

complaint

Mr R complains about a second hand car supplied to him under a conditional sale agreement with GMAC UK plc, trading as GMAC ("GMAC").

background

Mr R complains first about the quality of a second hand car supplied to him in February 2013, under a conditional sale agreement with GMAC. The price of the car was over £14,100 and Mr R paid an advance payment of £7,000. Mr R was told by the dealership, ("Z"), before he acquired the car, that the car had not been involved in an accident. About ten days after acquiring it, he said that he returned to Z to complain about a number of faults with the car, which a friend, who was a car mechanic, had noticed. Mr R believes that the car was involved in an accident prior to his ownership in view of the damage to the paintwork on one side of the car, although Z disputed this. Mr R said that Z's salesman agreed that there were faults, but Z did not accept that there had been an accident prior to Mr R acquiring the car. Ultimately Z offered Mr R a part-exchange for a similar car, but it required Mr R to pay a £5,000 deposit, which he was unwilling to do.

The car had been inspected by an independent garage ("B") in September 2013. B listed a number of faults to be repaired, and quoted a repair cost of almost £1,900. Mr R then obtained an independent engineer's report in March 2014 which listed similar faults to those found by B. GMAC offered to pay half of B's repair quote as a gesture of goodwill, although it noted that no evidence of an accident prior to Mr R acquiring the car had been found. Mr R also complains that he discovered in July 2014 that the first owner of the car was a car hire company. He said that if he had known this, he would not have acquired the car. He had understood that the car had been used as a lease car by his car's manufacturer. Mr R is unhappy about the misrepresentations made by Z. He also wishes to reject the car as it is not of satisfactory quality, and he wants GMAC to cancel the agreement.

our adjudicator's view

The adjudicator concluded that GMAC's offer to pay Mr R £949.50, being half of the repair costs in B's quote, was fair and reasonable. The adjudicator had asked for evidence that the car had been in an accident before Mr R acquired it from Z, from another garage that the car had been taken to for inspection ("C"), and from motor insurance bodies. But he received no evidence that the car had been involved in an accident.

Mr R disagreed and responded to say, in summary, that he had complained to Z, ten days after acquiring the car, about the damage and had returned to it to complain numerous times after that, although he did not find it co-operative. He said that Z had suggested he take the car to be inspected by C. Mr R said that the car was with C for three days and it had prepared a report although Mr R never saw this. He is unhappy that C cannot now provide evidence that he had brought his car to it for inspection. He also believes that the dealership incorrectly told him before he acquired the car, that the car was not in an accident, and he is also unhappy that it had not told him that the car was a hire car.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr R and to GMAC on 13 February 2015. I summarise my findings:

As the evidence was incomplete, inconclusive, or contradictory, I reached my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and the wider circumstances.

Satisfactory quality

I had considerable sympathy for Mr R's situation. He had said that a friend pointed out several faults with the car shortly after he acquired it. Mr R told GMAC in February 2014:-

"After a week of buying this car, my friend who is a car mechanic noticed that the car has probably been involved in an accident. We could see that the door on driver side was lowered, there were bubbles under the paint by the fuel intake part, there was a different shade of the paint on the right side of the car and by the back bumper, left back light was not fitted properly; it was moving and there is a big space between the lights at the front of the car and the bonnet which obviously should not be there. The front light is not original either; the numbers on windscreen and other glass were different which tells us that they are not original too. The upholstery came off the left rear door and there is water inside the door which you can see while the door is open and then the water comes out."

Similar faults were confirmed by B's quote in September 2013, and the independent report in March 2014 which had listed the following faults:-

1. The rear bumper has two areas of repair, one to the offside side wall and the other is the centre top face of the bumper cover. To rectify, these areas of paintwork will require removal and refitting of the bumper parts and the rear bumper cover will require repainting.
2. The nearside rear lamp is loose.
3. The offside rear wing requires repainting to create a good colour match.
4. The offside front headlamp will require replacement.
5. The offside front wing is mis-aligned to the offside front door, o/s screen pillar and the bonnet.
6. The offside rear door trim is not fitted to the door. There appeared to be water ingress into the vehicle on the offside rear foot well.
7. The offside rear door is not aligned with the offside front door. This requires re-alignment with the adjacent panels.
8. Both the offside rear quarter glass and drop glass have a different number which relates to one digit. This would suggest that both the quarter glass and drop glass on the offside rear door have been replaced at some time.
9. The bracket which holds the bumper to the nearside rear wing requires replacement to hold the rear bumper cover closer to the nearside rear wing.

