

complaint

Mr E complains that a car he financed through an agreement with Moneybarn No. 1 Limited ("Moneybarn") was faulty at the point of supply. He'd therefore like to be allowed to reject it.

background

Mr E signed a conditional sale agreement with Moneybarn in January 2018 and took receipt of a used car in February 2018. The car he received had covered 78,600 miles at that point and was first registered in 2010.

Prior to handing the car over, but after the finance agreement had been signed, the dealership replaced the timing chain. The following month Mr E reported a problem with a sensor. He had this fixed himself but early the next month there was another issue with the timing chain. Mr E had another garage diagnose the problem. They said the camshaft adjusters and inlet adjuster spring were damaged and they suggested this was because the timing chain had been misaligned by two teeth.

Mr E therefore complained to Moneybarn but they didn't uphold his complaint. They suggested that an independent inspection was necessary to clarify whether the issue had been present at the point of supply. But Mr E was unhappy with their response and referred his complaint to this service.

Our adjudicator didn't think an independent inspection was worthwhile. He noted that the cause of the failure in January wasn't recorded so it wouldn't be clear if there'd been a re-occurrence in March. He said Moneybarn had their opportunity to investigate the issue but hadn't done so and it was clear there was a problem with the timing chain when the car was provided, as the dealership had replaced it before they'd handed the car over. He explained that legislation allowed Moneybarn one opportunity to repair problems with the vehicle but if that repair was unsuccessful the vehicle could be rejected. And he thought here, as the car had been rectified after the finance agreement had been signed, the business had had their opportunity to fix the problem.

He said that, as that repair had evidently failed, Mr E should be allowed to reject the car; have his deposit refunded and that Moneybarn should repay all instalments they'd received towards Mr E's agreement from May 2018 (the point at which he was advised not to drive the car). He also thought Mr E had been inconvenienced by this issue and suggested Moneybarn compensate him for this by paying £150.

Mr E accepted the adjudicator's view but Moneybarn didn't. They said that, as Mr E had now changed the timing belt and evidence hadn't been conclusive that there was a fault at the point of supply, they couldn't agree. They asked for a final decision by an ombudsman.

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 agree with the adjudicator's view and for similar reasons. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr E acquired his car under a conditional sale agreement. The relevant law says that the car should have been of satisfactory quality when supplied. If it wasn't then Moneybarn are responsible and I'd think it fair and reasonable to ask them to put this right.

Legislation allows Moneybarn one opportunity to fix any problems that occur. But if their attempt at repair fails we'd usually expect the business to allow the consumer to reject the car.

Here the car was repaired before Mr E received it and I think it's reasonable to suggest this was the business' repair opportunity. But I'm persuaded that repair was unsuccessful. I say that because:

- Mr E reported a further issue with the timing chain very shortly after he took receipt of the car. It's therefore more likely than not that this issue was present or developing at the point of supply
- the report he provided from the garage supported this view and said the belt had been fitted incorrectly

It's clear that Mr E had a problem with the timing chain and given that there was a problem I think it's more likely than not that the problem related to an unsatisfactory earlier repair.

I agree with the adjudicator that an independent inspection would be unlikely to shed more light on this issue. The problem was highlighted to Moneybarn in early March but they didn't investigate it further at that point. It would be unfair to ask Mr E to wait any longer and as the issue with the timing chain occurred so quickly after the repair had been completed by the dealership, I think it's highly probable the current issue is related to that unsatisfactory repair.

So I think Moneybarn should allow Mr E to reject the vehicle and having considered the redress the adjudicator has suggested I find no reason to deviate from it.

my final decision

For the reasons I've given above I uphold this complaint and tell Moneybarn No. 1 Limited to:

- end the finance agreement with no further liability for Mr E
- collect the vehicle at no further cost to Mr E
- refund Mr E's deposit and add 8% simple interest from the date of payment to the date of settlement
- refund all payments from and including May 2018 to reflect the period Mr E has been unable to use the car and add 8% simple interest per annum to each refund from the date of payment to the date of settlement
- pay Mr E £150 to compensate him for the inconvenience he's experienced
- remove any adverse information they've recorded on Mr E's file in relation to this issue

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 1 June 2019.

Phil McMahon
ombudsman