

complaint

Ms K complains about a used car she paid for using her credit card provided by Creation Financial Services Limited ("CFS").

background

Ms K says the car was bought in January 2018 for a member of her family to use, who is the registered keeper. She says it broke down in May 2018, around four months and 4,000 miles later. And she says the cam belt had failed, causing irreparable damage to the engine.

Ms K also says she later learned the cam belt had been due to be replaced around eight months earlier. She says the supplying dealer misrepresented the condition of the car and didn't mention that the cam belt needed replacing. She says the sales agent asked her family member to sign the relevant documentation, although he was well aware she was paying for the car. And she says she didn't see this documentation until after the car had broken down.

So, Ms K says she'd ideally like a refund of the £880 she paid for the car.

CFS says the age of the car (16 years) would make it less reliable than a brand new vehicle. It says there's no evidence to suggest it left the dealership with a fault. It says Ms K had the car for four months (and covered around 4,000 miles) without any failure or issues. And it says if the car was faulty from the point of supply, it believes this would've become apparent sooner.

Our investigator thought Ms K's complaint shouldn't be upheld. She said the information on file indicated there wasn't a contractual relationship between Ms K and the dealership as a member of her family had signed the contract to buy the car, rather than her.

Ms K disagreed with the investigator's conclusions. She said she's the owner of the car and she has a receipt showing how much she paid and who she paid it to. She said she could've lent her family member the money to buy the car, but she paid for it as she'd always intended to retain ownership of it.

Ms K also said she was never asked to sign a contract and it didn't even occur to her that one was necessary. She said she didn't even realise a document the garage called a contract was in existence until the car broke down. She said her family member was asked to sign it in her absence and he didn't read it as he thought it was part of the documentation he needed to sign in relation to the registration document. And she says her family member didn't have her authority to sign the contract.

So, the matter's been referred to me to make a final decision.

my findings

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

I've decided not to uphold Ms K's complaint and I'll explain why.

I see Ms K paid for the car using her credit card with CFS. But for her to have a claim about this matter via CFS under s75 Consumer Credit Act ("s75") there would need to be a relationship between her as the debtor, CFS as the creditor and the supplying dealership as the seller of the car. And there would also need to be a clear breach of contract or misrepresentation by the dealership.

I also see the purchase invoice for the car was signed by the member of Ms K's family who was going to be the driver and registered keeper of it.

I note what Ms K's told us about the circumstances surrounding the signing of the invoice by her family member. And I note she says it was her intention to be the owner of the car in addition to paying the purchase price for it.

But I'm surprised Ms K was apparently unaware of the existence of a signed purchase invoice until after the car broke down four months later. And taking everything I've seen into account, I don't have enough information to conclude there is a contractual relationship between Ms K and the supplier of the car. For this reason, I don't think Ms K has a claim via CFS under s75 in respect of any breach of contract or misrepresentation relating to the car.

As a result of this conclusion I can't consider the merits of Ms K's argument about responsibility for the fault that's resulted in the engine needing to be replaced.

So, for these reasons, I can't fairly and reasonably uphold Ms K's complaint.

my final decision

I don't uphold Ms K's complaint against Creation Financial Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision 12 April 2019.

Robert Collinson
ombudsman