

complaint

Mr R complains about a car supplied to him in March 2012 and financed by a hire purchase agreement with GMAC UK Plc.

background

Mr R's initial complaint focused on the quality of the car. He says that the car has had various intermittent problems since he purchased it, in particular with loss of power and the engine management light illuminating.

Mr R had complained to GMAC saying that he wanted to reject the car. GMAC did not agree that the car was faulty at the point of sale. It indicated that the problems have been caused by maintenance issues relating to a blocked DPF filter. Mr R brought his complaint to this service. He has also complained that:

- the dealer did not MOT the car before the purchase; and
- the brake horsepower (BHP) was misrepresented at the time of sale.

Ultimately, our adjudicator did not recommend this complaint be upheld. He noted that it was unclear why the car had more recently been losing power and that a significant amount of time had elapsed since the original sale. He concluded that there was too much doubt to be able to say that the car was faulty at the time it was supplied.

The adjudicator noted that the car had passed its MOT in January 2012, and although it had failed in March 2012 this was related to a windscreen issue that the dealer says it fixed. He indicated that there was some confusion over the BHP of the car, but was not persuaded that this had caused Mr R a material loss, or that the BHP was a primary reason for his decision to purchase.

Mr R has requested that this matter is considered by an ombudsman. In summary, he says:

- he accepts the adjudicator's findings over the quality of goods issue due to the lack of evidence available;
- the dealer said it would provide a 12 month MOT but this was a false representation as the car failed an MOT in March 2012 – and although the issue highlighted on the MOT may have been rectified this is irrelevant because a pass certificate was not issued which meant the car was not legal to drive on the road; and
- he only agreed to the sale on the basis that the car had 160 BHP and would not have done so otherwise.

my findings

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

quality of goods

Mr R appears to have accepted our adjudicator's findings on this issue. As a result I do not intend to discuss it in great detail. However, I do comment as follows:

Mr R says he has experienced the more recent problems with the car since May 2013 and has diagnostic reports from July 2013 and April 2014 identifying these issues. However, after considering the submissions of both parties I consider that there is a lack of clarity as to what is actually the root cause of these problems. There is certainly a lack of persuasive evidence to show that they are due to an inherent fault with the car which was present since the time of sale (March 2012). Considering this, along with the age and mileage of the car and the time elapsed since the original sale I am minded to conclude that the issues are not the result of an inherent defect.

I appreciate that Mr R appears to have had some problems with the car in September 2012. This is backed up by a diagnostic report. However, it is unclear if these issues were the result of an inherent fault, or if they are actually connected with the issues experienced more recently. The car appears to have been running for around six months (to May 2013) without issue since these repairs were carried out - which, in light of persuasive evidence to the contrary, suggests to me that they were successful and that the problems experienced since then are unrelated.

While I am sorry to hear about the latest issues Mr R has been experiencing with the car, overall I am not persuaded that it was of unsatisfactory quality at the point of sale. Therefore, I cannot fairly conclude that GMAC should take it back and cancel the finance.

MOT

From looking at the MOT records I can see that a pass was granted in January 2012. There appears to have been a crack on the windscreen since then which resulted in an MOT fail in March 2012. It appears this issue was remedied but Mr R is unhappy that a pass certificate was not granted afterwards. He says that the car was illegal to drive and he was effectively sold an MOT failure.

I have no doubt that in hindsight Mr R has genuine concerns about whether he was driving a car with no MOT. However, overall, I am not satisfied that Mr R has actually been caused a material loss by this issue. I note that the car has passed an MOT since this time and there is no compelling evidence to show that Mr R's insurance was invalidated or that he was caused financial losses as a result of the claimed error by the dealer.

Furthermore, as I have already discussed, I am not satisfied that the car was of unsatisfactory quality at the time of sale. I accept that it did have an issue after it passed the MOT in January 2012. However, this appears to be solely down to a crack on the windscreen rather than in connection with the more recent issues with the car.

brake horsepower (BHP)

It is fair to say that there is some uncertainty about what was said about the BHP of the car at the time of sale. Mr R says he was told the car had 160 BHP while the dealer maintains it told him it had 130 BHP. The DVLA registration documents indicate the car was registered as a '160' model in error.

There is no persuasive record of what was said at the time of sale. I note there is no advert for the car and the invoice does not specify the BHP. Overall, I am not persuaded that the BHP was falsely described to Mr R at the time of sale. But, in any event, considering the age and mileage of the car at the time I am not satisfied this has caused him a material loss.

Mr R has pointed out that he would not have financed the car had he known it was a 130 BHP car. For a finding of misrepresentation I need to be satisfied that a false statement of fact was made which caused Mr R to enter into a contract he otherwise would not have.

For reasons already outlined I am not sufficiently persuaded that the dealer made a false statement of fact regarding the BHP. But even if this could be shown, I am still not satisfied that it was likely to be a material factor in Mr R's decision to finance the car. If it was I would have expected him to have discovered the discrepancy shortly after the sale and raised a complaint about it much sooner than he appears to have done (especially considering the nature of his experience with cars). I note that in his initial complaint to GMAC and the manufacturer he does not appear to have raised the BHP as a primary concern. It seems this has become the focus of his complaint at a much later stage.

I understand that Mr R strongly disputes what he considers to be assumptions about his motivations. However, as already noted, my findings are based on what I consider is likely to have been the case in the particular circumstances. While I accept that having a certain BHP may have particular benefits which are desirable to Mr R – for a finding of misrepresentation I need to be satisfied that it was a material inducement to entering into the contract. In this case I am not satisfied it was.

Overall, for the reasons outlined above, I am not satisfied that there has been a breach of contract or misrepresentation in respect of the goods. Therefore, I cannot fairly conclude that GMAC is responsible for taking back the car, cancelling the finance or compensating Mr R.

I know that this is not the outcome Mr R wanted and that he is likely to be disappointed. However, I remind him that he does not have to accept this decision and may pursue this matter by alternative means, should he wish to do so.

my final decision

I do not uphold this complaint.

Mark Lancod
ombudsman