

complaint

Mr F complains that a used car he paid for in part with credit provided by TSB Bank plc was of unsatisfactory quality. He brings this complaint under Section 75 of the Consumer Credit Act 1974.

background

Mr F got this car on 14 February 2018. The car broke down shortly after and Mr F had concerns about the gearbox - amongst other things - so he got in touch with the dealer. The dealer said any issues should be covered by a warranty Mr F bought when he got the car. But Mr F says the warranty provider told him the gearbox wasn't covered - as it's not an "internal" fault.

Mr F paid the £200 deposit for the car with his TSB credit card so he phoned TSB to complain. TSB said it would need to see some evidence of what's gone wrong and suggested Mr F should get an independent report. Mr F took the car to two local garages for checks and he's been told it needs repairs that are likely to cost over £6,000.

The dealer that sold the car to Mr F says not all of these repairs are "faults" in a car of this age and mileage and it thinks the estimated cost looks too high. The dealer offered to collect the car, have it checked by a third party specialist (in this particular type of vehicle) and arrange for any faults found to be fixed. TSB thinks that's a reasonable offer and any liability it has under section 75 has been discharged.

Mr F says the dealer didn't want to know when he first got in touch and he has no faith that repairs will be done properly. He'd rather TSB (or the dealer) pay for a garage near him to do the work or - if that's unacceptable - take the car back and provide a full refund.

Our investigator is satisfied that this car seems to have a significant number of serious faults. He thinks it was probably of unsatisfactory quality when it was sold. And, in view of the number of faults and the time it's likely to take to repair, he recommends Mr F should be allowed to reject the car and receive a refund.

TSB doesn't think this is fair. It says the dealer should have the chance to repair under legislation and Mr F has been offered a reasonable resolution to his complaint. It asked for an ombudsman to review the matter.

my provisional findings

I issued a provisional decision on 21 June 2018 and I've set out a summary of my provisional findings below.

Section 75 gives consumers an equal right to claim against a supplier of goods or services or the credit provider, in certain circumstances. I make my decision based on what I consider to be fair and reasonable in the circumstances – taking relevant law into account among other things. And Section 75 is relevant to whether TSB has taken appropriate steps in response to Mr F's complaint.

The Consumer Rights Act 2015 (CRA) says this car should have been of satisfactory quality when it was sold to Mr F - and consumers have a short term right to reject faulty goods within 30 days of sale. The level of quality that's considered to be "satisfactory" will vary

depending on the circumstances. In the case of most cars it's generally thought to be reasonable to take age, cost and mileage at the point of sale into account.

This car was around fourteen years old with over 90,000 miles on the clock and cost just over £5,500. As such, I think a reasonable person would appreciate there's likely to be some wear and tear present and parts will probably need to be replaced sooner or later - and that's reflected in the price paid.

I have spoken to Mr F and he's explained that he owned this car some years ago. He kept it well maintained so he was interested when it came up for sale again. He spoke to the dealer - located some distance away - on the phone and felt reassured that the car was still in excellent condition. He flew down and took the car on a test drive. He says his ability to take a close look was bit limited by poor weather but he took some comfort in paying the deposit by credit card and agreed to buy the car.

Mr F was able to drive the car about 400 miles home but it broke down the next day. Over the next week or so he became concerned about the gearbox and the car's overall condition. He had it checked by a local garage and found there's a problem with the gearbox - which will cost about £1,200 to fix and isn't covered by the warranty. After speaking to TSB Mr F had the car checked by another garage, M, and it found a number of issue. I accepted this was a long list and, taken with the fact the car broke down within 24 hours of purchase, I could see why our investigator thought it was likely the car was sold with significant faults.

From speaking to Mr F however, I understood the reason the car "broke down" was that it had in fact run out of fuel. I accept this was due to a faulty fuel gauge. But I think it's important and relevant to note that the car didn't break down as a result of some problem with the engine or other mechanical issue.

I think it is entirely understandable that Mr F was unhappy to see the list of issues identified by M. He says this work is required to make the car roadworthy. And, given the price he paid, it's uneconomical to repair so he should just be allowed to reject the car. But, the car passed an MOT with only one advisory two weeks before it was sold to Mr F. I think that indicates the car was considered roadworthy at that point - and it seems unlikely, on balance, that the car had become unroadworthy by the point of sale.

