

complaint

Mr and Mrs N complain that the car they acquired through a conditional sale agreement with Moneybarn No. 1 Limited (the business) was not of satisfactory quality.

background

Mr and Mrs N entered into a conditional sale agreement in June 2016 to acquire a used car. Mr N says that on the day he collected the car he contacted the dealer to say the car suffered a loss of power and the glow plug light was on. The next day the car had to be recovered due to a loss of oil. The car was taken for repair and returned to Mrs N on 23 June. Mrs N says the glow plug light came on again when she drove home.

Mr N says he contacted the dealer and was told to contact it again if the light stayed on. He says that the light was on intermittently but then the engine management light came on. At this point it was agreed that the car would be taken to a manufacturer approved garage for diagnostics. Mr N says that the problem was identified to be with the fuel pump.

Mr N says he then contacted the business which arranged for its own inspection. This reported the issue was not present at the point of sale.

The business says that Mr N raised his complaint in September 2016 regarding an issue that happened in June. It says that the car was taken to its manufacturer's garage and the issue was identified to be linked to the fuel pump. It says this is a wear and tear item and so Mr N's responsibility. The business says that the manufacturer's assessment noted the car was performing within the manufacturer's guidelines and so it could not conclude that it was not of satisfactory quality.

The business then arranged for an inspection to be carried out. It says that this confirmed the car was fit of purpose and of satisfactory quality at the point of sale. It also noted that the car been driven over 90,000 miles when it was acquired and Mr N had been able to drive around 6,000 miles in the car since acquiring it.

The business says that given the dealer had carried out work on the glow plugs; Mr N should contact it if there was still an issue. It said that it offered to contribute towards the cost of the clean and reimbursed him £1,430.08. It said that in order to consider this complaint further it would need evidence that the clean had been carried out and the issue with the car was linked to the issue Mr N raised in September 2016.

The adjudicator upheld this complaint. He said that the problem was present at the point of sale and hadn't been fixed. He recommended that the business have a long drive inspection carried out to identify what caused the car to go into limp mode but the business refused this. He said that given the time that this issue has been ongoing it was reasonable that Mr and Mrs N were allowed to reject the car.

The adjudicator recommended that the business collect the car at no cost to Mr N; cancel the agreement with nothing further owing and refund 15% of the payments Mr N had made. He also recommended that the business pay Mr N £100 compensation for the trouble and upset this issue had caused.

The business did not accept the adjudicator's recommendation. It said that the engineer's report stated that there was no warning light illuminated and so it believed the issue to have arisen while the car was back in Mr N's possession and that the problems were not linked.

The business said that the information provided did not support that the issues with the car were present at the point of sale. It said that the document dated 19 June 2016 noted an oil leak and that this had no connection with the issue reported to it in September. It said the second document noted the glow plug light being on. It said this issue was addressed by the supplying dealer and did not relate to the fuel pressure Mr N had reported. It further said that this type of vehicle should not be driven with low fuel and that the dealer had confirmed that when it inspected the car the fuel was low.

Mr N said, following the adjudicator's recommendation that the car was going into limp mode several times. He said the car had become unusable.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconsistent or contradictory, I have made my decision based on the balance of probabilities - that is what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr and Mrs N entered into conditional sale agreement with the business in June 2016 to acquire a used car. Under the regulations, the business is liable if the car was not of satisfactory quality at the point of sale. For a used car, the age and mileage of the car are taken into consideration when assessing satisfactory quality.

In this case, Mr N raised the issue of the loss of power and the glow plug light being on as soon as he acquired the car. Given this, it is reasonable to say that these issues were due to faults present at the point of supply. The car then needed to be recovered due to a loss of oil.

I understand that the car was returned to the dealer and work undertaken. However, Mrs N says that the glow plug light came on again when she drove the car home after the dealer returned it. This suggests the issue had not been resolved at that time.

Mr N was told to contact the dealer if the light remained on. He said that the light came on and off but then the engine management light came on. At this point the car was taken to the manufacturer's garage for diagnostics. The issue reported was with the fuel pump.

I appreciate the comments made by the business in regard to the fuel pump being a wear and tear item and that the assessment was that the car was operating within the required limits. However, I also note the car needed to be recovered on 19 June and 18 August. The second recovery report noted the fuel pressure and glow plug lights. Given the short time between when these issues materialised and when Mr and Mrs N acquired the car, I find it reasonable to accept there were issues present at the point of sale which did make the car not fit for purpose.

The inspection report carried out in October 2016 did not involve the car being driven due to the fuel light being on. While I note the comments made based on the inspection, without the

car being driven it would not be possible to identify if the car was still suffering from a loss of power.

I note that a settlement was agreed between Mr N and the business in regard to the car undergoing a clean process and Mr N being refunded an amount to reflect this loss of use of the car. However, following this the issue was still not resolved. The business will not pay for a further report.

On balance, given Mr N raised the issues with the loss of power and lights coming on shortly after acquisition and attempts to resolve this have not been successful, I find it reasonable that Mr and Mrs N are now allowed to reject the car.

I understand the comments made about Mr N being able to drive the car over 5,000 miles and the information in the reports. However, based on the recovery reports and further information provided I find it more likely than not that there was an issue with the car that was present at the point of sale and that this has not been resolved.

my final decision

My final decision is that I uphold this complaint. Moneybarn No. 1 Limited should:

- collect the car from Mr and Mrs N at no cost to them;
- cancel the conditions sale agreement with nothing further owing and remove any adverse information on their credit file;
- refund 15% of any contractual payments Mr and Mrs N made since he picked up the car following the clean process (which he has provided a receipt for £130 from 5 December 2016), for loss of enjoyment; and
- pay a further £100 for the continued trouble and upset this has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 3 March 2017.

Jane Archer
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