I can see that Z accepted that there had been work carried out to the car. It said in its letter dated September 2013:-

"it is clear to see a minor repair has been carried out at some point on the vehicle which I explained can be quite common with used vehicles as we cosmetically remove many small dents, scrapes and scratches on used cars. It is however clear to see that you have been given unqualified advice as to the nature of this previous repair which has led to your loss of faith in the vehicle".

I noted that it was unfortunate that there was no independent evidence to support Mr R's beliefs that the car was in an accident before he acquired it. But, I said that there were at the very least numerous minor defects with the car which could have been caused by an

accident. Mr R said that he had also complained to Z about the faults ten days after the car was supplied to him, and on many occasions after that. He had told this service:-

“For the next two months we attended [Z] between 10-15 times. Finally, [Z] asked for our vehicle to be inspected and it was taken to [C]. Upon collecting the vehicle we requested a copy of the report, but were informed that it could only be released to [Z]. Yet again we chased [Z] for a copy of the report but we were now informed that it had been lost.”

I noted that GMAC had said that Z had told it that it had no knowledge or details of Mr R's claims and no record of an after sales issue or contact with Mr R although Z's letter from September 2013 and Mr R's evidence contradicted this. I also noted that when the adjudicator contacted C, it said that it had no job cards for the car since supply, although it was not 100% sure of this. Again Mr R's evidence contradicted this. On balance, I was persuaded by Mr R's evidence that he had made many attempts to contact Z to complain about the faults to the car.

I also found that a reasonable person would find the car's faults to be unsatisfactory. In these circumstances, and on balance, I considered that it was more likely than not that the car was not of satisfactory quality at the point of sale in February 2013, and that there had been a breach of the Sale of Goods Act 1979 which applies to conditional sale agreements.

Misrepresentation

I noted that Mr R had said that he was told before he acquired the car that it had not been in an accident. GMAC's letter dated February 2014 confirmed that the dealership had told him this. But in view of the nature of the damage to the paintwork to Mr R's car, I could see, on balance, that it was more likely than not that the car had been involved in an accident. Mr R said that he had not had an accident with the car whilst he owned it, and I accepted this. I also noted that Mr R had said that if he had known the car had been in an accident, he would not have acquired it.

I also noted that the adjudicator had sought evidence of an accident with an insurance database, which did not have any record of an accident. But I could see that there would be no audit trail or record of an accident, if an insurance claim had not been made.

I also noted that in July 2014, after he had owned the car for over a year, Mr R discovered that the first owner was a car hire company. He believed that the car was originally a lease vehicle for the car's manufacturer. He had said that if he had known that the car was an ex-hire car, he would not have acquired it.

Mr R also referred to the "ownership promise" provided by the dealership. It said:-

“the great thing about buying a used car with.....is that you know exactly what you're getting. No hidden past, no hidden surprises – just complete peace of mind”.

I noted that Mr R has not had complete peace of mind in view of the previous ownership and the damage to the car prior to his ownership.

I also noted on Z's order form that there was a list of confirmations it required from an owner of a car to be part-exchanged. Amongst these, it required the owner to confirm if the car had been previously used for hire or involved in an accident. So, I could see it was important for Z to know about these aspects of a car's history, and I could understand why Mr R would be

unhappy if he had not been told whether either of these had applied to his car before he acquired it.

I also found Mr R's evidence to be plausible, consistent and credible, and I was persuaded by what he told us. Moreover, his recollections and actions were consistent, and he had raised the repair issues with Z shortly after purchase. So, I considered, on balance, that it was more likely than not that the car was not of satisfactory quality at the point of sale.

In view of the various problems with the car, I considered that it would be fair and reasonable for GMAC to cancel the conditional sale agreement and to permit Mr R to reject the car. As the finance agreement was being cancelled, it should be removed from Mr R's credit file. I noted that Mr R was seeking a refund of his monthly repayments. But I noted that he had been able to use the car and had driven at least 6,300 miles in it. So, it was fair that he paid for the use of the car. I also noted that Mr R had paid £240 for the independent inspection report. I considered that it was fair for GMAC to refund this amount to him.

