

## **complaint**

Mr Z complains that a car he acquired through a conditional sale agreement financed by Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF) was of unsatisfactory quality.

Mr Z was represented by his partner in bringing this complaint. Although she made most of the submissions on his behalf, for simplicity, I refer to Mr Z throughout.

## **background**

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 5 December 2016 - a copy of which is attached and forms part of this final decision.

In my provisional decision, I explained why I felt Mr Z's complaint should be upheld. I then invited both parties to provide further submissions before I reconsidered the complaint.

BPF responded to say it had nothing further to add.

Mr Z responded to ask me to reconsider my provisional decision. In summary, he said:

- He has had nothing but problems with the car and had raised concerns about the mileage mis-recording at the outset;
- It wasn't a case that he had refused to pay the monthly payments on the account. When he raised matters with BPF it refunded a monthly payment and Mr Z had been led to believe everything would be resolved quickly – but that is not how things worked out;
- BPF had told him it would refund the car hire costs he was currently incurring in the event that this service decided a rejection of the car was appropriate – and he had borrowed money from his family in the belief that this would be reimbursed;
- To repay the arrears will place further strain on him after what has already been a difficult year;
- He had incurred other costs as he had to pay for taxis and use public transport when the car let him down; and
- The entire episode has had a drastic effect on him and his family.

## **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'm sorry to hear of Mr Z's difficulties and I know that this car has been a disappointment to him and caused lots of problems. Had he made his payments under the agreement, then he would be entitled to some, but not all, of those back - as it is only fair that when someone has had usage of a car they contribute towards that usage.

I acknowledge what Mr Z has said about the mileage mis-recording. But as I set out in my provisional decision, in order to be satisfied there was an issue with the mileage, I'd need some compelling evidence that this was the case. I haven't seen any such evidence here – none of the independent inspection reports confirmed an issue with the mileage.

And I note when Mr Z had use of a hire car he travelled around 1,600 miles in 25 days – which is usage consistent with the mileage recorded on the car that is the subject of this complaint. And so on balance, I think the car has probably travelled around 21,987 miles from the point of sale.

And although I think rejection is the appropriate remedy here, I think it only fair that Mr Z pays for the usage that he has had. Even if Mr Z had driven the car only half the distance recorded by the odometer – I would still think it reasonable to expect that he pays for usage. I accept it's not been trouble free usage and I took that into account by reducing the arrears.

The arrears on the account are in the region of £6,223. But, as I said in my provisional decision, I don't think it is fair to expect Mr Z to pay that amount.

I don't think Mr Z should have to pay any arrears that accrued after he left the car at garage in August 2016. As I understand it, Mr Z was provided with a courtesy/hire car in August and September, which he either didn't have to pay for or was refunded the cost of. From October 2016 he hired a car himself. Mr Z said BPF promised it would refund the most recent car hire costs. BPF doesn't agree that is the case. It said it did refund some costs incurred in August/September, but didn't agree to refund all hire costs.

I can't fairly ask BPF to pay the cost of a hire car for the period from October 2016 onwards and at the same time say it can't recoup arrears that accrued under the agreement for that time. Nor do I think it would be fair for me to ask BPF to refund the car hire costs and then try to recoup some or all of the arrears for those months from Mr Z. It is only fair that Mr Z contributes towards the fact that he has had a car to drive during this period. But I did take into account the fact that the hire was more expensive than what Mr Z would've had to pay under the agreement - and so I've reduced the outstanding arrears accordingly.

Ultimately, Mr Z has been kept mobile for the most part for the past year and a half and travelled in excess of 20,000 miles. I accept it hasn't been without problems. But other than a small deposit, three monthly payments (taking into account one was refunded) and the most recent car hire costs – he hasn't paid anything else towards that usage. I acknowledge that Mr Z has had a terrible time with this car and that is why I felt he should only be required to pay around half of the arrears that have accrued up until August 2016. And I further reduced the outstanding arrears to reflect the higher cost of car hire and the deposit paid, whilst taking into account the goodwill gesture already paid.

I think the reduction of the arrears to £2,000 is appropriate compensation for the level of inconvenience and distress that Mr Z been caused –as well as the loss of enjoyment overall.

I sympathise with Mr Z who I understand may have faced some financial difficulties over the past year and has not had the drive he expected. But I'm afraid I think he does need to contribute towards the drive that he has had.

It remains open to him to contact BPF to discuss with it an affordable repayment plan based on any income/expenditure assessment that it may require him to undertake. I would remind BPF of its obligation to treat customers who are in financial difficulties in a positive and sympathetic manner.

**my final decision**

My final decision is that I uphold this complaint. To settle it, I'm intend to ask Clydesdale Financial Services Limited trading as Barclays Partner Finance to take back the car, end the agreement and reduce and limit the outstanding arrears to £2,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 16 January 2017.

