and this persuaded him to change his mind and recommend that FirstRand cover the costs for the water pump, drive shaft, brake discs and horn. He noted that the problems arose shortly after the point of sale and he thought they were likely to have been present at that time.

Mr T said the cost of replacing the tyres should be covered since the problem with the driveshaft had caused them to wear. FirstRand queried the basis on which the investigator had changed his mind. I issued a provisional decision as follows:

I explained that in considering what is fair and reasonable, I need 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.

I said the finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. FirstRand is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

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 identified two key issues in this complaint. Firstly, was the car fit for purpose at the point of sale and secondly what has been spent on repairs. Normally I would have expected the dealer to be given the opportunity to address any faults, but this didn't happen and Mr T went ahead and allowed the car to be repaired without authorisation. I gathered he later sold the car and so we were left in a position whereby it was impossible to have it inspected due to it having been repaired and then sold. I said I thought that was regrettable and I could appreciate the stance taken by FirstRand which owned the car.

However, I reviewed the health check carried out by the main dealer to which Mr T took the car and I could see that the car had issues. The health check identified that the washer jets weren't working, the anti-freeze was contaminated, rear discs were scored, a wheel bolt was missing, undertrays damaged, an exhaust clamp was corroded, the brake fluid was due to be renewed and issues with the tyres.

Mrs T said her husband took it to his garage which I called S, and it replaced certain parts. The invoice from S, which isn't VAT registered and has no web site, referred to the removal and refitting of parts, an EPA specialist charge and checking of the oil. Mrs T has provided a handwritten receipt for parts, namely, drive shafts, shock absorbers, wheel bearings, control arms and ball joints. This was paid for in cash. I said I had also seen an invoice from a VAT registered supplier for a brake disc, a brake pad set and a ball joint. This showed the parts were to be delivered to S. I said I could only presume these two lots of parts were the ones fitted by S.

Mrs T had also supplied a video and photographs of repairs being carried out to a car. Unfortunately, these do not identify the car, but I presumed they were of the one acquired by Mr T. I added that the dates of the various invoices tied in together with the parts being bought shortly before the repair was undertaken.

I considered it more likely than not that the car required repairs and due to the fact these became apparent shortly after acquisition I thought it reasonable to conclude that these were present at the point of sale. However, I explained that I had seen no explanation as to why the driveshaft was replaced. This was not identified as an issue by the main dealer and I couldn't see why Mr T's garage replaced it. I had not seen any explanation which showed this was necessary work.

I had some concerns about the claimed costs and the lack of evidence to show that driveshaft was faulty at the point of sale. I gathered Mr T borrowed cash from his mother to pay for the £920 worth of parts and as she had been ill he had been unable to provide any evidence of this. As for the tyres I didn't consider these should be the responsibility of the business. Mr T had the opportunity to inspect these before purchase and I wasn't persuaded that any of the other claimed issues were the cause of the damage.

In short, I said I could accept there were some issues with the car and I was able to accept that the cost of repairing those identified by the main dealer should be covered by FirstRand. I was open to considering the other costs if persuasive evidence was put forward to show that they were incurred to repair faults which were present at the point of sale.

Mrs T responded to say that half the facts in my provisional decision were incorrect, but she didn't want to spend any more time on the complaint. FirstRand reviewed the history of the complaint and noted that it had seen no evidence that repairs had been carried out as suggested by the main dealer. It listed these as follows:

Windscreen washer jets
Anti-freeze contaminated
NSF wheel bolt missing
Undertrays damaged
Centre exhaust clamp corroded
Brake fluid overdue

It also said that Mr T had repairs carried out at an unauthorised third party non-VAT registered garage. It doubted some of the evidence put forward by Mr T and said it had been fair in its handling of the complaint and in the payment it had already made.

My findings

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

Mr T, acting on behalf of her husband has decided that she doesn't wish to take up my offer to supply further evidence in support of the complaint and hasn't explained which facts I have got wrong. On that basis there are no grounds that would allow me to alter my provisional decision in favour of Mr T.

FirstRand has outlined the history of the matter and has said that it has tried to support Mr T, but he hasn't allowed it to do so. It referred to its initial offer of £580 to contribute to various repairs.

I have reviewed the various submissions again and I cannot see that I have misunderstood the claims put forward by Mr T. I am satisfied that FirstRand has tried to assist Mr T and I consider its offer of £580 was a reasonable response. It is not clear that it has paid this sum, but if not, I consider it should do so and that will satisfy my provisional decision that the cost of the main dealer's recommendations be covered.

My final decision

FirstRand Bank Limited has already made an offer to pay £580 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that FirstRand Bank Limited should pay £580, if it not already done so.

My Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 17 September 2020.

Ivor Graham
ombudsman