

complaint

Mrs C complains she got a car on finance with FirstRand Bank Limited (trading as MotoNovo Finance), which isn't of satisfactory quality. She wants to reject it under section 75 of the Consumer Credit Act 1974.

background

Mrs C says before taking out the hire-purchase agreement on the car, she asked the dealer whether it had been damaged or in an accident, and was told it hadn't. She says after washing it a few times, she noticed damage to the offside wing, alloy and door. Mrs C says she found out the dealer bought the car at auction. She says the auction house told her the car had been damaged before it was sold to the dealer. She feels the dealer misrepresented the car.

MotoNovo says it can't know what was discussed at the point of sale as it wasn't there. It notes the dealer said Mrs C inspected the car before buying it. It says the defect is cosmetic and consistent with the age and mileage of the car. It's offered a repair, without any admission of liability.

The adjudicator considered an independent report which was carried out. He accepts the car was damaged. But, he feels this is consistent with the age and mileage of the car. He says the damage is cosmetic rather than structural. He doesn't think the dealer should have drawn this to Mrs C's attention. He doesn't think Mrs C should be entitled to reject the car.

Mrs C doesn't agree. She says the car was clearly misrepresented to her. She says MotoNovo hasn't committed to providing a repair and hasn't offered any suitable remedy.

my findings

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

In her complaint, Mrs C refers to the law in relation to the sale of goods. She states this requires the goods to be of satisfactory quality, fit for purpose and free from minor defects. I take the law into account when making this decision – but this service doesn't operate in the same way as a court. I have to reach a decision based on what I think is fair and reasonable. Mrs C's car was second hand and had travelled over 40,000 miles when she bought it. So, when looking at this complaint, I'm considering it in the context of the age and mileage of the car.

I don't doubt Mrs C when she says she specifically asked the dealer, before she bought the car, whether it had been damaged or in an accident. The dealer provided a report that shows the car hasn't been written off at all. An independent report was carried out which agrees with that. It says there's only minor damage to the offside wing. It says a repair had been carried out, but couldn't say when this was. Based on her enquiries, Mrs C suggests it was done by the previous owner. On balance, I think she's right. There's nothing to suggest that the dealer carried out this repair.

The report says that the damage *may not* have been visible on purchase. But, it later says that it *wouldn't have* been visible on purchase. It's clear that the repair is visible at the time of inspection. I accept Mrs C says she inspected the car before purchasing but couldn't see the damage. She says this wasn't immediately obvious, particularly in sunlight. I accept as a layperson, Mrs C might not have been able to see the damage. I say this particularly as the car may have been freshly polished, and prepared by the dealer, ready for sale.

I think the dealer would have had information about the car from the auctioneer. That might have included information about the damage. Also, I think that being an expert, the dealer's more likely to have seen the damage and noted the repair. But I don't think whether or not the dealer misrepresented the condition of the car to Mrs C makes a difference to the outcome of this complaint.

I agree with the adjudicator that the damage is only cosmetic. That's what the independent report says. And, I don't think it's proportionate to allow Mrs C to reject the car on this basis. MotoNovo has confirmed it's willing to offer a repair, at a garage of the dealer's choice. In the circumstances, I think this is a reasonable offer and a suitable remedy.

my final decision

My final decision is I uphold this complaint. And, I order FirstRand Bank Limited (trading as MotoNovo Finance) to pay for the damage to the offside wheel arch, wing and door of Ms C's car to be repaired.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 11 April 2016.

Loucia Kyprianou
ombudsman