Siobhan Kelly  
**ombudsman**

## **provisional decision**

### **complaint**

Mr Z complains that a car he acquired through a conditional sale agreement financed by Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF) was of unsatisfactory quality.

Mr Z is represented by his partner in bringing this complaint. And although she made most of the submissions on his behalf, for simplicity, I refer to Mr Z throughout.

### **background**

In April 2015, Mr Z acquired a used car which he financed through a conditional sale agreement. He said he was told the car had one previous businessman owner, but later discovered it was in fact used by the dealership as a courtesy car. He said he has experienced nothing but problems with the car from the outset. The car has been to the dealership for repair on numerous occasions. And although repair has resolved some of the issues, Mr Z thinks there is an underlying issue with the electrics in this car which presents intermittently.

Mr Z was unable to resolve the matter with the dealership and so he complained to BPF. He said he had lost faith in the car and wanted to reject or exchange it. In around September 2015, he stopped making the monthly payments towards finance agreement.

BPF didn't agree that there had been a misrepresentation about the previous owner of the car. But it did arrange for an independent inspection. An issue was identified with the brakes, but BPF said none of the other faults complained of could be replicated. BPF wanted an opportunity to repair the car.

Unhappy with this outcome, Mr Z asked us to look at his complaint. During the lifetime of his complaint with the service, various other problems developed with the car and attempts to identify and rectify the on-going electrical issues complained of by Mr Z were undertaken.

Our adjudicator issued a view which recommended that Mr Z take the car to a franchised garage for issues that fell under the warranty to be fully investigated and repaired - including the fault with the brakes. Work was carried out and the matter was thought by all parties to have been resolved. However, an issue arose shortly afterwards with the suspension. Mr Z contacted BPF and it arranged for this to be repaired.

In June 2016, the electrics started to behave bizarrely again – resulting in the car not starting and Mr Z having to use roadside assistance to start/recover the car on a few occasions. Some further work was carried out on the car in August 2016 and BPF obtained an independent report which said the car was now fault free. But Mr Z hasn't been back to collect the car. He doesn't want it back.

Our adjudicator looked at the case again. He recommended that BPF end the finance agreement, refund the deposit and pay simple interest on the refunded amount - as well as reimburse any car hire costs and remove information about the loan from Mr Z's credit file.

BPF asked for an ombudsman's decision. It didn't agree with our adjudicator's recommendation. And it highlighted that our adjudicator hadn't taken into account the fact that Mr Z had travelled around 20,000 miles in the car but only paid four monthly instalments.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I intend to depart from our adjudicator's recommendation and I've set out my reasons below.

Mr Z said he was misled about the previous use of the car. I wasn't present at the point of sale and so I can't be sure what was said by either party. The registration document shows only one previous owner and although Mr Z said he wasn't made aware it had been a courtesy car, I think the fact that the previous owner was the dealership might have prompted some further questions here. On the evidence presented, I cannot be satisfied that Mr Z was told that the car had only one businessman owner.

I now turn to whether the car was of satisfactory quality. Legislation says that goods should be of satisfactory quality, durable and free from defects. I have to decide if the issues with this car were defects that existed at the point of sale. In doing so I take into account all of the relevant circumstances, including the age, mileage and price of the car. The cash price of the car was £19,000. It was just over two years old and had travelled around 37,370 miles at the point of sale.

Mr Z has complained of several confirmed faults which occurred within the first year of his owning the car and at a point when the car was less than three years old. He has also complained of other faults which couldn't be replicated – most notably that the electrics were behaving bizarrely from around July 2015 onwards. He has also complained that the odometer was recording the mileage incorrectly.

I have looked at the various job sheets and reports for this car. I have listed below only the issues that have been confirmed to exist, along with the approximate mileage that the car had travelled from the point of sale (where available):

- April 2015: oil leak from gearbox (seal replaced) – 250 miles;
- May 2015: collapsed flywheel (replaced) – 2,300 miles;
- July 2015: screeching noise from brakes (non-genuine brake parts replaced);
- September 2015: further issue identified with brakes (discs); parking sensor sporadically working and gave incorrect warning on reverse; failure of electric window to open on one of several tests – 7,890 miles;
- February 2016: lights stuck on (battery disconnected to turn off);
- March 2016: front braking light fault on dash due to non-genuine bulbs; coolant light on dash; major coolant leak from thermostat and water pump resulting in the air conditioning and heating not working; wipers smearing; brake discs excessively lipped; play in near side front wheel bearing; software updates – 14,529
- April/May 2016: suspension issues (BPF arranged repair)
- June 2016: boot opening and battery dying (bulbs removed)
- August 2016: non-start (several internal CDI control faults/software update/replace terminal relay) – 21,897 miles.

