

complaint

Mr A complains about a car he bought through a hire purchase agreement with FirstRand Bank Limited. He says the car was sold to him with a number of faults which meant the car was illegal and could not be driven. There were also problems with the registration papers for the car and the additional warranty was not cancelled when Mr A asked.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 12 December 2013; a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I felt Mr A's complaint should be upheld and the redress I felt was appropriate. I invited further comments from both parties and asked the parties to specifically refer to the iPod connector in the car, and to provide a full copy of the warranty terms and conditions.

Mr A has responded to my provisional decision and says, in summary, that he does not accept my provisional findings. He has provided significant further comments over a number of separate responses but I see little benefit in repeating those submissions again here in this decision.

FirstRand Bank has not provided any response to my provisional decision.

my findings

I have reconsidered all the available evidence and arguments, along with Mr A's further submissions, to decide what is fair and reasonable in the circumstances of this complaint.

I would like to thank Mr A for all of his substantial responses to my provisional decision. I appreciate the time he has taken to provide these responses and his strength of feeling about this case is clear. Although I have not specifically referred to those additional submissions, I can assure the parties here that I have read and considered them all. I would also remind the parties that I am not required to refer to every point that either party raises in the complaint and my decision will focus on what I consider to be key to the complaint.

Having carefully considered all of the available evidence presented in this case I have come to broadly the same conclusions as my provisional decision for what are essentially the same reasons.

For the reasons set out in my provisional decision, I find that the car was not of satisfactory quality at the time it was supplied to Mr A and FirstRand Bank is liable for the cost of repairing some of the faults that the car now has. As explained in my provisional decision FirstRand Bank is not responsible for all of the faults that Mr A has referred to as I am not persuaded all of the problems reported were as a result of faults that were present at the time of sale. Mr A has reiterated many of his previous comments about the faults with the car in his latest submissions but these have not persuaded me to alter my provisional findings. The more recent problems, such as the gear box problems, are not in my view evidence of a gear box fault at the time of sale and I do not think FirstRand Bank is responsible for any repair costs.

Mr A has provided copies of sections of the warranty booklet terms and conditions. One of these sections does say that the warranty can be cancelled at any time. However, cancellation is not necessarily accompanied by a refund of the payments that had been made to the warranty. It states that the warranty company will “...*only consider a refund if the vehicle has been written off or if you die...*” Neither of these situations has arisen so I cannot see that a refund should have been paid.

Mr A does argue that the warranty would not cover him for the faults present at the time of the sale and argues this is further evidence of why the cost of it should be refunded. The dealership has already repaired some problems that were present at the time of the sale and my decision here should address those additional issues by having FirstRand Bank cover the cost of the repairs it is liable for. I see no reason why the warranty would not cover new issues (providing they fall under the warranty terms and conditions) that may arise during the term of the policy.

My provisional decision explained why I did not think FirstRand Bank should have been required to refund the cost of the warranty and my view on this remains unchanged.

FirstRand Bank has not responded to my provisional decision and it has not therefore referred to the iPod connector that I asked the parties to comment on. The iPod connector is referred to in the advertisement and Mr A says it was not supplied. In the absence of anything further from FirstRand Bank I find that it should now meet the cost of providing and fitting the iPod connector.

For the same reasons explained in my provisional decision I am satisfied that the car was not of satisfactory quality but I do not think that instructing FirstRand Bank to take back the car and refund what Mr A has paid to be the most appropriate redress in this case. The relevant legislation allows for different remedies in cases such as this and rejection of the goods is not always the most appropriate action. I have again given this a great deal of thought but I am still satisfied that instructing FirstRand Bank to meet the cost of those repairs is fair and reasonable in the circumstances here.

I appreciate Mr A will likely remain unhappy with my decision and I should remind him that he does not have to accept my decision. He is free to reject my decision and take further action through the courts if he thinks this is more appropriate.

my final decision

My final decision is that I uphold this complaint and direct FirstRand Bank Limited to:

- pay Mr A £840 for the loss of use and impaired use he has had from the car;
- refund the £64.01 cost of the door strap, with interest;
- refund the £54.85 MOT cost, with interest;
- reimburse Mr A for the cost of the repairs to the sun roof, subject to the presentation of an invoice or receipt;
- reimburse Mr A for the cost of installing an iPod adapter/connector, subject to the presentation of an invoice or receipt;

- pay Mr A an additional £200 for the inconvenience caused; and,
- update or amend Mr A's credit file to ensure it records accurate information.

