

Complaint

Mr A complains that Moneybarn No. 1 Limited refused to let him reject a faulty car.

Background

In October 2018 Mr A acquired a car costing £4,690 funded by a deposit of £400 and the balance with a conditional sale agreement. It was some seven years old and had done around 100,000 miles. It was bought sight unseen and the car was driven to his home despite him paying for it to be delivered on a recovery truck.

Within few days he noticed a number of faults. He told Moneybarn that a warning light for a faulty suspension came on, the paint work was damaged, airbags missing, brakes were worn down, the windscreen was damaged, despite having been told this would be fixed and the rear seatbelts were not working. He asked that he be allowed to reject the car.

Moneybarn arranged for the car to be subjected to an independent inspection. The inspector said the car required a number of repairs and further investigation into the suspension fault. He also said a number of the faults were safety issues. He concluded these faults would have been present at the point of sale. Moneybarn agreed to cover the cost of repairs to the brakes and to pay £200 as goodwill gesture to meet the delivery costs. However, it considered the other faults to be cosmetic and not sufficient to merit rejection.

Mr A brought his complaint to this service where it was considered by one of our adjudicators who recommended it be upheld. He concluded that the car wasn't fit for purpose and noted it had a number of MOT fails. The brakes were seriously worn and some of the other faults were safety matters. He concluded that Mr A should be allowed to reject it. Moneybarn didn't agree. It said the issues were due to wear and tear and the warning light was to do with sensor issues or needing service.

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 considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Within a few days of taking delivery of the car Mr A identified a number of faults. These are not disputed and the key issue is whether they were sufficient to merit rejection. I consider that taken individually the faults were such that they would not merit rejection. However, I have to consider them in their totality.

I am conscious that the car was reasonably old and had done a high mileage and so it will have been subject to wear and tear. As such it wouldn't be in perfect condition, but where a car comes with issues which compromise the driver's and passengers' safety than I consider that to be of a more serious concern.

Issues with the airbags are of particular concern and I note that the independent inspector was of the opinion that further investigation was necessary. He also listed a number of issues such as an incorrectly routed flexible brake hose, damaged windscreen and wipers. Indeed he referred to the 'numerous problems' which required repair and he believed any issues with the suspension would require further investigation. Overall he concluded all the faults would have been present at the point of sale.

So the car had numerous faults when it was sold and, of course Mr A didn't have the opportunity to carry out an inspection prior to purchase. Taken together I consider they amount to the car being of such a quality to be considered suitable for rejection. While I appreciate the position taken by Moneybarn I have reached a different conclusion and I consider Mr A should be allowed to reject the car.

My final decision

My final decision is that I uphold this complaint and I direct Moneybarn No. 1 Limited to:

- end the agreement with nothing further to pay from April 2019.
- collect the car at no further cost to the customer
- refund the deposit and pay 8% simple interest from the date of payment until the date of settlement
- pay £150 distress and inconvenience payment
- remove any adverse information from Mr A's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 June 2020.

Ivor Graham
Ombudsman