

complaint

Miss M complains that the car she financed by a hire purchase agreement (HPA) with R. Raphael & Sons Plc (the business) was not of satisfactory quality.

background

Miss M entered into HPA with the business in August 2015 to finance the acquisition of a used car. At that time the car was around 10 years old and had been driven over 120,000 miles.

When she acquired the car Miss M says she was told that it had 12 months MOT; had been given a full service; and the brake pads had been changed. She says that when she checked the car's documents there was only nine months on the MOT and it hadn't just been serviced. She said there was also a discrepancy with the mileage. She said that after two months she had to pay for the front brake pads and drums to be replaced as they were unsafe. Four months after acquisition she had to have a pump replaced. She also reported at that time that the car was using a lot of oil and she had been told there was an oil leak.

Miss M says she mentioned that on the second day she had the car the engine management light came on. She says she raised this with the dealer but her concerns were dismissed.

Miss M says the engine management light still goes on and off all the time and she was told that the rear brakes needed changing.

Miss M raised her complaint with the business saying that due to the problems she had experienced in the first five months of having the car she wanted to reject it.

The business says that Miss M complained to it in February 2016. At that time it contacted the dealer to say that there was a discrepancy with the mileage and it suggested the dealer dealt with the issues with Miss M's car. It noted the oil leak, intermittent issues with the engine management light coming on, and the need to fit new rear brake pads. It said in its email that the car was invoiced with the incorrect mileage and sold with faults.

In its final response letter, dated May 2016, the business says that given the age and mileage of the car Miss M acquired, wear and tear issues should have been expected. It says that the mileage discrepancy was not significant given the total mileage of the car. It also says that the issues Miss M has raised with the car are due to wear and tear. It did offer as a gesture of goodwill to pay £100 towards the repairs but Miss M rejected this. It says Miss M has continued to have full use of the car.

The adjudicator said that Miss M had experienced a number of faults with her car and that the business had noted that *'there is no doubt that the vehicle was ... sold to the customer with faults'*. He said that it was up to the business to prove the faults were not present at the point of supply.

The adjudicator said that the report carried out on the car was not conclusive. He spoke to the inspecting business and it said that it was unable to determine if the problems with the oil leaks were or were not present when the car was sold. It was also said that it had not confirmed the car was safe to drive but that it was in the same condition as when it was delivered to it.

On balance the adjudicator said that the car was sold with faults and recommended that Miss M was allowed to reject the car and that payments were refunded for the time when Miss M was without the car. He also recommended that the business refund Miss M for the extra oil she had to buy plus any other direct costs and pay her £150 compensation for the trouble and upset this caused.

The business did not agree with adjudicator's view. It said that it had paid for independent investigations into the oil leaks and said that the results showed that the leaks were highly unlikely to have been present when Miss M acquired the car. It said that given the mileage the engine had driven normal wear and tear would mean it would consume above average amounts of oil.

The business said that it accepted Miss M raised the issue with the oil in February 2016, before the MOT was carried out in May 2016. It said this was six months after she acquired the car and after it had been driven around 5,000 miles. It said that the leaks would not have been present at the point of supply based on the time and mileage covered before the issue was raised.

It said that Miss M had use of her car as shown by the mileage recorded on her MOT in May 2016. It said the oil leak was not recorded in this MOT.

The business said it was not fair to allow Miss M to unwind the agreement, return payments and pay her compensation given Miss M had reasonable usage of the car. It said the faults with the car were wear and tear.

my provisional conclusions

I issued a provisional decision on this complaint. I concluded in summary:

- the issue in regard to the mileage discrepancy was not being pursued by Miss M and so I did not consider this further;
- Miss M acquired a 10 year old car that had been driven over 120,000 miles;
- some repairs were undertaken to the car but the issue regarding the oil leaks remained outstanding;
- the report carried out in August 2016 noted oil leaks but did not give details about whether these were present at the point of supply;
- Miss M first raised the issues in February 2016 and she had been able to drive the car during that period;
- given the age and mileage of the car, the time Miss M was able to drive it and the mileage she covered, I found it more likely than not that the issues were not due to faults that were present at the point of supply.

Miss M responded to my provisional decision. She reiterated the discrepancy with the mileage and said that the faults with her car were not due to wear and tear. She said she originally raised the issues with the oil leaks in February 2016 five months after entering into the HPA. She said at that time she was putting in two litres of oil every couple of weeks and this increased as time went on.

Miss M said she made her complaint when 132,000 miles had been driven in the car, only 5,000 covered by her. She said it took the business five months to handle her complaint properly. She said that she had to have the car recovered due to the severity of the issues. She said that the MOT carried out in May 2016 was done as a gesture of goodwill because the car was mis-advertised with a 12 month MOT which was not correct. She said that the inspection was carried out two months later and recorded four oil leaks. She did not accept that the oil leaks would have developed within the two months. She said that the inspection report said that it could not determine when the oil leaks occurred and that further investigation was needed.

Miss M also raised issues regarding the dealer's registration of the car in Miss M's name.

Miss M said that she should be allowed to reject the car given the issues she has experienced.

my findings

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

I appreciate the comments Miss M has made in regard to the mileage of the car. The business said that the discrepancy was not material given the overall mileage of the car. I noted in my provisional decision that Miss M was not pursuing this issue. Even accepting there was an issue with the mileage it is important to establish whether this would have had a material impact on Miss M's decision in regard to the acquisition of the car. On balance, based on what I have seen, I find it unlikely this issue would have had a material affect on Miss M's decision to acquire the car.

In regard to the oil leaks, it is clear that these are an issue with the car but for the business to be held liable I need to be satisfied that they were present at the point of supply. I understand the comments Miss M has made in regard to when she raised her complaint and the mileage she has driven.

The inspection report did not confirm whether the faults were present at the point of supply. I appreciate the comments Miss M made about the MOT. However, as I set out in my provisional decision, I find that based on the age and the mileage of the car and the mileage Miss M was able to drive, I do not find I have enough to say that the outstanding issues with the oil leaks were present at the point of supply. Because of this I do not find I do not uphold this complaint.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 December 2016.

Jane Archer
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