

complaint

Mr C acquired a new car in mid November 2012 by hire purchase with FCE Bank Plc, trading as Ford Credit. He complains that the car has exhibited very serious faults and is not fit for purpose. He wants to reject the car, and to receive a full refund of all payments he has made under the hire purchase agreement.

background

The background to this complaint, and my provisional findings, were set out in my provisional decision dated 9 April 2015 – a copy of which is attached and forms part of this final decision. In my provisional decision, I explained why I thought that Ford Credit should:

1. Take back the car from Mr C, without further liability to him
2. Refund to Mr C his total deposit (£4,800) and all monthly payments he has made under the hire purchase agreement after July 2014, plus interest at 8% per annum simple from the dates of payment to the date of settlement
3. Pay compensation to Mr C of £150 for financial loss, and £150 for non-financial loss

Ford Credit responded to say that it acceded to my decision – but the figure of £4,800 included an allowance of £1,500, which was a reduction in the cost of the car for acquiring the vehicle using finance from Ford Credit, and was not a payment made by Mr C. It said the deposit paid by Mr C was £3,300.

Mr C responded to say he agreed with my decision, and he accepted that the total deposit he had paid was £3,300.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also taken account of the responses received to my provision decision. I see no reason to depart from that decision, other than to amend the total deposit figure as advised by Ford Credit and Mr C.

my final decision

For the reasons explained above, my final decision is that I uphold this complaint. In full and final settlement of it, I order FCE Bank Plc:

1. To take back the car from Mr C, without further liability to him
2. To refund to Mr C his total deposit (£3,300) and all monthly payments he has made under the hire purchase agreement after July 2014, plus interest at 8% per annum simple from the dates of payment to the date of settlement
3. To pay compensation directly to Mr C of £150 for financial loss, and £150 for non-financial loss

If FCE Bank Plc considers it has to deduct tax from the interest element of my award, it should send Mr C a tax deduction certificate when it pays them. He can then use that certificate to try to reclaim the tax, if he is entitled to do so.

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

Roy Mawford
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr C acquired a new car in mid November 2012 by hire purchase with FCE Bank Plc, trading as Ford Credit. He complains that the car has exhibited very serious faults and is not fit for purpose. He wants to reject the car, and to receive a full refund of all payments he has made under the hire purchase agreement.

background

Mr C said:

- Problems with temperature regulation arose shortly after he took delivery of the car – he returned it to the supplying dealership, who told him there was nothing wrong
- He reported the same problems at the car's first 12-month service, but received the same response from the dealer
- In late July 2014, well before the next 12-month service was due and with 11,000 miles 'on the clock', the car completely broke down – overheating and requiring an engine replacement
- The dealer accepted the breakdown had been caused by an inherent fault, and installed a new engine
- The car was out of action for two months, during which time the dealer was unhelpful about providing alternative transport for Mr C and his family
- He and his family were upset and inconvenienced over this period, and incurred significant out-of-pocket expenses in arranging alternative transport

Mr C complained to Ford Credit five days after the car broke down. He received a final response letter in late September 2014, rejecting his complaint – which he then referred to us. He decided not to collect the car when the repair was completed, adding that he was advised by the Financial Ombudsman Service not to do so.

our initial conclusions

Our adjudicator found no evidence to support Mr C's statement that we had advised him not to collect the car. He also agreed with Ford Credit that the car should not be rejected. But he felt Mr C should receive compensation for the period that the car was out of action.

Mr C continued to make the monthly payments of just over £275 required under his hire purchase agreement. Following our adjudicator's intervention Ford Credit offered to pay compensation of £600 to Mr C – which would cover two monthly payments, plus just over £45 for out-of-pocket expenses.

Mr C rejected Ford Credit's offer. He said that, under the Sale of Goods Act, a retailer must either repair or replace faulty goods, within a reasonable period of time and without causing significant inconvenience – and, if the retailer did not do so, the consumer could claim their money back, minus an amount for the use they had made of the goods. He confirmed that this was what he wanted to happen.

my provisional findings

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

Ford Credit has a responsibility to ensure that goods of satisfactory quality have been supplied. This means that a reasonable person would have regarded the goods as satisfactory, taking into account all relevant circumstances, which for cars include age and mileage travelled. But there are limits to Ford Credit's responsibilities. In particular, faults must be present at the point of sale.

The general legal principle is that the remedy for not fulfilling this responsibility is to put the wronged party in the position they would have been in if the contract had been performed, not in the position they would have been in had there been no contract. However, for hire purchase agreements, a breach of terms relating to quality of goods can entitle a consumer to reject the goods, treat the agreement as at an end and claim for damages.

The courts have used different methods of assessing damages in such cases, but it may be appropriate for a customer to receive the amount paid by way of hire, plus any money spent on the goods during the period of hire, less an allowance for any benefit they have had during the hire period.

In this complaint:

- The dealer accepted the breakdown had been caused by an inherent fault which, by definition, must have been present at the point of sale
- During the period mid November 2012 to late July 2014 (inclusive), Mr C and his family benefited from use of the car (which travelled 11,000 miles)
- Mr C and his family suffered significant upset and inconvenience during the period that the car was out of action, and incurred out-of-pocket expenses in arranging alternative transport

I find that a reasonable person would regard the car as not of satisfactory quality. In addition, I find that:

- Given the car's complete breakdown and the problems experienced by Mr C and his family while the car was out of action, he should be allowed to reject it (without further liability)
- Mr C should receive a refund of all payments made, except the monthly payments made between December 2012 and July 2014 (inclusive)
- Mr C should also receive compensation for financial and non-financial losses incurred while the car was out of action (I estimate his out-of-pocket expenses at £150)

my provisional decision

For the reasons I have explained, but subject to any further comments or evidence I receive from Mr C or Ford Credit by 11 May 2015, my provisional decision is that Ford Credit should:

1. Take back the car from Mr C, without further liability to him
2. Refund to Mr C his total deposit (£4,800) and all monthly payments he has made under the hire purchase agreement after July 2014, plus interest at 8% per annum simple from the dates of payment to the date of settlement
3. Pay compensation to Mr C of £150 for financial loss, and £150 for non-financial loss

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