

Complaint

Mr G complains that Vanquis Bank Limited rejected his claim under Section 75 Consumer Credit Act 1974 (CCA 1974) in respect of a faulty car.

Background

In September 2017 Mr G bought a second hand car. It cost £3,995 and had done some 40,000 miles. The car broke down the following day and it was towed to a nearby garage where it was repaired. In November Mr G's local garage diagnosed a fault with the diesel particulate filter (DPF). The dealer said this was due to wear and tear so Mr G agreed to cover the cost of the repair. The local garage identified that three out of the four injectors were over-fuelling resulting in the blockage of the DPF, and if left unresolved it considered this would be detrimental to the turbo. Mr G paid for all four injectors to be replaced.

He contacted Vanquis in January 2018 to ask that it cover the cost of repair and it requested additional information. Mr G says he sent this to Vanquis, but it says the material wasn't received. Mr G re-sent it and Vanquis rejected his claim. It said the dealer paid for the first repair and Mr G hadn't established that the later fault was present at the point of sale. It had suspended payment of the cost of the car which Mr G had funded by means of his credit card. Once his claim was rejected Vanquis brought the payment for the car back into charge and added an interest charge of £1,143.41.

Mr G brought his complaint to this service where it was considered by one of our adjudicators. She said she was satisfied there was fault with the DPF and it was unlikely this had arisen in the period Mr G had owned the car. She thought that it was likely the DPF was significantly deteriorated when the car was bought by him.

She thought the discovery that three of the injectors were faulty and suspected of causing the premature blockage of the DPF supported her view that the fault was present at the point of sale. She said that as the faults appeared in the first six months of ownership, the burden of proof lay with Vanquis and it hadn't provided any compelling evidence to suggest the car was of satisfactory quality at the point of sale.

She recommended Vanquis:

- Commission an independent assessment of the car to ascertain whether, having had works done it is now fault free and of satisfactory quality. If the repairs were found to have been successful, then no further action would be required on this point.
- Refund (upon receipt of an invoice) the cost of the DPF filter replacement Mr G paid for.
- Refund the £1,915.19 Mr G paid for the repair to the injectors.

Vanquis didn't agree and maintained the fault was due to wear and tear. It said he had been able to drive car for over a month and it also noted the mileage at the point of sale may have been higher than 40,000 recorded on the invoice. It provided an extract from a website about diesel injectors which suggested fuel filters were subject to wear and tear.

I issued provisional decision as follows:

I said that because Mr G's transaction with the dealer was financed by credit supplied to him by Vanquis, section 75 of the CCA1974 is a factor that needed to be taken into account when dealing with his complaint. In simple terms, section 75 gives Mr G an equal right to claim against Vanquis or the dealer for a breach of contract or misrepresentation by the dealer.

The car broke down the day after it was bought and after some discussion the dealer covered the cost of that repair. However, responsibility for the latter and more significant fault is disputed. We do not have an independent report into the cause, but the garage which carried out the repairs identified faults with three of the injectors. It suggested that this was due to over fuelling which can be caused by wear which enlarges the nozzle hole.

I said I appreciated that various parts would suffer wear and tear over a period of time, but given the fact that the fault appeared so soon after Mr G bought the car this suggested the fault was present at the point of sale. The car was sold as having done 40,000 miles, but Vanquis had suggested this was incorrect. The recorded mileage some four months later was 48,173. Either Mr G did a significant number of miles in a short time or Vanquis is correct and the dealer misrepresented the car.

In any event even if one were to assume the car had done more miles than shown on the sales invoice I noted it still had done a relatively low mileage and I didn't believe that it was reasonable to presume that three of the injectors would have worn out after only some 48,000 miles. I believed one would expect them to last much longer.

I noted Mr G raised the possibility of rejecting the car with the dealer. The dealer didn't agree and Mr G had the car repaired. I suspected if the matter had been brought to this service earlier I might have recommended rejection. However, Mr G didn't pursue rejection and turned to Vanquis to ask that it cover the cost of the repairs. He didn't ask that the car be rejected. Vanquis took the decision to suspend payment.

Mr G hadn't asked that this be done and he didn't suggest that he wasn't prepared to pay for the car. All he asked for was that Vanquis cover the cost of the repairs. I asked Vanquis for clarification as to how the large sum of £1,143. 41 of interest had been calculated. It told me that while the transaction was in dispute the interest was frozen. It said that Mr G became liable for it on 10 July 2018 when the transaction was removed from dispute.

I didn't consider this to be fair or reasonable. Vanquis decided to freeze the interest and I am not aware that it made it clear to Mr G that he could suffer such a large interest charge. Mr G paid off the money due once it was recharged by Vanquis and I suspected that it had been made clear to him the potential of such a large interest charge he would have cleared the debt earlier. Therefore I didn't consider Mr G would have paid interest if there had been no problem with the car or if it had been made clear to him that he would incur interest if his claim was rejected.

I explained that our adjudicator had recommended that the business commission a report into the car, but I didn't think that was necessary. Mr G has had the car repaired and I thought that addressed the fault which I believe was present at the point of sale. I suggested that Vanquis Bank Limited should:

- Refund (upon receipt of an invoice) the cost of the DPF filter replacement Mr G paid for.

- Refund the £1,915.19 Mr G paid for the repair to the injectors.
- Remove the interest charge for the car and refund it if necessary.

Vanquis accepted the first two bullet points of my proposal, but wondered why the interest should be removed. It said that Mr G wasn't disputing the initial transaction and it would expect to pay some compensation for not making it clear the interest would be charged as a lump sum.

My findings

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

The only remaining point which is not agreed is the treatment of the interest imposed on Mr G. I agree that removing the interest charge is a little unusual, but I believe it is fair and reasonable when taking into account the evidence in this case. I am satisfied that Mr G had the intention and the ability to pay off the debt before the interest was payable. The only reason it wasn't paid in time to avoid interest was because the car suffered several faults. Vanquis then froze the interest without making it clear that it was continuing in the background.

I am satisfied that if Vanquis had made it clear that interest was running Mr G would have paid the debt and thus avoided the interest charge. This service seeks to put people back in the position they would have been had the problem not occurred. In this case this means Mr G would not have paid the interest which is why it is fair and reasonable that it be removed and if necessary repaid.

My final decision

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

- Refund (upon receipt of an invoice) the cost of the DPF filter replacement Mr G paid for.
- Refund the £1,915.19 Mr G paid for the repair to the injectors.
- Remove the interest charge for the car and refund it if necessary.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 23 February 2020.

Ivor Graham
Ombudsman