

complaint

Mrs C complains that a car that was supplied to her under a conditional sale agreement with GMAC UK plc (trading as Vauxhall Finance) was not of satisfactory quality. She is being helped with her complaint by her uncle.

background

A used car was supplied to Mrs C in April 2015 under a conditional sale agreement with GMAC. The diesel particulate filter warning light came on two days after the car was supplied to her. A diagnostic check showed that there were no faults. Mrs C experienced further problems with warning lights and high diesel consumption so the car was returned to the dealer at the end of April 2015. The car's software was updated and Mrs C collected the car. But another warning light came on and the car was making a bad noise so Mrs C returned the car to the dealer. There was a problem with the oil pressure sensor which was replaced. Mrs C collected the car but continued to experience problems with it so again returned it to the dealer. The dealer said that there was no problem with the car. Mrs C didn't accept that and asked for the car to be exchanged. The dealer refused to exchange the car so Mrs C left it with the dealer as she refused to drive it as she felt it was unsafe. Mrs C complained to GMAC. She wasn't satisfied with its response so complained to this service. The car is with the dealer and Mrs C has made a statutory off road notification. But she has continued to make the payments under the conditional sale agreement. The car has been inspected by an independent expert.

The adjudicator recommended that this complaint should be upheld. He noted that the independent report says that: the car is not currently roadworthy; it has been sitting for some time; when the car was started it didn't run smoothly and didn't rev cleanly; the diesel particulate filter warning light was on; Mrs C had completed a very low amount of miles for the amount of time she had the car; and it can't be certain whether there were faults present at the point of sale, but Mrs C raised her concerns just after purchasing the car. He noted that the engineer says that the faults were due to the limited use of the car and will continue if the car is used in the incorrect way and could cause further internal engine. But the adjudicator felt that it was reasonable to suggest that the faults were more than likely present at the point of sale. He said that Mrs C had completed a small amount of miles when she first raised her concerns; the concerns have been substantiated by the independent report and it is reasonable to suggest that the issues with the car were present before she entered the agreement. He noted that the car had been returned to the dealership a considerable amount of times and he could appreciate why Mrs C had now lost faith in the car. The adjudicator recommended that Mrs C should be able to reject the car and cancel the agreement – and that she should be refunded any deposit or payment she has made towards the agreement with interest. He also said that the car should be collected at no cost to Mrs C and that the agreement should be marked as fully settled on Mrs C's credit report.

GMAC has asked for this complaint to be considered by an ombudsman. It refers to information about how a car functions when a particulate filter is fitted. And it says, in summary, that

- when Mrs C visited the dealership in April 2015, the mechanic checked the saturation of the filter and it was at 36% which indicates that the filter was operating as it should;
- Mrs C has not driven the car correctly which is why it is currently not roadworthy (not because of an inherent fault at the point of sale);

- the oil level has risen – as noted by the inspector – because the car had tried to regenerate but had failed to complete the cycle causing the oil level to rise;
- the car wasn't smooth and wouldn't rev cleanly because it had entered restricted performance due to the filter saturation becoming too full and regeneration cycle being interrupted on previous occasions;
- the lights on the dashboard are glow lights that are illuminated to advise the customer that the regeneration is taking place and not to indicate a fault;
- the oil pressure sensor which was changed would not have had a detriment on the car and is not a part that is associated with the particulate filter; and
- Mrs C has blocked the filter through failing to drive the car within the manufacturing specifications, causing it to enter restrictive mode.

my findings

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

Mrs C has only been able to use the car to drive a low number of miles. She returned the car to the garage soon after it was supplied to her and has had to return it a number of times. She says that she has lost faith in the car and the independent report says that the car is now not roadworthy.

As the problems with the car started so soon after it was supplied to Mrs C, I find it to be more likely than not that the problems existed when the car was supplied to Mrs C. So I find that the car was not of satisfactory quality at that time. I am not persuaded that there is enough evidence to show that it is the way that Mrs C has driven the car that has caused the problems.

So I find that it would be fair and reasonable for Mrs C to reject the car and cancel the agreement – and that GMAC should refund any deposit and payment that Mrs C has made under the agreement with interest. I also find that the agreement should be marked as fully settled on Mrs C's credit report.

my final decision

For these reasons, my decision is that I uphold Mrs C's complaint. In full and final settlement of it, I order GMAC UK plc (trading as Vauxhall Finance) to:

1. Collect the car and cancel the conditional sale agreement – at no cost to Mrs C.
2. Refund to Mrs C any deposit that she paid for the car and all payments that she has made under the agreement.
3. Pay interest on those amounts at an annual rate of 8% simple from the date of each payment to the date of settlement.
4. Show the agreement as fully settled on Mrs C's credit report.

If GMAC deducts tax from the interest element of my award, it should send Mrs C a tax deduction certificate when making payment. She can then use that certificate to reclaim the tax if she is entitled to do so.

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

Jarrold Hastings
ombudsman