Interest should be added to the refunded amounts at 8% simple per year from the date of payment until the date of settlement.

Should FirstRand Bank think that interest should be deducted from the interest element of my award then it should send Mr A a tax deduction certificate so he can reclaim the tax if he is eligible to do so.

Mark Hollands
ombudsman

COPY – PROVISIONAL DECISION

complaint

Mr A complains about a car he bought through a hire purchase agreement with FirstRand Bank Limited. He says the car was sold to him with a number of faults which meant the car was illegal and could not be driven. There were also problems with the registration papers for the car and the additional warranty was not cancelled when Mr A asked.

background

In August 2012 Mr A bought a used car through a hire purchase agreement with FirstRand Bank. The circumstances of the complaint are well known to both parties and I see little benefit in restating those circumstances again here in full.

In summary, Mr A bought a used car and when the car was MOT'd very shortly after it was purchased it failed the MOT. The car failed the MOT test primarily because of issues with some of the tyre's tread depth being lower than the legal limit, and a problem with the track rod and ball joint. Mr A also says the car had other faults and certain items that were advertised with the car were not provided.

Mr A also purchased one year's warranty and the cost of this was added to the amount included in the finance. Mr A says it was not made clear to him that the year long warranty would be included in the four year finance agreement. And, therefore, the cost of the warranty would be considerably higher as the warranty cost would be increased by the interest charged on the hire purchase agreement.

When Mr A bought the car he says the V5 registration document was not completed by the previous keeper and the tax disc had a different registration number to the car he was buying. Mr A says that it took some time to resolve this issue with the DVLA and he was unable to use the car during this time. Mr A did start using the car but this was not until May 2013.

Mr A complained to FirstRand Bank and as the complaint could not be resolved he referred his complaint to our service. The adjudicator who reviewed the complaint ultimately explained that FirstRand Bank had offered to take back the car, unwind the agreement and refund the repayments Mr A had made with interest.

Mr A did not accept FirstRand Bank's offer and asked for the complaint to be reviewed.

The complaint was then referred to me and after an initial review Mr A provided some further information that I felt was relevant to the complaint. FirstRand Bank was also asked to clarify if its offer was still available. It said that it would still cancel the agreement and take back the car but it will not now refund the payments Mr A has made as it believes he has had considerable use of the car.

my provisional findings

Mr A has raised a number of different issues relating to the sale of the car and associated finance. However, I am not required to respond to every point one of the parties has made or to answer every question raised. That is not because I have not taken into account what Mr A said, but because my role is to focus on what I consider material to the outcome of the complaint.

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am minded to uphold this complaint in part.

quality of the car

Hire purchase agreements are covered by the Supply of Goods (Implied Terms) Act 1973. This says that, in a hire purchase agreement, there are implied conditions including a condition that the goods will be of satisfactory quality and will be fit for purpose (s.10).

The concept of 'satisfactory quality' is expanded by the Sale and Supply of Goods Act 1994 and includes: fitness for purpose; appearance and finish; freedom from minor defects; safety; and durability. These are the requirements of quality in the hire purchase contract agreed between Mr A and FirstRand Bank.

When deciding whether goods are of 'satisfactory quality' it is necessary to consider all the circumstances – including age and the price paid. Mr A was buying a used car that was approximately six years old and had travelled around 75,000 miles. It is reasonable to expect a car of this age and mileage not to be in the same condition as it would have been when new and this is reflected in the price paid for the car.

Having said that, the car should be in a roadworthy condition and looking at the circumstances here, I am not satisfied the car was in a roadworthy condition. Mr A had the car MOT'd very shortly after he bought it and the car failed the MOT. Mr A said that the supplying dealer asked for a second MOT test to be carried out as it was concerned with the results of the first test.

Both test results were the same and the car failed both tests. The reasons for the failure were very similar and were because of the depth on some of the tyres being below the legal limit allowed. The track rod and ball joint also had 'excessive play' and this was a further reason for the failure.

Mr A also refers to other faults with the car and in particular a leak with the sunroof and a missing door strap. The door strap is a key component that appears to have been missing from the car for some reason when it was sold to Mr A. I think the door strap should have been present on the car when it was sold.

The garage that Mr A has taken the car to on several occasions has stated that there is a problem with the sunroof and it does not close correctly. This issue is allowing water to leak into the car, which is clearly unsatisfactory. Although the garage only provided the comments recently, Mr A did complain about the leaking sun roof shortly after it was purchased. On balance, I think it is more likely than not that the sun roof did leak at the time the car was supplied to Mr A.

