

complaint

Mr B complains that MBNA Limited has refused his claim under section 75 of the Consumer Credit Act (the CCA). He says a car he bought is of unsatisfactory quality. Mr B wants MBNA to refund the money he paid for the car.

background

The details of this complaint are well known to Mr B (and MBNA), so I don't repeat them here.

Mr B bought a car from a dealer. He paid for it using, in part, his MBNA credit card. After buying the car he took it to another garage so it could be checked – as he wanted to apply for an extended warranty from the manufacturer. That garage noted a number of issues with the car so Mr B took it back to the dealer. This all happened the same day.

The dealer put (at least most of) the problems right. But Mr B wasn't happy with this as he wasn't certain the manufacturer would recognise repairs carried out by somebody other than a 'main' dealer. And he thought some of the issues highlighted meant the car wasn't roadworthy – so the dealer shouldn't have sold it to him. He says that by returning the car he's exercised his option of rejecting the goods.

There was then a protracted disagreement involving Mr B, the dealer and its legal advisers. The dealer said it would charge Mr B for storing the car. And it was suggested the car might be sold to cover those costs.

Mr B asked MBNA to help him sort things out – and give him a refund under section 75 of the CCA. MBNA contacted the dealer but the position remained deadlocked – but it did offer to pay Mr B £200 so he could get an independent report on the car. It seems it wasn't possible to take this up as there was a further disagreement over insurance cover for the inspector being able to drive what Mr B considered to be a car that wasn't roadworthy. Mr B asked us to look into things for him.

Our adjudicator said she didn't think there were any reasons to ask MBNA to give Mr B a refund. There was no breach of contract or misrepresentation of the car. It didn't seem to be faulty at the point of sale. She felt the garage that had inspected the car wouldn't have let Mr B drive it back to the dealer if it wasn't roadworthy.

Mr B didn't agree. He didn't think the adjudicator had properly considered all the relevant law (and regulations) covering his problem – and quoted extensively from the research he'd done. So Mr B's complaint has been referred to an ombudsman to make a final decision.

my findings

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

I can see Mr B feels very strongly about the problems he's experienced. That's clear from his dealings with the dealer, MBNA and our adjudicator. And I can understand why. After all, he paid quite a bit of money for the car. So his concerns are understandable.

But I'm afraid I have to tell Mr B that I think the adjudicator has reached the right outcome here. While I understand Mr B's concern that the adjudicator did not specifically mention specific laws (and regulations) in her opinion, this doesn't mean they weren't considered. I'm satisfied they were.

The same is true here – I don't deal with each and every legal point Mr B has clearly researched. But I want to reassure him I have looked at the extensive submissions he's made to us.

The issue I have to decide is quite simple. In order for me to direct MBNA to refund Mr B, I have to be satisfied there's been a breach of contract on the part of the dealer – or it misrepresented the car Mr B bought. And I don't think either applies.

The car had to be of satisfactory quality. For a second-hand car, this must take into account its age, mileage travelled and its price. It wouldn't be reasonable to expect it to be in perfect condition. After all, it was about nine years old.

Mr B test drove the car before he bought it. So he might have picked up on some of the issues the garage found very shortly afterwards. In any event, I note the dealer offered – and carried out – the works it considered appropriate. This seems a reasonable action on the part of the dealer.

Mr B believes the car wasn't roadworthy. He believes the dealer didn't carry out any checks before an MOT certificate was issued. This is a serious allegation. Despite Mr B's misgivings, I can't ignore the fact the car had a valid MOT certificate when he bought it. And the garage that inspected the car did allow him to drive it back to the dealer. If the car was not roadworthy, I wouldn't expect it to do so.

So, on balance, I'm not persuaded the car was not of a satisfactory quality, bearing in mind its age. I have also not seen anything to demonstrate there was any misrepresentation by the dealer.

As I am satisfied the car was of satisfactory quality (taking account of the factors I refer to above), there is no requirement on the part of the dealer or MBNA to accept Mr B's request to reject the car.

I also have to consider Mr B's actions in – as he says – rejecting the car. The remedies available to him for unsatisfactory goods (repair, replacement or rejection) have to be applied proportionately. Clearly the relationship between Mr B and the dealer has now broken down. But I can understand the dealer might see Mr B simply refusing to collect the car after the dealer had carried out repairs as not being a proportionate response.

MBNA has offered to pay £200 so an independent inspection could be carried out. This hasn't proved possible, which is disappointing – as it might help settle the matter. While I understand there have been some issues about insurance cover to enable the inspection to happen, I struggle to see that these are unsurmountable.

I know that Mr B will be disappointed with this, but I don't believe I can fairly direct MBNA to give him a refund of the money he paid for the car. Given how strongly Mr B feels about his complaint he may want to pursue it through other means. But my final decision brings to an end what we – in trying to resolve the dispute informally – can do for him.

my final decision

For the reasons I've given, my final decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 July 2015.

Andrew Davies
ombudsman