

complaint

Mr A complains that Vanquis Bank Limited rejected his section 75 claim when he complained about issues he's experienced with a caravan.

background

In April 2016 Mr A purchased a caravan and paid a deposit of £500 using his Vanquis credit card.

In March 2018 Mr A had the caravan serviced. The engineer discovered that the nearside axle and suspension had suffered severe degradation and that the inner axle had turned within the outer axle tube. The engineer also said that a non-approved repair had been carried out with significant torque being applied to the hub locknut jamming the stub axle. The engineer told Mr A that the caravan wasn't safe to tow or roadworthy because of these issues.

Mr A contacted Vanquis to make a section 75 claim. Vanquis referred him back to the supplying dealer, who disagreed with what the engineer had said and relied on the pre-delivery checks which hadn't identified any issues.

Based on this, Vanquis didn't uphold the section 75 claim. Mr A complained to this service.

Our investigator upheld the complaint. He was satisfied that the caravan wasn't of satisfactory quality at the point of supply because it had been supplied with a faulty axle which had been the subject of a temporary repair. The investigator was satisfied there had been a breach of contract and said that Vanquis should arrange for the caravan to be repaired.

Mr A didn't agree. He said he'd lost out on holidays he'd booked because he'd been unable to use the caravan for the last 14 months, during which time he'd still had to pay for insurance and storage costs. He also felt that the caravan had depreciated in value during this time meaning he would get less for it in part exchange, even if it was fully repaired. Mr A said he'd already purchased a new caravan in any event and he wanted a full refund of the cost of the old van.

my findings

I've considered all the available evidence and arguments to decide what's 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's been a breach of contract or a misrepresentation by the supplier. In order to uphold Mr A's complaint I would need to be satisfied that there's been a breach of contract – in other words, I'd need to be satisfied that the caravan wasn't of satisfactory quality at the point of supply.

It might be helpful for me to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. Rather, in deciding what's a fair and reasonable way to resolve Mr A's complaint, I've taken account of section 75. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mr A pursued a claim for breach of contract.

Under the relevant law, the caravan needs to be of satisfactory quality and fit for purpose at the point of supply. If the caravan wasn't of satisfactory quality then a breach of contract can be said to have occurred.

Having looked at all of the available evidence, including the engineers report and the independent report, I'm satisfied that the fault and the non-approved repair were present at the point of supply. Because of this, the supplying dealer has breached its obligations to provide a caravan of satisfactory quality.

At this stage, it doesn't appear to be disputed by Vanquis that there's been breach of contract so I won't focus further on this. What is in dispute is what should be done to put things right. So my decision will focus on this.

When a breach of contract is established under section 75 I'd expect the finance company to take steps to put things right as if the breach hadn't occurred. In Mr A's case, this might mean repairing the fault with the caravan or it might mean returning the caravan for a full refund of all payments made (less a deduction for fair use).

Mr A wants to return the caravan and have all of his payments refunded. However, where a car (or a caravan, as in this case) is found to have a point of supply fault, the business is generally allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can ask to reject the car (or caravan).

In this case, Vanquis hasn't had the opportunity to repair the fault. I think it should be allowed that opportunity. There's evidence to suggest that the axle can be repaired at proportionate cost. Vanquis should pay for this repair.

I can see that the relationship between Mr A and the supplying dealer has broken down so I think Mr A should have the choice as to where the repairs are carried out.

I've taken into account what Mr A has said about not being able to use the caravan for a long time, whilst still incurring insurance and storage costs. He also says the caravan has depreciated in value.

Weighing everything up, I think Mr A should receive compensation for his losses in relation to insurance and storage fees. I also think he should be reimbursed for the cost of the independent report he obtained. In relation to depreciation, I would expect a caravan to depreciate in any event, and I'm not persuaded that Mr A's faulty caravan has depreciated beyond that which would otherwise be expected.

I appreciate that Mr A has already purchased another caravan. I understand why he's done this but it doesn't change what I think is a fair and reasonable way to resolve the complaint, which is by having the caravan repaired.

my final decision

My final decision is that I uphold the complaint. Vanquis Bank Limited must:

- Arrange for the caravan to be repaired at a garage of Mr A's choice and at no cost to Mr A.

- Refund the insurance premiums paid by Mr A from March 2018 until now together with simple interest at 8% per year from the date of payment to the date of settlement
- Refund the storage costs paid by Mr A from April 2018 to now together with simple interest at 8% per year from the date of payment to the date of settlement
- Refund the cost of the independent report which Mr A paid for

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 October 2019.

Emma Davy
ombudsman