I accept that tyres do wear out and they can be considered a 'wear and tear' item. However, I do not think it would be reasonable for the car to be sold with tyres below the legal requirement. The evidence in this complaint also demonstrates there was a fault with the track rod and ball joint and the sunroof. Having carefully considered the circumstances here, I am minded to conclude that the car was not of satisfactory quality at the time it was supplied to Mr A.

Mr A says the car was advertised as having an iPod connector included but one was not supplied. He also says the spare key did not work, a telephone was not provided with the 'phone kit' and the 'satnav' software was not up to date. I understand the spare key simply needed a new battery (which has been provided) and I think that the software for the satnav can be updated if required with little inconvenience by a franchised dealer. Although Mr A says a telephone was not supplied I have not seen anything to show a telephone should have been supplied. The car should include a phone kit but this does not mean that a telephone should actually be included with the 'kit'. I do not therefore think these issues should, at this point, be upheld.

The car advertisement clearly says that the iPod connector is supplied and I think it is reasonable therefore that one should have been included. FirstRand Bank has not however responded to this particular point and I would therefore ask that it responds specifically to this point when responding to this provisional decision. If FirstRand Bank believes that the car does include an iPod connector it should provide any supporting documentary evidence to show it was included. I will reconsider this point once both parties have responded to my provisional decision.

Mr A has recently referred to new problems he is experiencing with the car, such as a fault with the gearbox. He says that approximately £3,000 of repairs are needed. FirstRand Bank can be liable for any faults that were present with the car at the time it was supplied to Mr A. It is not however

responsible for every additional fault that occurs during the time Mr A is using the car. Although Mr A says he did not use the car for some time after he bought it he has however said that he has been using the car since around May 2013. During this time the car has travelled in excess of 90,000 and 15,000 miles has been travelled since Mr A bought the car.

Having considered these new problems that Mr A is referring to, I am not satisfied that they were present at the time the car was supplied. They are more likely to be faults that can be associated with a car that has now travelled more than 90,000 miles and is over seven years old.

For simplicity I will refer to any redress that I feel is appropriate towards the end of this provisional decision.

mileage

The car advertisement states the mileage of the car is 74,949 miles and it also includes a picture of the odometer with the mileage of 74,949. I appreciate that the mileage on the sales invoice states the car had travelled 74,000 miles and this is clearly wrong. However, Mr A knew that the mileage of the car was 74,949 and he bought the car knowing this is what the mileage was. I do not therefore think Mr A has been misled in anyway about the mileage.

registration issues

The car Mr A bought was advertised with a 'normal' registration plate but the car had previously had a private registration plate. The tax disc in the car had the registration number of the car on it, as is normal, but the registration did not match the registration that was actually on the car. The tax disc had the previous private registration number which would have presumably been bought by the previous owner when he had the private registration plate attached to the car.

From the evidence that has been presented it is clear that the car Mr A bought was the same car that had the private registration plate. The HPI check and government website both indicate that the registration plate on the car and the registration number on the tax disc belong to the same car.

The private registration plate was changed a few months before Mr A bought the car and it is likely it was changed as the previous owner wanted to keep the private registration for his new car. This is not uncommon. Nor is it uncommon for the tax disc to not match the registration plate on the actual car when it previously had a private registration plate. The car is still taxed and I am unaware of any requirement that would mean the tax disc would need to be changed to match the registration plate on the car.

The tax disc expired at the end of November 2012 and had it not failed the MOT Mr A would have been able to drive the car without issue until the tax disc expired. There was a problem with the V5 registration document as Mr A says the previous owner did not sign the form to indicate he had sold the car.

I appreciate the form should have been signed by the previous owner and this would have caused some delays in Mr A obtaining a new V5 document in his name. However, there was no dispute about Mr A having legitimately bought the car and I see no reason why Mr A could not have used the car once the issues with the MOT had been resolved. Had the previous owner disputed this then there would have clearly been a significant issue. This was not however the case and the previous owner did not raise a dispute.

The tax disc expired at the end of November 2012 and Mr A would have needed to buy a new tax disc if he wanted to continue using the car. The tax disc would be sent to the registered keeper of the car but at the end of November 2011 Mr A had not actually received the new V5 document from the DVLA. He says that it was only on 12 January 2013 that he finally received the new V5 document in his name and this was after the DVLA completed its investigation into the absence of the previous owner's signature on the relevant part of the V5 when he sold the car.

