

complaint

Miss M complains about an issue with a car that she bought partly using credit provided by Barclays Bank UK PLC, trading as Barclaycard. Her complaint is made against Barclaycard under section 75 of the Consumer Credit Act 1974.

background

Miss M bought a used car for £6,791 from a dealer in May 2017. She paid a deposit of £813, £1,673 using a debit card and £1,000 using her Barclaycard - with the balance provided by a loan from a third party. The car was three years old and had been driven for 16,014 miles. She says that in December 2017 she noticed a loud noise coming from the car when it goes over speed bumps. She asked a garage to look at that issue when the car was having an MOT test in February 2018 and was told that the noise was coming from the wheel manifold and was caused by the bushes. She complained to Barclaycard under section 75. It paid her £25 compensation because of its delay in dealing with her complaint – and arranged for the car to be inspected by an independent expert. Miss M wasn't satisfied with Barclaycard's response so complained to this service.

The investigator recommended that this complaint should be upheld. He said that the car wasn't as durable as it should've been. So he recommended that Barclaycard should arrange with Miss M for the car to be inspected by a relevant garage or dealership and that it should cover the cost of the repairs suggested.

Barclaycard has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- the issue with the car can't be fully diagnosed until a complete review of the car is done;
- the independent expert says that the condition wouldn't have been developing at finance inception;
- the issue with the car wasn't noticed until more than six months after the car was purchased and if the fault was existing at the point of sale it would expect Miss M to have noticed it prior to December 2017;
- it's unable to agree that the dealer has breached its contract or misrepresented the car; and
- it would need definitive evidence from a professional that the fault was inherent when Miss M bought the car – but the independent expert says that it's an undiagnosed issue and that he would be unable to confirm any possible causes.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss M and to Barclaycard on 4 April 2019. In my provisional decision I said as follows:

"In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Miss M's complaint about Barclaycard, I must be satisfied that there's been a breach of contract or misrepresentation by the dealer and that Barclaycard's response to her claim under section 75 wasn't fair or reasonable. I'm not determining the outcome of Miss M's claim under section 75 as only a court would be able to do that.

Miss M bought a used car in May 2017. About seven months later she says that she noticed a loud noise coming from the car when it goes over speed bumps. But there's no evidence to show that she did anything about that until February 2018 when she took the car for an MOT test and asked the garage to look at the issue. That was about ten months after she'd bought the car. The garage said that the noise was coming from the wheel manifold and was caused by the bushes. Miss M complained to Barclaycard under section 75 and it arranged for the car to be inspected by an independent expert in March 2018. The car's mileage at that time was recorded as being 23,995 miles – so Miss M had used the car to drive about 8,000 miles.

The inspection report says:

"We drove the vehicle for approximately 3 miles where we noted when travelling over speed bumps there is a metallic rattle and a creaking noise from the front of the vehicle which appeared to be emanating from the offside of the vehicle"; and:

"In our opinion based on the visible evidence we can conclude the vehicle displayed a creaking and rattling type noise from the offside front. We would consider that based on the mileage covered and length of time since finance inception and also on the balance of probability, this condition would not have been developing at finance inception. Further investigation is required to fully confirm the exact cause and parts required".

So the independent expert concluded that it was more likely than not that the issue wouldn't have been present when the car was bought by Miss M. But the expert didn't conclude what was causing the issue or say what would be required to remedy the issue.

Barclaycard would only be liable to Miss M under section 75 if there'd been a breach of contract or misrepresentation by the dealer. The issue with the car could've been caused by a number of factors. She'd been able to use the car without the issue occurring for seven months. And in the absence of clear evidence to show that there was an issue with the car when it was supplied to Miss M, I'm not persuaded that there's been a breach of contract or misrepresentation by the dealer in these circumstances.

So I find that it wouldn't be fair or reasonable for me to require Barclaycard to pay for the car to be repaired – or to take any other action in response to Miss M's complaint. Barclaycard has paid £25 compensation to Miss M for its delay in dealing with her complaint – I consider that to be fair and reasonable compensation for its delay".

So, subject to any further representations by Miss M or Barclaycard, my provisional decision was that I wasn't minded to uphold this complaint.

Miss M has responded to my provisional decision and says, in summary, that:

- she only noticed the fault in December because the noise only happens when it turns cold and can only be heard in the cold months;
- if she'd heard the noise before then she would've immediately taken the car back to the dealer as she was only given a three month warranty;
- she's not received the £25 compensation from Barclaycard;

- she's driven 8,000 miles in the car because she bought it to get to work - which is a round trip of 30 miles six days a week; and
- she wants the car to be fixed.

my 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'm not persuaded that I should change my provisional decision.

Miss M says that she didn't become aware of the noise issue until December 2017 – about seven months after she bought the car. And she didn't do anything about it until February 2018. The car was inspected by an independent expert in March 2018 who concluded that, on the balance of probability, the issue wouldn't have been developing when Miss M bought the car. And Miss M had been able to use the car to drive about 8,000 miles.

For those reasons, I'm not persuaded that there's enough evidence to show that there was an issue with the car when it was bought by Miss M – or that the car was of unsatisfactory quality at that time. So I'm not persuaded that there's enough evidence to show that there's been a breach of contract or misrepresentation by the dealer. And I find that it wouldn't be fair or reasonable in these circumstances for me to require Barclaycard to pay for the car to be repaired – or to take any other action in response to Miss M's complaint.

Barclaycard has provided evidence to show that it credited £25 compensation to Miss M's account in March 2018 because of its delay in dealing with her complaint. I consider that to be fair and reasonable compensation for the delay. And I'm satisfied that it's provided enough evidence to show that the payment has been made to Miss M.

my decision

For the reasons set out above, my decision is that I don't uphold Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 28 June 2019.

**Jarrod Hastings
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