

complaint

Mr K complains that Vanquis Bank Limited unfairly declined a claim he brought under section 75 of the Consumer Credit Act 1974. He wants compensation.

background

Mr K is represented in this complaint by his partner, Miss W, but for ease of reading I'll mostly refer to him.

Mr K tells us that in March 2018 he purchased the vehicle from a dealer I'll call "F". He says he paid the purchase price, of just under £2,400, with a combination of £300 from his Vanquis credit card and the balance by direct transfer from his bank account. Mr K said he'd already had two bald tyres replaced before he took the vehicle for a pre- MOT inspection in May 2018. He states that this inspection revealed further faults with the vehicle including a loose steering rack; corroded brake pipes and seals; and pitted brakes and discs. He says that when he complained to F it alleged the transaction was a "*trade sale*" and as such it wasn't liable for the repairs. Mr K says he's never been involved in the motor trade and feels this description was added as F knew the vehicle wasn't fit for purpose and in an attempt to deprive him of his rights.

Vanquis told us it had refused the claim as it hadn't found any breach of contract or misrepresentation by F. It said the inspection report had confirmed the faults were down to general wear and tear.

Our investigator didn't recommend the complaint should be upheld. She said she didn't think that F had breached the contract or misrepresented the sale. She thought the vehicle was of satisfactory quality having regard to its age, mileage and the price paid - which she felt was below market value.

Mr K didn't agree with this outcome. He disputed the transaction was a trade sale and says he'd since found out that the bank transfer had been to a personal account and not F's business account. As it's not been possible to resolve this complaint an ombudsman has been asked to make the 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'm sorry that Mr K has experienced the disappointment and inconvenience that's arisen due to the problems with this vehicle. And I can understand his sense of frustration that over a year later things still haven't been resolved.

Mr K's complaint consists of two main elements. There's an allegation that the transaction was misrepresented as a trade sale and that the vehicle wasn't of satisfactory quality when supplied.

I should explain that I don't apply the law - directly - but I do take it into account. And relevant legislation here includes the Consumer Credit Act 1974 and the Consumer Rights Act 2015 (CRA).

As this complaint, based on section 75, is brought against Vanquis it's important to note that I'm looking at whether or not Vanquis has treated Mr K fairly in its handling of this claim. I'm not deciding the merits of any underlying claim he might have against F. Although in deciding if Vanquis has treated him fairly, I'll consider how it's looked at this aspect.

Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75, and subject to certain conditions, the consumer has an equal right to bring a claim against the provider of the credit as well as the supplier of the goods or services. To do this there must have been a misrepresentation or breach of contract on the supplier's part. I should add that only part of the purchase price needs to be paid by way of relevant credit. So the fact that Mr K paid the balance by bank transfer and to other than F's business account doesn't affect the outcome of his complaint.

A misrepresentation is a false statement of fact which leads a consumer into entering the contract. And there seem to be two potential areas of misrepresentation in these circumstances. These relate to an advert which described the vehicle as being "*well maintained*" and the transaction being described as a trade sale on the sale invoice.

I don't think this was a trade sale as I've no information to show me that Mr K was acting as a trader in this transaction. Simply describing a transaction as a trade sale does not make it such. In these circumstances, there's insufficient evidence to show the transaction amounted to a trade sale and I think Mr K retained any rights he acquired under the CRA. But I don't think this entry on the invoice amounted to a misrepresentation. I'll explain why.

Mr K made it clear in a complaint to F that he'd been unaware the transaction was being described as a trade sale. It seems F later justified the description by reference to there having been a part-exchange vehicle involved as part of the sale. This doesn't amount to a misrepresentation as Mr K wasn't aware that the transaction had been described as a trade sale until *after* the agreement had been signed. So it can't have affected his decision to purchase the vehicle.

As far as the description of the vehicle as being "*well maintained*" is concerned, I think this is too vague to amount to a clear statement of fact. I'm also of the view that Mr K could have declined to enter into the agreement - or sought further details - if he wasn't satisfied with the maintenance or service history with which he'd been provided. He knew he was purchasing a 12 year old vehicle with 82,000 miles covered and so it was to be expected there would be some issues with the vehicle. There's also a MOT history which shows the vehicle was due for another test in May 2018 and a previous advisory referred to a worn front brake disc. Although it commented that this hadn't seriously weakened it.

The CRA says that goods must be of satisfactory quality at the time of supply. And satisfactory quality is defined as being what a reasonable person would consider to be satisfactory. This takes into account such factors as age, previous use and price.

I've seen a report, dated May 2018, which Mr K obtained from a local garage I'll call "*W*".

This report state that the following items were found to be defective:

Near-side top suspension ball joint excess play;

'Leak at steering rack;

Off-side front brake pipe excessively corroded;

Rear brake pipes excessively corroded;

Front to rear brake pipes excessively corroded;

Corrosion and off-side and near-side inner sills and off-side and near-side outer sills;

Brake discs scored and pitted;

Mr K accepts he knew at the time of the agreement that there were issues with the pitted brakes and discs.

The report when on:

“The possible cause of leak at the steering rack and suspension ball joint having excess play is due to general wear and tear on the vehicle.

The corrosion which is visible on the vehicle would require outer plastic sill panels being removed to view full extent of corrosion prior to being tested.”

I'd describe the faults listed as being typical wear and tear issues which it's not unreasonable to expect would arise with a vehicle of this age and mileage.

A further report from a garage I'll call "G" and which is dated 31 October 2018 found similar faults together with additional welding to some sills being required. This report suggested that these faults should have been picked up on a pre-sale inspection. But again I'd describe the additional welding identified as being typical of the sort of remedial work that a vehicle of this age might reasonably require due to wear and tear.

In summary, I think Vanquis considered the information with which it had been supplied and reached a reasonable view based on that. I think it was entitled to conclude that there'd been no misrepresentation or breach of contract. As such I think it dealt with Mr K's complaint in a fair manner. I shan't be asking it to do anything else.

I know my decision will come as a disappointment to Mr K but I again emphasise that it concerns only the way Vanquis has handled his complaint. It doesn't prevent him from taking any action that he feels he might have against F.

my final decision

For the reasons given above my final decision is that I do not uphold this complaint.

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

Stephen D. Ross
ombudsman