I understand it is at this time that Mr A then bought a new tax disc and for the avoidance of doubt, I see no reason why Mr A could not use the car at that time. The MOT issues had been resolved a considerable time ago and the car could be taxed and insured. Mr A was, at that time, wanting to keep the car and any remaining issues from the time of the sale should not have prevented Mr A from using the car.

It is reasonable when buying a car to expect the various documents, such as the V5 registration document, to be in order when buying a car but this is not the case here. The lack of correct documentation resulted in Mr A not being able to obtain a new tax disc and this meant he could not use the car for approximately six weeks.

cancellation of the warranty

Mr A does not dispute wishing to take out the additional warranty and there is nothing to suggest he was unaware of the purchase price of the warranty. He says he decided to cancel the warranty once he realised the warranty was for one year but when included on the hire purchase agreement it would attract interest over the four-year term.

I have only been provided with a copy of the application page for the warranty and this states that once accepted the warranty cannot be changed. It is possible that the warranty may have a cooling off period within its terms and conditions but I have not been presented with a full copy of the terms and conditions. I would ask both parties to provide a full copy of any warranty terms and conditions that apply to the warranty Mr A took out so that I can consider this further.

Mr A has referred to the Distance Selling Regulations but these apply to goods sold mainly by telephone, text or internet. They generally apply where there has been no 'face to face' sale, but that is not the case here. The warranty was sold directly to Mr A when he was buying the car and he was present at that time. I do not therefore feel the Distance Selling Regulations apply in this instance.

If there was no cooling off or cancellation period included in the warranty terms and conditions I am minded to conclude that there are no grounds for FirstRand Bank to have accepted Mr A's request to cancel the warranty.

I have not seen anything to demonstrate Mr A was misled about the cost of the warranty and as Mr A was borrowing the vast majority of what was needed to buy the car I think he should have realised the warranty would be included in the cost of the finance. It should have also been apparent that any interest would apply to the warranty cost over the term of the hire purchase agreement. Subject to both parties providing further submissions on this point, I am minded to conclude that there are no grounds for me to instruct FirstRand Bank to back date Mr A's cancellation request.

two-month grace period on repayments

The two-month grace period meant that Mr A did not have to start making repayments to the hire purchase agreement until he was in his third month of ownership. Although Mr A did not have a trouble free period at the beginning of the hire purchase agreement he did not however start making repayments until the third month. This is what was agreed under the two-month grace period.

I will refer to this issue again during the redress section of this final decision.

complaint handling

Mr A is unhappy about the way his complaint was dealt with by FirstRand Bank. I appreciate FirstRand Bank was unable to resolve Mr A's complaint to his satisfaction but from what I have seen here I do not think it dealt with his complaint particularly badly. It responded in a timely manner and attempted to address the concerns raised. It did refer to the supplying dealer for assistance and did arrange for its solicitors to respond to some issues. I do not however think this is unreasonable.

I also think it is worth noting that it was after Mr A complained to FirstRand Bank that the replacement tyres and repairs to the track rod and ball joint were completed. FirstRand Bank provided Mr A with referral rights to our service, as it was required to do, and overall I do not think it has acted unreasonably when dealing with the complaint.

incorrect spelling

Mr A complained to FirstRand Bank about his name being spelt incorrectly and this looks to be as a result of the supplying dealer incorrectly spelling Mr A's surname on various application documents. It is clear to all parties now how Mr A's surname should be spelt and if it has not already done so FirstRand Bank should ensure that its records include the correct spelling of Mr A's surname. It should also ensure that the information it sends to the credit reference agencies is accurate and any existing data should be corrected if necessary.

redress

As detailed above, I am minded to conclude that the car supplied to Mr A was not of satisfactory quality at the time he bought it. I have therefore given great thought to what, if any redress, should apply in this instance.

The legislation that applies here refers to several possible remedies that could be applied in these circumstances. I should however explain that I am not bound by the legislation but must *have regard to* the law in making decisions. I do not have to *follow* that law but as I explain above I must make a decision which is, in my view, fair and reasonable in all the circumstances of the complaint.

Until very recently Mr A made it very clear that he wanted to keep the car and he did not want to return it. In April 2013 Mr A said that it would be '*disastrous if I had to return the car*'. It is only very recently that Mr A has now indicated that he wishes to reject the car and for FirstRand Bank to take back the car.

The issue with the tyres and track rod and ball joint were repaired within a relatively short period and the cost of those repairs was I understand met by the supplying dealer. These repairs were approximately £1,600 and I think that had Mr A wished to reject the car he should have made that clear at the time before the repairs were completed. There are still outstanding faults, that I will refer to again shortly, but these issues are not in my view significant.