I also found that Mr R had spent considerable time and trouble in pursuing his complaint. I considered that GMAC should pay him £150 compensation for his inconvenience.

Subject to any further representations by Mr R or GMAC, my provisional decision was that I was minded to uphold this complaint in part. In full and final settlement of it, I intended to order GMAC UK plc, trading as GMAC to:

1. Arrange for the collection of the car and cancel the remaining finance at no additional cost to Mr R;
2. Refund Mr R's deposit of £7,000 (advance payment) in full. Interest should be calculated on this sum at 8% simple per annum from the date of Mr R's payment to the date of settlement;
3. Pay Mr R £150 compensation in relation to distress and inconvenience;
4. Remove any reference to the conditional sale agreement from Mr R's credit file; and
5. Pay Mr R £240 as a refund for the independent report.

If GMAC considered that tax should be deducted from the interest element of my award, it should provide Mr R with the appropriate tax deduction certificate so that he was able to claim a refund, if appropriate.

Mr R disagreed and responded to say, in summary, that he should get a refund of his monthly payments after he had rejected the car. He had also not used the car since the date of my provisional decision. He also said that he had sent this service correspondence received from previous registered keepers of the car. This correspondence was never received by us and I have not seen it. But Mr R said that the car was originally owned by a car hire company and it was then sold to a car body repair centre, which sold the car to Z. GMAC disagreed with my provisional decision and responded to say, in summary, that it had noted that C's inspection report dated 30 September 2013 did not contain any reference to the car's registration number or its mileage. It had also contacted C. C said that it could not confirm that it had inspected the car. GMAC also referred to the car handover sheet. It said that this confirmed that Mr R was happy with the condition of the car when he bought it as he had signed the form to confirm this. It also referred to the March 2014 report which said that the car was fit for purpose.

The adjudicator asked Mr R if he could provide any more information about C. He said that he had never used C before and had been referred to it.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I note that GMAC is casting doubt on the authenticity of C's inspection report. But I note that it lists similar faults to B's estimate and the March 2014 independent report. So, I am not persuaded that its evidence should be discounted. GMAC also said that the fact that Mr R had signed a handover sheet confirmed that he was happy with the condition of the car. I note that the handover sheet shows that various items were explained to Mr R, but I am not persuaded that this meant that he had the opportunity to have a detailed inspection of the condition of the car. The form also refers to Mr R's statutory rights not being affected by his confirmation. GMAC also said that the independent inspection said that the car was fit for purpose. But, I note that the report does not say that the car was of satisfactory quality. There was an implied right in the conditional sale agreement that the car was of satisfactory quality under the Sale of Goods Act 1979. So, on balance, and for the reasons set out above, I am persuaded that it was more likely than not that the car was not of satisfactory quality at the point of sale in February 2013, and that there had been a breach of the Sale of Goods Act 1979. I consider that my provisional decision is an appropriate resolution for this.

I note that Mr R is concerned about the previous ownership of the car, although I have not seen the correspondence from the previous owner to evidence this. I also note that GMAC has not commented on this aspect of Mr R's complaint. Mr R is also unhappy that I had not ordered a refund of his conditional sale repayments since he rejected the car. I consider that it is reasonable that Mr R should pay for his use of the car. But, as Mr R said that he has not used the car since my provisional decision in February 2015, I propose that GMAC should also refund any repayments which Mr R has made from and including February 2015.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of it, I order GMAC UK plc, trading as GMAC to:

1. Arrange for the collection of the car and cancel the remaining finance at no additional cost to Mr R;
2. Refund to Mr R his deposit of £7,000 (advance payment) in full. Interest should be calculated on this sum at 8% simple per annum from the date of Mr R's payment to the date of settlement;
3. Refund to Mr R the repayments he has made under the conditional sale agreement from and including February 2015. Interest should be calculated on this sum at 8% simple per annum from the date of Mr R's payments to the date of settlement;
4. Pay Mr R £150 compensation in relation to distress and inconvenience;
5. Remove any reference to the conditional sale agreement from Mr R's credit file; and
6. Pay Mr R £240 as a refund for the independent report.

If GMAC considers that tax should be deducted from the interest element of my award, it should provide Mr R with the appropriate tax deduction certificate so that he is able to claim a refund, if appropriate.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R to accept or reject my decision before 22 June 2015.

Roslyn Rawson
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