

complaint

Mr A, who is represented by his son, Mr S, complains that FirstRand Bank Limited rejected his claim under Section 75 Consumer Credit Act 1974 in respect of a car.

background

Mr A bought the car on 5 November 2016 and on 1 May 2017 he noticed a warning light had come on and the engine was misfiring. The car was 10 years old, cost £15,000 and First Rand provided finance. An engineer inspected the car and listed the faults as shown on the diagnostic tool. Mr A contacted the garage which had sold him the car, but it said it didn't have any responsibility for the problem. Mr S had the car inspected by another garage which diagnosed a knocking bottom end, but it didn't comment on the cause or origins of the fault. This report cost £32.50.

Mr S contacted FirstRand and said that it needed an independent engineer's report to say if the fault had been present at the point of sale. It provided details of three organisations where Mr A could find an independent engineer.

Mr A then brought the complaint to this service where it was considered by one of our investigators. In due course Mr S arranged for an independent engineer attended to inspect the car, but as the car's battery was flat he was unable to carry out a full inspection. Mr S says the engineer refused his offer of a battery charger.

Mr S then obtained a report from another garage. This report suggests that the fault may lie with a failed connecting rod or crankshaft bearing. It said such a fault was often associated with poor maintenance, but the car showed every sign of being well maintained. The engineer said that he couldn't conclusively state that the fault was present at the time of sale, but he leaned towards it being present for a period of time and only showing itself later.

Mr A was charged £2,050 for this report. The investigator accepted that on balance the fault had been present at the time of sale and it wasn't due to normal wear and tear. She considered FirstRand:

- unwind the finance agreement
- refund the full deposit
- refund monthly premiums from May 2017
- cover the cost of the engineers report up to £500
- add 8% interest from the date of payment to the date of settlement on the above amounts

First Rand didn't agree and said the writer of the report wasn't recognised as an independent engineer. It said that it normally paid £200 for inspection reports and the amount claimed was excessive. It asked that the car be examined by an independent assessor.

Mr S didn't agree and said that his father had incurred £2,050 on the inspection and this should be reimbursed. He also said that his father had incurred additional costs in having a parking permit, as well as tax and insurance for a car he couldn't use.

my findings

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

Because Mr A's transaction with the garage was financed by credit supplied to him by FirstRand, section 75 of the CCA1974 is a factor that needs to be taken into account when dealing with his complaint. In simple terms, section 75 gives Mr A an equal right to claim against FirstRand or the garage for a breach of contract or misrepresentation by the garage.

We have evidence from several engineers that there is a fault with the car and it is likely to be serious and to require major and costly repairs. I am also satisfied that this fault occurred just under six months from when Mr A bought the car. The remaining question is whether it was present at the time of sale.

Regrettably the car's battery wasn't charged when the independent inspector came to carry out his inspection. I am not sure why Mr A didn't ensure it was charged given that his failure to do so only delayed resolving his complaint. This means the only person to comment on when the fault was likely to have occurred is the garage mechanic Mr A engaged. The inspector says: "I am a mechanical and electrical motor vehicle specialist I have been in the motor industry for a period of 15 years..." I can understand FirstRand's concerns at the validity of his report, but I am not minded to prolong matters by asking for another inspection to take place.

I also have some reservations about the report given the sum the garage has charged. It is some 10 times what I would expect and it has caused me to wonder why this is and whether it has any bearing on whether I should accept as a genuine third party report. After much deliberation I have decided to accept it at face value and accept its conclusions.

The report says that the writer cannot say definitively that the fault was present at the time of sale, but that it is likely that it was. Given the car has to all intents and purposes been well maintained by Mr A it didn't seem unreasonable to conclude that the underlying fault was present some six month before it manifested itself.

The investigator told Mr S that we may award reasonable costs of obtaining an independent report. Clearly those charged by the garage are not reasonable. I note Mr S has obtained estimates from other garages for carrying out an inspection some of which are reasonable and some which aren't.

He suggests that a standard inspection wouldn't have been sufficient to identify the fault. I don't agree. It doesn't seem that the fault was difficult to diagnose, but the more challenging issue was to say whether it was likely to have been present at the time of sale. If the car had been the subject of a standard inspection I believe the inspector would have been able to venture an opinion on that matter. If at that point Mr S disagreed then he could have engaged his own engineer.

The invoice for the report is broken down as follows:

Inspection of Vehicle

Flat call out rate	£500.00
Expert vehicle Inspector hourly rate@ £150.00 x 3	£450.00
Motor-trade Insurance contribution	£210.00
Diagnostic equipment hourly hire rate@ £60.00 x 3	£180.00
Review of vehicle documentation	£110.00

Vehicle Inspection Report

Hourly rate@ £85.00 x 6	£510.00
Administration	£90.00
Total	£2,050.00

I find it hard to regard this as remotely close to being reasonable. The investigator has suggested FirstRand pay £500 toward the cost and while I regard this as generous I have decided not to reduce this sum. But I don't consider it should pay any of the other costs Mr S has suggested it should. FirstRand wrote to Mr A in late May suggesting he obtain an independent engineer's report and provided details of how he could find one. As such I think it was possible to have resolved his complaint much earlier.

I agree with the investigator that FirstRand should:

- unwind the finance agreement
- refund the full deposit
- refund monthly premiums from May 2017
- cover the cost of the engineers report up to £500
- add 8% interest from the date of payment to the date of settlement on the above amounts

It follows of course that FirstRand will reclaim the car at a time that is reasonable.

my final decision

My final decision is that I uphold this complaint and I direct FirstRand Bank Limited to compensate Mr A as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 December 2017.

Ivor Graham
ombudsman