As explained above, the new faults that Mr A has referred to are in my view not problems that were apparent at the time the car was sold and I think it would be unreasonable to use these new faults as a reason to instruct FirstRand Bank to accept rejection of the car.

It is also worth noting that Mr A has now travelled in excess of 15,000 miles since he bought the car. Having carefully considered all of the circumstances here I do not think that FirstRand Bank should now be required to take back the car from Mr A and refund all that he has paid towards the agreement.

There is an outstanding issue with the sun roof and this is something that Mr A raised at outset. I think it more likely than not that it was leaking when Mr A bought the car and FirstRand Bank should be liable for now repairing the sun roof. The relationship between Mr A and the supplying dealer has clearly broken down and I think it is unreasonable to expect Mr A to take the car back to the supplying dealer for repair. I think that Mr A should take the car to a garage of his choice so that the sun roof can be repaired and then, subject to clear evidence of payment, FirstRand Bank should reimburse Mr A for the repair costs.

Mr A has paid £64.01 for the repair to the door strap, which seems reasonable, and FirstRand Bank should reimburse Mr A for this amount.

Mr A also paid for a second MOT test, at a cost of £54.85, as he says the supplying dealer did not accept the results of the first test. I think it reasonable that Mr A also receives a refund of the cost of the MOT test.

Interest at 8% simple per year should be added to each of these refunds from 30 August 2012 (MOT test) and 21 September 2012 (door strap), until the date of settlement.

The problem with the tyres and track rod and ball joint when the car was sold meant that Mr A was unable to use the car as it was not in a roadworthy condition. It is both illegal and dangerous to drive a car with faults like this and it is clear why Mr A was unwilling to use the car.

The car was sold on 12 August 2012 and the MOT certificate was issued on 7 September 2012. This was 26 days where Mr A could not use the car and I think it is unreasonable to expect Mr A to pay for the use he did not have of the car.

As I have explained above, I see no reason why Mr A could not have used the car once the MOT certificate had been obtained and while the car still had a valid tax disc. The problems with the V5 document did however prevent Mr A from obtaining a replacement tax disc and this again resulted in a period where he could not use the car. This would have been from 1 December 2012, when the existing tax disc expired, to 12 January 2013 when Mr A accepts he could tax and insure the car. This is a further 42 days where Mr A could not use the car and was as a result of not being provided with the correct documentation when he bought the car.

I am minded to conclude that as a result of faults with the car and inadequate documentation Mr A has been prevented from using the car for a period of 68 days. Mr A is still experiencing problems with the sun roof and will continue to until it is repaired. Having thought about what redress I think should be payable to Mr A I think it would be fair and reasonable for FirstRand Bank to pay Mr A an amount that (approximately) equals three month's instalments that were due under the hire purchase agreement. Mr A was required to pay £279.92 each month and it should therefore pay £840 for the loss of use and the impaired use he has had from the car.

As Mr A will essentially receive a refund of three months payments I do not think it necessary for FirstRand Bank to apply a grace period of two months to the repayments that are due. I also think it is unnecessary, and unreasonable, to instruct FirstRand Bank to restart the finance agreement.

Finally, I think that as a result of being supplied with a car that was not of satisfactory quality I think that Mr A has been caused some inconvenience. Having considered the specific circumstances here, along with the awards that our service generally makes in similar cases, I think an additional £200 should be paid to Mr A.

Further redress may also be applied once both parties have responded to my provisional decision but I am not at this point in a position to be specific about what, if anything, else may apply. If I do feel that additional redress should be paid I will inform both parties before I issue my final decision so they have the opportunity to consider and respond to this before my final decision is issued.

my provisional decision

Subject to any further evidence or representations received from Mr A or FirstRand Bank Limited, I propose to uphold Mr A's complaint. I am minded to direct FirstRand Bank Limited to:

- pay Mr A £840 for the loss of use and impaired use he has had from the car;
- refund the £64.01 cost of the door strap, with interest;
- refund the £54.85 MOT cost, with interest;

- reimburse Mr A for the cost of the repairs to the sun roof, subject to the presentation of an invoice or receipt;
- pay Mr A an additional £200 for the inconvenience caused; and,
- update or amend Mr A's credit file to ensure it records accurate information.

I would remind the parties to respond to my specific requests for information when responding to the provisional decision. Both parties will be informed of any changes to the redress proposed above before a final decision is issued.

Mark Hollands
ombudsman