I acknowledge what has been said, primarily in the independent inspections, about the fact that Mr Z has managed to drive the car a considerable distance and that it isn't clear that the reported issues (aside from the brakes) were present at the point of sale. Although the issue with the parking sensor was noted – the engineer couldn't say that it was a point of sale fault. The intermittent electrical faults couldn't be replicated, but in a later report it was noted that electrical issues on modern cars are not uncommon and although the cause of the condition needed to be identified, the engineer hadn't seen anything to suggest it was a point of sale issue. It was the view of the engineer that, from an engineering point of view, the car wasn't of unsatisfactory quality.

But by the time of the first independent inspection, Mr Z had already returned the car due to an oil leak, collapsed fly wheel and faulty brakes – none of which have been taken into consideration by the engineers when formulating their opinion on the quality of this car. In addition, an issue was identified with the parking sensor and the electric windows when the car was around five months on from the point of sale – but still less than three years old. This, in my view, supports what Mr Z has told us about on-going electrical issues.

And although the car has now travelled a considerable distance from the point of sale, looking at all of the issues here and the timeline of events, I think there is an underlying issue with the overall quality of this car that can be traced back to the point of sale. There have been numerous faults with many

separate components over the space of a year or so. All of this leads to think that, on balance, the car wasn't of satisfactory quality at the point of sale.

I acknowledge there is a report which says that the car is now working without fault. And that despite this Mr Z has refused to take the car back from the garage.

But I can understand why he wants nothing further to do with this car. I think Mr Z has had a terrible time with this purchase and this car has caused nothing but problems from the outset. He has allowed numerous repairs and diagnostics to take place. He agreed to repair as a resolution to his complaint in April 2016 only to experience further issues shortly afterwards. I think he has been more than patient here and I think rejection of the car is reasonable having considered all of the circumstances.

Mr Z has stopped paying for the car. I acknowledge what he said about the mileage recording incorrectly, and I do note that this was an issue that he raised in August 2015 and so something he has been complaining about for some time. But in order to be satisfied there was an issue with the odometer, I'd need some compelling evidence that this was the case. And I note that when Mr Z had use of a hire car he travelled around 1,600 miles in 25 days – which is usage consistent with the mileage recorded on the car that is subject of this complaint. And so on balance, I think the car has probably travelled around 21,987 miles from the point of sale.

And although he has had great inconvenience, I think it only right that he contribute towards the usage he had. But I think he also needs to be compensated for the inconvenience caused by the numerous garage trips and breakdowns, as well as the loss of enjoyment of the car.

I also need to take into consideration that he was also, on occasion, kept mobile by hire cars paid for by BPF or provided by the dealership. And that BPF has already paid for some of Mr Z's hire car costs - as well as having paid some compensation already. In addition, BPF has paid for repair work.

I acknowledge the not-insignificant sums that BPF has already paid towards repairing this car. And I can understand why BPF might've attempted repair initially. And although BPF has spent money trying to restore the car to a satisfactory quality – I don't think it fair that Mr Z should share the burden of those costs.

As I understand it, the car hasn't been driven by Mr Z since August 2016. I think he rejected the car at that point, as I have found he was entitled to do, and so I don't think he should be responsible for any arrears that have accrued since then – primarily because the car hasn't been driven. He has made four payments to the account and a further 11 payments have accrued between his last payment and when the car was rejected in August. I do think that Mr Z needs to contribute towards at least some of the arrears outstanding on the agreement, given the significant mileage covered. But given the considerable difficulties experienced by Mr Z – I think he should only be liable for 50% of those monthly payments.

It follows that I don't think Mr Z should be awarded a full refund of any car hire incurred from August 2016 onwards. Although I do note the car hire was more expensive than his monthly payments under the agreement and I've factored that in accordingly. I've also taken account of the fact that BPF had already made a goodwill gesture to Mr Z of one monthly payment and had refunded some car hire costs already. And I'm not asking BPF to refund Mr Z's deposit.

Having factored all of this in, I think the outstanding arrears should be reduced and limited to £2,000. So to resolve this matter, I think BPF should take back the car and end the agreement. It should reduce and limit the outstanding arrears to £2,000. Both parties will in due course need to discuss this with each other and arrange an affordable repayment plan if necessary.

### **my provisional decision**

My provisional decision is that I uphold this complaint. To settle it, I'm intend to ask Clydesdale Financial Services Limited trading as Barclays Partner Finance to take back the car, end the

agreement and reduce and limit the outstanding arrears to £2,000. I now invite both parties to provide any further submissions by 19 December 2016 after which time I will reconsider this complaint.

Siobhan Kelly  
**ombudsman**