

complaint

Mr J complains that Bank of Ireland (UK) Plc ("BOI") declined his section 75 claim.

background

In August 2014 Mr J was supplied with a car and paid a deposit using his BOI credit card.

Mr J has said that he began to experience issues with error messages relating to the steering and the immobiliser from December 2014. He has said that the car broke down several times and on each occasion he had to call out a recovery company.

The car was returned to the supplying dealer but on each occasion the technicians were unable to replicate the issues which Mr J reported.

In June 2017 the technicians discovered that the battery on the car was not a manufacturer fitted battery and said that this could be linked to the issues which Mr J was experiencing.

Mr J was unable to resolve matters with the dealer so he complained to BOI. He wants to reject the car and receive a full refund of the purchase price.

BOI said there was no evidence that the car was of unsatisfactory quality and declined the section 75 claim. It acknowledged that it could have provided better customer service to Mr J when he first complained and offered compensation of £100.

Mr J wasn't happy with the response and complained to this service.

Our investigator thought that the car had been sold to Mr J with a battery which wasn't designed for the car and felt it was likely that this had caused the issues. The investigator said BOI should arrange for a replacement battery and pay compensation of £150 for loss of use.

BOI responded and said the supplying dealer had already replaced the battery in January 2018.

Mr J didn't agree with the investigator. He said he'd rejected the car and had been advised not to drive it so he hadn't collected it from the supplying dealer after it replaced the battery. He said he'd hired a car in the meantime and wanted reimbursement for these costs. Mr J said he'd accepted the return of the car in July 2018 only because the dealership threatened to charge him for storage. He said the new battery hadn't resolved the issues and provided a further diagnostic from a third party garage which suggested that the fault codes might have been caused by a fault with the body control module but that further inspection by an engineer specialising in electrical faults was required.

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 certain circumstances section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or a misrepresentation by the supplier. In order to uphold Mr J's complaint about BOI, I would

need to be satisfied that there's been a breach of contract or a misrepresentation and that BOI's response to the section 75 claim wasn't fair or reasonable.

The relevant law says that the goods – in this case the car – must be of satisfactory quality at the point of supply. If this isn't the case then a breach of contract can be said to have occurred.

Satisfactory quality is what a reasonable person would expect, taking into account all of the relevant circumstances including (amongst other things) the age and mileage of the car and the price paid.

Where a fault occurs within the first 6 months there's a presumption that the fault was present at the point of supply unless the business can show otherwise. The business is allowed an opportunity to fix the fault. After 6 months, the burden of proof is reversed and it is up to the consumer to show that the fault was present at the point of supply.

Mr J and BOI disagree about whether the car had a fault. In order to reach a decision I need to look at all of the available information and determine, on the balance of probabilities, whether the car is of satisfactory quality.

Mr J has said that he first experienced issues with the warning light in December 2014. I can see that the car has been inspected by the supplying dealer on several occasions since then but the technicians haven't been able to replicate the issues or find any fault codes. This has been the case throughout 2015 and 2016 until in June 2017 the supplying dealer found that the wrong battery had been fitted to the car and suggested that this might be the cause of the issues. Initially Mr J wasn't prepared to give authority for the battery to be replaced even though the dealer offered because the dealer couldn't give a guarantee that this would resolve the issues. However, in January 2018 Mr J agreed to have the battery replaced. After the battery had been replaced, and before the car had been collected, Mr J said he wanted to reject the car.

I've reviewed the job sheets provided by the dealer but I can't see any evidence that there was a fault with the car. I can see that diagnostic tests were carried out but that no faults were found. I've taken into account the intervals at which the car was returned to the supplying dealer, which suggests that the issues were intermittent, because there are periods of several months where no problems were reported.

I can see that the car has broken down on several occasions and that both the third party recovery company and the dealer identified an incorrect battery as a possible cause. Mr J has said that the battery in the car was the one it was supplied with. I haven't seen anything which causes me to doubt this. Based on the opinion of the recovery company and the dealer, it seems likely that the incorrect battery was the cause of the issues.

Since the battery was replaced Mr J has said that he's experienced the same issues. However, I haven't been provided with any persuasive evidence to show that this is the case. I can see that the car remained at the supplying dealer from January 2018 to July 2018 because Mr J didn't collect it. Mr J has also told this service that he hasn't used the car since it was returned to him in July 2018 because he thought this was consistent with his request to reject it. On balance, I'm unable to conclude that the repair (the replacement battery) wasn't successful.

I've considered the further evidence provided by Mr J. This makes reference to a possible fault with the body control module but it isn't conclusive and the third party garage has said that it doesn't specialise in electrical faults and that a qualified person needs to investigate further. I'm not persuaded that this evidence is sufficient to enable me to draw any conclusions or to say that the new battery is causing the fault codes.

Taking everything into account, I'm unable to conclude that the car is of unsatisfactory quality. The diagnostic tests carried out by the supplying dealer found no faults. It seems most likely that the issues experienced by Mr J were caused by an incorrect battery but this has been replaced now and I haven't seen any persuasive evidence that the issues have continued. I'm not persuaded that BOI has acted unfairly or unreasonably in declining the Section 75 claim.

That said, I can see that Mr J has had some loss of use of the car up to the point where the battery was replaced and I think it's fair to ask BOI to pay compensation for this. I think £150 is a fair and reasonable amount.

Mr J has said that he had to hire an alternative car from January 2018 onwards. I don't think it's reasonable to ask BOI to cover these costs because I'm not persuaded that there was any good reason for Mr J not to use the car once the battery had been replaced.

my final decision

My final decision is that I partially uphold the complaint. Bank of Ireland (UK) Plc must pay compensation of £150 to Mr J for loss of use.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 16 July 2020.

Emma Davy
ombudsman