

## **complaint**

Mr and Mrs B complain that Barclays Bank PLC, trading as Barclaycard, will not refund to them the money that they paid for a car. They say that the car is not of satisfactory quality and that the seller misrepresented the car to them. Their complaint is made against Barclaycard under section 75 of the Consumer Credit Act 1974.

## **background**

Mr and Mrs B bought a used car in September 2013 which they paid for using their Barclaycard. They experienced some problems with the car so complained to the seller and then to Barclaycard under section 75. They were not satisfied with Barclaycard's response so complained to this service.

The adjudicator did not recommend that this complaint should be upheld. She concluded that there had not been a breach of contract or misrepresentation and that Barclaycard was not required to refund the payment to Mr and Mrs B under section 75.

Mr B has responded in detail and says, in summary, that: the car is of unsatisfactory quality which is supported by an independent and impartial expert; the contract was breached because the warranty repairs were not carried out by the seller; and the car was mis-sold due to false claims made on the seller's web site regarding its source which influenced his decision to buy it.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

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 has been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr and Mrs B's complaint about Barclaycard under section 75, I must be satisfied that there has been a breach of contract by the seller or a misrepresentation by the seller which induced Mr and Mrs B to buy the car.

Mr and Mrs B paid £2,767 to the seller, using their Barclaycard, for a car in September 2013. The car had been first registered in 2005 and had a mileage of 68,700. A few days later the car passed an MOT test. Mr and Mrs B then complained to the seller about some faults with the car and, in November 2013, they had the car inspected. The inspection report listed some faults with the car and concluded: *"In my professional opinion this many things can't all be faulty so soon after the purchase and so soon after a MOT test, so I am sure they have been faulty for quite a while before the purchase date"*. However, that report did not say which faults did exist with the car when it was bought by Mr and Mrs B and I therefore do not consider that it shows that the car was not of satisfactory quality at that time.

I consider that some of the faults would have been visible when the car was bought by Mr and Mrs B and that the other faults are consistent with a car of this age and mileage and which is reflected in the price that was paid for the car. Mr and Mrs B have driven the car for more than 1,300 miles and it was of a roadworthy condition because it passed an MOT test just days after it was bought by Mr and Mrs B. They had owned the car for two months before it was returned to the seller and the seller was unable to find the driving faults about which Mr B complained. I am not persuaded that there is enough evidence to show that the

car was not of satisfactory quality when the car was bought by Mr and Mrs B or that the seller has breached the terms of the sale contract.

The seller's promotional information says:

*"The used car retail arm of [the seller] offer used cars prepared to a high standard usually with a good service history that come direct from our leasing clients or as part exchanges from the many dealers we use to supply new cars to our leasing customers".*

Mr and Mrs B say that their car was bought by the seller at auction and has therefore been misrepresented to them. However, I am not persuaded that the seller's promotional information was enough to be a representation that the car that was bought by Mr and Mrs B came directly from its leasing network. Nor am I persuaded that there is enough evidence to show that Mr and Mrs B bought the car because of that representation and that they would not have bought it if they had known that it had been bought by the seller at auction. I therefore do not consider that there is enough evidence to show that the car was misrepresented to Mr and Mrs B.

For these reasons, I do not consider that it would be fair or reasonable for me to require Barclaycard to refund to Mr and Mrs B the money that they paid for the car or to pay them any other compensation.

#### **my final decision**

My decision is therefore that I do not uphold Mr and Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B to accept or reject my decision before 4 December 2014.

Jarrold Hastings  
**ombudsman**