

complaint

Miss W complains about issues with a car purchased with finance from FirstRand Bank Limited.

background

Miss W purchased a car in August 2017 and entered into a finance agreement with FirstRand Bank (t/a Motonovo).

After around 3 weeks the car broke down. Miss W called the RAC who told her that the cause of the breakdown was due to a failed cylinder.

Miss W took the car to a local garage. It inspected the car and diagnosed a fault with the injectors. Three injectors were replaced at a cost of £600 but Miss W continued to experience issues with the car.

Miss W complained to Motonovo and asked to reject the car. Motonovo refused. It said that the dealership should have been given the opportunity to inspect the car, obtain an independent engineers report and agree any repairs. It said that because Miss W had authorised third party repairs it would not pay for the repairs or hold the dealership liable. It offered £300 as a gesture of goodwill.

Miss W obtained an independent report from ACE. The report concluded that there was low compression to 2 cylinders which may have been caused by faulty fuel injectors. The report also said that it was likely that the fault was developing at the point of sale.

Motonovo accepted that the ACE report indicated that there was a progressive fault which had been developing at the point of sale. But it said that it had been prejudiced by Miss W's actions in authorising third party repairs. It said that it couldn't be sure that the damage hadn't been made worse by the repairs.

Motonovo also said that it had concerns about the ACE inspection. It said that the testimony of the owner of the dealership suggested that ACE had not carried out a compression test but had instead relied on the compression test figures provided by the third party garage.

The investigator upheld the complaint. She said that the evidence from the RAC, the third party garage and ACE all said the fault was caused by a failed injector and that the fault was present at the point of sale. She said that because of the nature of the fault, it was unlikely that the third party garage had worsened the situation by replacing the injectors. The investigator recommended that Motonovo allow Miss W to reject the car, refund all associated payments and pay compensation of £300.

Motonovo didn't agree. It didn't dispute that there were issues with the car at the point of sale. But it said it wasn't reasonable for Miss W to authorise third party repairs without giving the supplying dealership the opportunity to repair the car in accordance with the Consumer Rights Act. Motonovo also said that the ACE report didn't take the third party repairs into account and felt that it was possible that the third party repairs had made the problem worse.

my findings

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

The Consumer Rights Act says that a car must be of satisfactory quality (taking into account its age and mileage), be as described and be fit for purpose. If a car develops a problem which you wouldn't expect for its age and mileage within the first 30 days from the date of purchase, the buyer can reject the car. There is no obligation to accept a repair – although you can ask for a repair if you want to. After 30 days, if a problem arises then you are entitled to ask for a repair or replacement free of charge. Usually this will be a repair. The seller has one opportunity to repair the car. If the repair isn't successful you can reject the car. During the first 6 months after purchase it's the responsibility of the seller to prove that the fault wasn't present at the point of sale.

Miss W's car broke down within 30 days of the date of purchase. All 3 reports indicate that the problem was faulty fuel injectors. Even though Miss W purchased a used car, I think that faulty fuel injectors can be considered a significant fault, as opposed to a minor fault or a cosmetic issue. And because the fault arose within the first 30 days from the date of purchase, Miss W was entitled to exercise her short term right to reject the car.

Motonovo has accepted that the fault was present at the point of sale. But it says that the dealership should have been given the opportunity to repair the car. Miss W has told this service that the car broke down when she had young children in the car and that she had to arrange for the car to be towed.

Miss W says that before the third party repairs were carried out she spoke to the dealership and asked whether the injectors were covered under the warranty. She says she was told that the warranty didn't cover injectors but that the dealership would cover half the cost of replacing the injectors. Miss W says that the dealership authorised the third party repairs but when Miss W contacted the dealership after the repairs had been carried out to advise that there was still a problem, she was told that the dealership wanted to inspect the car and that it was no longer prepared to meet the half of repair costs. Miss W says the dealership deny that this conversation took place.

I think it's more likely than not that Miss W called the dealership after the car broke down and asked whether repairs would be covered under the warranty. I wasn't party to the conversation so I can't say exactly what was discussed, but Miss W has been consistent in her evidence that the dealership offered to meet half the cost of the repairs, so it seems more likely than not that the dealership authorised the third party repairs.

The dealership is normally given the opportunity to inspect and repair the car. But where the dealership permits a third party to carry out repairs, there's no obligation to allow the dealership a further opportunity to repair. In this case, I'm satisfied that Miss W has acted reasonably.

Motonovo has suggested that the third party repairs might have made the problem worse. I haven't seen any evidence to suggest that this is the case. All 3 reports are very clear about the nature of the fault. I think it's unlikely that replacing faulty injectors with new injectors would have made the problem worse.

Motonovo has also suggested that the ACE engineer didn't carry out proper compression tests and that he relied on what he was told by the third party garage. I've taken this into account but the ACE report is an independent report. Even if the third party compression tests were taken into account in some way by the ACE engineer, there's no evidence to suggest that these compression tests were inaccurate. And low compression is consistent with the nature of the fault with the injectors. Ultimately, if Motonovo has concerns about the ACE engineer these should be addressed directly with ACE.

Taking all of the available evidence into account, I'm satisfied that the fault was present at the point of sale and I don't think the fact that third party repairs were carried out absolves the dealership from liability. I think that Miss W should be allowed to reject the car.

my final decision

My final decision is that I uphold the complaint. FirstRand Bank Limited should:

- Allow Miss W to reject the car.
- Arrange for the car to be collected at no cost to Miss W.
- Refund the deposit paid by Miss W together with 8% simple interest from the date of payment to the date of settlement.
- Refund all contractual payments made by Miss W together with 8% simple interest from the date of payment to the date of settlement.
- Reimburse Miss W the cost of the ACE report.
- Reimburse Miss W's storage costs (upon receipt of evidence).
- Reimburse Miss W's costs of a second insurance policy (upon receipt of evidence).
- Pay compensation of £300 for the inconvenience caused to Miss W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 9 April 2018.

Emma Davy
ombudsman