

complaint

Mrs G complains that the car she purchased under a conditional sale agreement financed by Clydesdale Financial Services Limited (trading as Barclays Partner Finance) was not fit for purpose at the point of sale as it broke down within a short period of time after purchase.

our initial conclusions

Our adjudicator did not recommend that the complaint should be upheld. She noted the condition of the car at the time it was sold, which included the age and mileage but did not think the car was in an unsatisfactory condition when it was supplied. On balance, she felt the problems experienced were more likely caused by wear and tear and the general age and condition of the car.

Mrs G did not agree with the adjudicator's conclusions. She said that the car had covered just over 1000 miles over a period of 8 months when it broke down. The car came with a three months or 3,000 miles warranty so, it had not even fully utilised the warranty mileage. The main car dealer has told her that it was usual for the used cars to be supplied with a one year warranty but only the minimum three months' warranty was provided.

She further said that the car dealer did not do the service but they stamped the service book. Therefore, there is no evidence to suggest that the service was actually carried out and the car is likely to have been supplied with faults. She became aware that the car with mileage of over 100,000 could not secure finance and for this reason, the agreement stated the incorrect mileage. If the correct mileage was stated then the finance would not have been approved, meaning that she would not have bought the car.

Mrs G also says that the finance agreement was not fully explained to her. BPF promised to pass on her concerns but she has not yet heard anything further. She believes that the finance was misrepresented to her and despite raising her concerns she is still awaiting a response to her complaint.

Therefore, Mrs G asked an ombudsman to review her complaint.

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 have based my decision on the balance of probabilities - in other words, on what I consider is most likely to have happened in the light of the evidence.

Mrs G has raised some questions about the way the finance agreement was sold to her. I can see that she has already raised a separate complaint against the credit broker so, I will not comment on the role of the credit broker in arranging the finance, within the scope of this complaint.

Conditional sale agreements are covered by the Sale of Goods Act 1979, which says that, in a conditional sale agreement, there are implied conditions including a condition that the goods will be of satisfactory quality (s.14). The concept of 'satisfactory quality' is expanded by the Sale and Supply of Goods Act 1994 and includes; fitness for purpose; appearance and finish; freedom from minor defects; safety; and durability.

I can understand her concerns that the car she bought broke down within a year and despite covering only low mileage. She is entitled to bring a claim against the lender if the car she was supplied with was faulty at the point of sale or not fit for purpose. However, in deciding whether the car was faulty, I need to consider various factors such as, the age of the car, the mileage covered and the general maintenance of the car.

I think it would be fair to say that a used car is more likely to breakdown, particularly when it had already covered over 100,000 miles before Mrs G bought it. But for me to come to a conclusion that it was defective at the point of sale, I need to see some independent expert report confirming this. I have not seen any such evidence so; I cannot be as sure as I need to be that the car was not fit for purpose at the point of sale, despite covering only just over 1,000 miles in around 8 months. However, the fact that Mrs G was able to use the car for this long does tend to support the argument that the faults could not have been present at the point of sale.

I do understand the point Mrs G is making about the service of the car and that the engine should have been flushed on each service. However, based on the information available to me I cannot fairly conclude that the service book was stamped without ensuring that the service was carried out properly on each occasion. It therefore follows that I cannot establish that this could have been a contributory factor in the engine breaking down.

In light of the above, I am not persuaded that there is sufficient evidence available to hold the business liable for the problems Mrs G experienced with the car. I am therefore unable to instruct BPF to make a payment to Mrs G, or to take back the car.

I appreciate this decision will be disappointing for Mrs G but I am not persuaded there is sufficient evidence to uphold this complaint.

I realise Mrs G does not consider that she has received the level of customer service that she should have done from BPF. But it seems she has now been provided with the information she requested. I do not, therefore, consider it appropriate to require it to do any more than that.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs G to accept or reject my decision before 5 February 2015.

Joyce Gordon
ombudsman