

complaint

Mrs M complains that the new car she acquired under a Personal Contract Purchase ("PCP") with Arval UK Limited wasn't of satisfactory quality. She wants to reject the car.

background

In December 2016 Mrs M acquired a new car under a PCP with Arval. However, within a couple weeks of having the car the engine management light illuminated on the dashboard and the car went into "reduced power/limp home mode". Mrs M took the car back to the dealership.

The dealership replaced the sensor for the diesel particulate filter ("DPF") and returned the car to Mrs M. But around two weeks later the car broke down again and was returned to the dealership. This time the DPF was replaced.

Unfortunately, Mrs M continued to have problems with the car which appeared to relate to the DPF. The car was returned to the dealership on more than four occasions. The DPF was replaced for a second time, oil changes have been carried out and the car extensively tested by the dealership and the manufacturer. Following problems with the car in December 2017 a new DPF was again required. On this occasion the manufacturer declined to cover the cost. Due to the faults with the car Mrs M has been unable to use it since January 2018.

Mrs M complained to Arval and said she now wanted to reject the car as not being of satisfactory condition. The manufacturer offered her £500 compensation for the distress and inconvenience she'd had suffered. But Arval said the problems were due to the way the car was driven and not an inherent fault with the car. It said that the DPF needed to periodically go through a regeneration cycle to clear gases and soot particles from the exhaust. But if the car was only driven on short journeys, as Mrs M was doing, then the cycle wouldn't complete which would cause problems with the car's engine. It said Mrs M had been made aware of the regeneration cycle and what she was required to do to ensure the cycle was effective.

Arval offered to assist Mrs M in sourcing a cheaper repair for her or to request that the dealership remove and have the current DPF flushed out before being refitted and the system refitted, but with Mrs M to cover the cost. It said she could undertake early termination of the contract subject to the existing terms and conditions of the agreement and provided the car was repaired.

Mrs M was unhappy at Arval's response. She complained to this service and also arranged for the car to be independently inspected.

The independent engineer confirmed that the car was showing a problem with the DPF which could be caused by either dirt in the filter or a software issue. The engineer said that earlier cars with DPF's were required to be driven at a minimum of 40mph for at least five miles on a regular basis to bring the DPF unit up to operating temperature for it to then regenerate. As Mrs M had reported the car was used for a regular lengthy commute then this should be enough for the DPF to regenerate even if the car was then used for shorter journeys over the interim. The engineer considered that "*there may be an underlying issue with the powertrain control module/software*" which would require further investigation.

Our adjudicator recommended Mrs M's complaint should be upheld. He said that Arval had been given a fair chance to repair the car and taking into account its age and mileage he thought the car had been faulty at the point of sale.

The adjudicator said it was fair for Mrs M to reject the car and for the credit agreement to be cancelled. He said she should be reimbursed for any monthly payments made since December 2017; for the unused advance payment calculated from December 2017 and for any insurance from December 2017. Interest was payable on all these reimbursements. Finally, if the compensation had not already been paid, then Arval should pay the £500 compensation originally offered.

Arval disagreed with our adjudicator's view. It said the problem with the DPF arose from the way Mrs M used the car and not an inherent fault. However, it has offered to take back the car and reduce the outstanding balance on the car by 50%. Mrs M has not accepted this offer and the complaint has been passed to me.

my findings

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

It's agreed that the car acquired by Mrs M has a problem with the DPF that means it can't currently be driven. Mrs M says that the fault was present at the point of sale and is possibly a software one rather than the filter itself. Arval says the filter has a problem because the short journeys made by Mrs M in the car mean it can't regenerate which has led to engine problems.

Mrs M says the car is used for both long and short journeys and I've seen that the independent engineer considered that if the car was used as Mrs M had described then there shouldn't be an issue with the DPF.

Looking at the mileage of the car, I've seen it had a mileage of 135 at the point of sale in December 2016. When the independent engineer inspected the car in April 2018 it had a mileage of 5445. While I accept this doesn't indicate a regularly used car I have to take account of the amount of time it spent off the road up until December 2017 when it was effectively no longer used by Mrs M. The car has spent around 6 months with the dealership and manufacturer, although the testing of the car did add 1000 miles to the mileage.

When the car first developed the problem Mrs M had driven the car for about two week, and the mileage was 477, so in that time the car had been driven about 150 miles a week. There was a similar weekly mileage before the car broke down again. I've also seen that the car has broken down around seven times in the period Mrs M has had possession of it. This was sometimes within a short space of time if it being returned to Mrs M from the dealership following repairs.

While I appreciate that the mileage of the car doesn't suggest a lengthy daily commute I don't think it necessarily means the car wasn't driven for lengthier journeys when the DPF could regenerate. I appreciate Arval's view is that the car wasn't being driven sufficiently long or fast enough to allow the DPF to function properly but I have taken into account the opinion of the independent engineer that a car of this age shouldn't "require this additional driving technique." Looking at the history of the repairs I don't think the evidence contradicts

the independent engineer's opinion that there may be an underlying issue with the software which requires investigation.

Under the Consumer Rights Act 2015 goods that are supplied must be "*of a satisfactory quality*", "*fit for purpose*" and "*as described*". If they aren't then there is a right to reject them if the issue can't be resolved. And under these types of agreements the car is supplied by credit provider, in this case Arval, and so it's Arval who is responsible if there is a complaint about the quality of the car. Taking into account the number and length of times the car has been inspected, tested and repaired I think the dealership, and so Arval as the finance provider, has had a fair opportunity to rectify the fault and hasn't been able to do so. I am upholding Mrs M's complaint as I'm satisfied that the car wasn't of satisfactory condition at the point of sale. It's fair and reasonable for Mrs M to reject the car.

I require Arval to cancel the agreement and collect the car at no cost to Mrs M. It is to show the agreement as settled on Mrs M's credit file and remove any adverse information related to this agreement. It must reimburse her the unused advance payment calculated from December 2017, any monthly payments paid under the agreement since December 2017, any insurance from December 2017 (subject to Mrs M providing evidence of this cost) and the cost of having the car independently inspected (subject to Mrs M providing evidence of the cost). All these reimbursements are to have interest added from the date of payment until the date of settlement.

Finally, I think Mrs M has suffered distress and inconvenience from not being able to use the car so if the manufacturer has not yet paid the compensation of £500 I require Arval to cover that sum. If the compensation has been paid then I don't think it would be reasonable for Arval to pay an additional amount.

my final decision

For the reasons provided above I'm upholding Mrs M's complaint. I require Arval UK Limited to do the following:

- End the agreement with nothing further owed by Mrs M.
- Allow Mrs M to reject the car
- Collect the car at a convenient time for Mrs M and at no cost to her
- Show the agreement as settled on Mrs M's credit file and remove any adverse information related to this agreement
- Refund Mrs M's unused advance payment calculated from December 2017 together with interest at the rate of 8% per year simple from the date of payment until the date of settlement
- Refund the costs of the independent engineer's report together with interest at the rate of 8% per year simple from the date of payment until the date of settlement (Mrs M to provide evidence of this cost)
- Refund any monthly premiums paid by Mrs M after December 2017 together with interest at the rate of 8% per year simple from the date of payment until the date of settlement.
- Refund any insurance costs from December 2017 together with interest at the rate of 8% per year simple from the date of payment until the date of settlement. (Mrs M to provide evidence of this cost)
- Pay Mrs M £500 as compensation for the distress and inconvenience caused to her unless this amount has already been paid by the manufacturer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 17 January 2019.

Jocelyn Griffith
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