

## **complaint**

Mr D complains that a car he purchased using his credit card was not of satisfactory quality. He brings his claim against Vanquis Bank Limited under section 75 of the Consumer Credit Act 1974.

## **background**

Mr D purchased a car and paid using a combination of his Vanquis credit card, bank transfer, and the part exchange value of a car he traded in. When he purchased the car he was informed the engine had been replaced by a specialist.

A day after the purchase Mr D noticed problems with the car, there appeared to be oil in the coolant system and a warning light on the dashboard. He contacted the specialist who had originally replaced the engine and he made suggestions on how Mr D could rectify the issue. However, Mr D was still having problems two days later. Around ten days after the original purchase Mr D contacted the dealer and informed it he wanted to reject the car – he requested a full refund.

Vanquis has rejected Mr D's claim for a full refund under section 75– in summary, it says that the dealer offered a repair which was suitable remedy.

Our adjudicator recommended this complaint be upheld. She was satisfied that the faults existed at the time of purchase and that they were serious in nature. She considered that Mr D should have been entitled to reject the car and receive a full refund. She found that some of Mr D's claims for consequential losses were reasonable, including the insurance costs he incurred (as he had not used the car) and the cost of the independent report.

Vanquis disagrees with the adjudicator's findings. In summary it considers that the fault was not a major fault and says that it is impossible to conclude with certainty that it was present at the time of sale. It notes the age and mileage of the car and that the fault was commonly experienced with this type of car. It says that the dealership offered a repair which was an appropriate remedy in the circumstances.

## **my findings**

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

Where there is a dispute about what happened I make my findings on the balance of probabilities – which is to say, what I find most likely to be the case, based on the evidence available and the wider surrounding circumstances.

I have considered the evidence available, including the submissions of Mr D which I find to be consistent and credible. I am satisfied that he noticed the problems with the car on the day after purchase and that he reported them shortly afterwards. I also note the expert report which Mr D obtained shortly after purchase which states:

*'oil entering cooling system. Cooling system loss of pressure. No apparent external leaks. Advised the customer not to use as may result in permanent engine damage'*

Overall, I am satisfied that the car was faulty when Mr D bought it. I accept that the car was purchased second-hand, however the car must still be of satisfactory quality considering all the circumstances. Despite its age and mileage I do not find it acceptable (considering the price paid and all the surrounding circumstances) to have these types of issues with the car shortly after purchase.

I am also satisfied that Mr D acted reasonably in rejecting the car rather than accepting the offer of repair. In coming to this conclusion I have taken into account that his rejection came very shortly after purchase and that I consider the fault to be significant. I know that Vanquis dispute this and say it is a fault which is common to the type of car. However, whether or not the fault is common to this make and model, it is clear to me that it was deemed serious enough that Mr D was advised by the expert not to drive the car. Furthermore Mr D obtained an estimate of over £4,000 for the repairs (around a third of the total value of the car) – I consider this to indicate that major work is required to remedy the fault.

I consider that Mr D was entitled to a full refund when he wrote a letter of rejection to the dealer shortly after discovering the problem. Therefore, I consider he should be entitled to a full refund now. Vanquis should take ownership of the car and refund Mr D the cost of it, including simple interest on the cash payment and the credit card payment (where applicable). I am satisfied that, on balance, Mr D has not had significant usage of the car during the time of his ownership (due to the recommendation in the expert report). Therefore, I cannot fairly conclude that Vanquis should deduct a portion of the refund due to Mr D.

Mr D has indicated that he should receive compensation for consequential losses. He has mentioned road tax and MOT costs – however, I am satisfied that these were included in the purchase cost and therefore he will be receiving the value of these as part of the refund. He has also mentioned solicitor's costs and garage storage costs. In the circumstances I am not persuaded these costs were necessary so I cannot fairly conclude that is reasonable to award them.

However, I do find it is reasonable to award Mr D the cost of insuring the car during the period he has had it. I note that he has not had use of the car and in these particular circumstances I am satisfied that he acted reasonably in keeping the car insured. I find that Mr D should receive the cost of insurance during the time he has had the car and up to the point of settlement, on production of valid receipts for those costs. I also consider it fair and reasonable that Mr D receive a refund for the cost of the independent report he obtained.

### **my final decision**

My final decision is that I uphold this complaint and direct Vanquis Bank Limited to:

- pay Mr D £7,745 representing the cash payment for the car, including 8% simple interest on this amount from the date of payment to the date of settlement;
- rework Mr D's credit card as if the payment of £1,000 had not been made, refunding him any credit balance including interest at 8% simple from the date of any credit balance to the date of settlement;
- pay Mr D the £3,245 representing the part exchange value he contributed to the purchase by trading in his old car;
- pay Mr D the cost of insuring the car from the date of purchase to the date of settlement (on Mr D producing valid receipts for this expense); and
- pay Mr D £25 for the independent report he commissioned.

As part of the settlement Vanquis should take back the car at no cost to Mr D at a time convenient to him.

Vanquis should deduct basic rate tax on the interest element of my award and provide Mr D with a certificate of tax deduction so that he may claim a refund, if appropriate.

Mark Lancod  
**ombudsman**