I accept the standard of quality Mr F was reasonably entitled to here is probably a bit higher than that required to pass an MOT. But, I think some of the items on the list look as if they're probably wear and tear related - and, as such, might reasonably be expected to be present in a car of this age and mileage. On the evidence I have at the moment, I can't be sure which (if any) of the issues listed should reasonably be considered a "fault". And, even if I were to accept that it's likely some of these are defects - meaning this car probably wasn't of satisfactory quality at the point of sale - I have to consider the appropriate remedy.

The CRA says a purchaser like Mr F has the short term right to reject faulty goods but that right must be exercised within the first thirty days of purchase. On the current evidence, I am not satisfied that Mr F did so here. And I can't fairly find he should be entitled to reject the car now, solely on that basis. After the first 30 days the CRA allows for a price reduction or a final right to reject goods if:-

- there has already been one repair or replacement and there is still a problem;*
- repair or replacement is impossible or disproportionate; or*

- *the consumer has asked for a repair or replacement but the trader hasn't done so in a reasonable time and without significant inconvenience to the consumer.*

Taking everything I have seen into account, I am minded to find the appropriate remedy here would be to give TSB (or the dealer) an opportunity to repair. I am satisfied the dealer offered to do that in April 2018. I have seen emails the dealer sent to TSB then, offering to have the car collected from Mr F, taken to a third party specialist for inspection, have any faults fixed and return the car to Mr F - all at no cost to him.

I appreciate Mr F had concerns about the dealer - because he felt it didn't take his complaint seriously at first and he was worried that an email address didn't look right. But, I can't fairly find that Mr F should be entitled to reject the car on those grounds. I think it's reasonable to give the dealer the chance to have this car checked and get any defects (beyond wear and tear) that were present at the point of sale repaired.

I understand TSB has already refunded £240 to Mr F for diagnostic checks that he paid for. If I'm wrong about that please let me know. It looks as if Mr F has also paid for some repairs which he says were required to keep the car on the road. But, this seems to have happened after the dealer offered to have the car fixed in April last year. So, whilst I am sorry to disappoint Mr F, I don't think I can reasonably require TSB to refund those costs.

Based on everything I've seen so far, I don't think TSB has acted unfairly in response to Mr F's complaint. I'm satisfied it considered his claim for breach of contract and contacted the dealer who offered to fix any faults at no cost to Mr F within a reasonable time. TSB says it will consider the matter again if the problems aren't fixed and I think that sounds fair. If Mr F then has reason to complain to TSB and he's unhappy with the response, he may be able to bring another complaint to this service.

I invited both parties to consider my provisional findings and let me have any further evidence or comments by 5 July 2019. I said I'd review everything again after that and make my final decision.

my findings

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

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

TSB accepted my provisional conclusions and had nothing further to add. Mr F is most disappointed and said (in summary):-

- TSB is jointly and severally liable with the supplier under section 75 and it has failed in its duty of care to him as a customer;
- the car was misrepresented and faulty and the warranty is unfit for purpose;
- he remains concerned about the dealer's business set-up and refers me to on-line reviews;
- the dealer wouldn't take responsibility when Mr F contacted him initially and it didn't get back to TSB within the time limit TSB gave; and
- it's unfair to give the dealer another chance to put things right at this stage.

I have considered everything Mr F has said carefully. I understand he feels TSB owed him a duty of care and should have done more to help. But, as I explained in my provisional conclusions, what I have to consider here is whether TSB has taken appropriate steps in response to Mr F's complaint.

I've seen nothing to show that Mr F paid for the warranty with credit provided by TSB. For the reasons I've given already, I remain of the view that the offer that's been made is reasonable - and proportionate. I appreciate this offer was made outside of the time limit TSB set for a response when it first got in touch with the dealer. But, I am not persuaded that means I should not reasonably take it into account.

I know Mr F has serious misgivings about the dealer's actions and intentions - but I can't fairly uphold this complaint on those grounds, from the evidence I have seen. I think the dealer made a reasonable offer to have the car checked by a third party and fix any faults found. And TSB says it will consider this matter again if the problems aren't fixed. If Mr F has reason to complain to TSB then, and he's unhappy with its response, he may be able to bring another complaint to this service.

I realise this isn't the outcome Mr F wanted and I'm sorry it's taken some time to reach this point. But, I am not persuaded that there are enough fair and reasonable grounds to uphold this complaint - in that I can't fairly require TSB to do more than has already been offered. I leave it to Mr F to decide if he wants to contact TSB and/or the dealer to accept the offer. If he doesn't, he remains free to pursue any legal rights he may have against those parties.

my final decision

For the reasons I've given, my decision is I do not uphold this complaint - in that I do not require TSB Bank Plc to do more than has been offered already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 11 August 2019.

Claire Jackson
ombudsman