

complaint

Mr T complains about a car he financed through a conditional sale agreement with Clydesdale Financial Services Limited.

background

Mr T says he's had many problems with the car since driving it away from the dealer. These include:

- oil and engine management lights coming on
- difficulty with steering especially at higher speeds
- tyres in poor condition
- brakes squeaking and fan making a loud noise

Mr T had some work done on the car but there are still problems. An expert report revealed the extent of these. He now wants to give the car back and have the finance cancelled.

Our investigator thought this was a reasonable option. But Clydesdale disagreed. In summary it says:

- Mr T should've gone through the approved warranty company to get repairs which would've fixed things;
- instead Mr T had a third party look at the car and continued to drive it - possibly making things worse; and
- it hasn't had a chance to repair the car and it would like to offer the cost of a full repair at an approved dealer.

Mr T just wants to return the car so the matter has come to me for decision.

I issued a provisional decision about this complaint on 3 January 2017. I said:

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

was the car sold in reasonable condition?

Mr T financed a second hand car, but it still needs to be of satisfactory quality. So while I would expect a degree of wear and tear on a car of this age and mileage I wouldn't expect significant faults at the outset.

It's debatable whether the issues with the tyres, brakes and steering alignment are faults or just reasonably expected wear and tear. But the expert report done on the car in September 2016 identifies abnormal noises from the engine, oil staining and dense smoke emissions with a pungent oil odour, and illumination of warning lamps (oil and diagnostic). This report is detailed and credible and convinces me the car has significant faults.

I understand Mr T has driven the car a fair amount before this expert report was done. However, the expert has taken this into account, and said the faults identified were likely present at the time Mr T financed the car in July 2016.

And, importantly, Clydesdale accepts that a few days after the sale Mr T called to report problems with warning lights illuminating (including an oil light), poor performance and an abnormal noise from the engine. This is supported by a phone log and ties in with the same problems identified in the expert report months later.

So, it seems to me that significant faults were present at the point of sale. The evidence certainly supports this finding.

did Mr T make things worse by driving the car?

The expert hasn't said that Mr T made things worse by driving the car. And from Mr T's initial call to Clydesdale it seems there were significant issues with the car at the point of sale anyway. But it is a possibility that the faults have been worsened by ongoing use.

However, even if I were to accept this I don't think it is fair to blame Mr T. I can see he reported the issues to Clydesdale very shortly after the sale explaining to it:

- what the problems were*
- that he'd already had a mechanic look at the car*
- he was told the warranty didn't cover repairs and the dealer hadn't been helpful*

At that point I think it would've been fair for Clydesdale to intervene and try and get things sorted. It could've arranged its own approved inspection / repair straight away. Instead the contact notes show that Mr T made several calls to Clydesdale between July and September about the problems (and to say they were getting worse) without any real progress. And it seems Mr T had to chase the matter at times despite being told he would get a call back. It took until late September before Clydesdale arranged an inspection.

Clydesdale says it was waiting on a report from Mr T and has produced a letter from late August where it chases this. The letter says that during a phone call in early August Mr T agreed to send in a report. But I can't see this in the phone notes – it looks as if Mr T was chasing for updates during this time. And in any event, I think Clydesdale could've taken steps to put things right based on what Mr T had told it already. I can see it wrote out to the dealer in early August asking it to investigate Mr T's concerns – but this wasn't enough.

My overall impression, from what Mr T has said, and from the call notes and information on the file, is that he made a fair effort to get the matter sorted out. I don't think he stopped Clydesdale from taking a look at the car - I think things have been held up because Clydesdale didn't take full ownership of the issue.

warranty / third party repairs

I know Clydesdale has referred back to the warranty. But Mr T told us he tried to get repairs done through the warranty (and the retailer) but didn't get anywhere. He also said this to Clydesdale over the phone. And regardless of the existence of a third party warranty or the actions of the retailer, Clydesdale is responsible for putting things right.

Mr T had some third party repairs done prior to the expert report arranged by Clydesdale. Mr T says these didn't address the main faults and he only had the tyres, brake pads, suspension and a sensor fixed. I haven't seen any job cards to show what was actually repaired but I have seen receipts for parts which broadly support what Mr T says. I accept Clydesdale's point that third party repairs could've made things worse. But it seems likely that the car had significant issues at the point of sale anyway. And I think Clydesdale's delay in arranging its own resolution (already mentioned above) have meant it wasn't so unreasonable that Mr T would seek these repairs (I note the receipts for parts other than tyres are dated from late August 2016 onwards).

what is a reasonable remedy?

Clydesdale now wants an opportunity to repair the car. But I think there are good reasons why this isn't the best option.

Firstly, I'm not sure if repair is even practical. The inspection report says that the engine and turbocharger need stripping and further diagnostic tests need to be run. And it isn't clear what specifically needs to be done to fix the car or if it can be fixed economically.

Secondly, I note that things have gone on for several months and Mr T has already been inconvenienced. As I have already said – Clydesdale should've done more to make sure this was resolved earlier. I think Mr T had the right to reject the car at an early stage. I know he was willing to accept repairs as a first step – but the faults haven't yet been fixed and he wasn't aware of the extent of the damage at the time – so I don't think he fairly loses his right to reject.

Right now I think rejection is the fairest option. It seems Mr T has been using the car and covering a fair mileage so he should pay for this. I can see that he is up to date with his monthly payments. But it should be recognised that his use of the car has been affected by the faults so I think he should get back some money. This isn't an exact science but I think that 15% of each monthly payment would fairly compensate Mr T for the trouble. It appears that Mr T didn't pay a deposit so he won't get a refund for that.

Mr T says he has paid for repairs but I can't see what he paid in total. I've seen some receipts for parts but nothing to show the cost of fitting. Nor do I have any receipt to show he paid £20 for the report from his mechanic as claimed. It is also worth noting that some of the parts appear to address reasonably expected wear and tear (like brake pads and tyres). Normally Mr T wouldn't get a refund for those items. But I accept that if he returns the car now he isn't getting the full benefit of the parts he paid for.

Had Mr T financed any car he likely would've had to lay out some money for reasonable wear and tear. But it is arguable that paying for parts to remedy inherent faults has left him out of pocket so he should get interest on this. But I think it is difficult calculating exactly what the interest award should be in this case. So I have just taken this into account in my overall recommendation below.

All things considered I think it's fair for Mr T to get 70% of the amount he has paid towards parts as shown on the invoices he has provided this service. This would fairly cover the out of pocket expenses for parts that are arguably not to fix 'reasonable wear and tear' and also compensate him for partial loss of use for those parts that are. The receipts show a total cost of £422.21 so Clydesdale will pay Mr T back £295.55.

my provisional decision

I plan to uphold this complaint and direct Clydesdale Financial Services Limited to:

- *collect the car and cancel the finance agreement at no further cost to Mr T;*
- *refund Mr T 15% of each monthly payment he has made;*
- *pay Mr T a £295.55 part refund for repairs; and*
- *remove the finance agreement from Mr T's credit file.*

Both parties accepted my provisional findings.

my findings

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

Both parties have agreed with my provisional findings. And I still think what I have proposed is fair and reasonable. So the outcome of my final decision will be the same, based on the same reasoning I set out in my provisional decision (which is detailed above).

my final decision

I uphold this complaint and direct Clydesdale Financial Services Limited to:

- collect the car and cancel the finance agreement at no further cost to Mr T;
- refund Mr T 15% of each monthly payment he has made;
- pay Mr T a £295.55 part refund for repairs; and
- remove the finance agreement from Mr T's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 13 February 2017.

Mark Lancod
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