

complaint

Mr S complains that Moneybarn No 1 Limited supplied a used car of unsatisfactory quality under a finance agreement.

background

The background to this complaint and my provisional findings are set out in my provisional decision dated 1 September 2017 – a copy of which is attached and forms part of my final decision.

In my provisional decision I explained what I'd decided about this complaint and what I intended to do – subject to any further submissions from the parties. A copy was sent to Mr S and Moneybarn to give each of them the chance to think about what I'd said. I asked the parties to let me have any comments or information they would like me to take into account before I look at all of the evidence again and make my final decision.

Mr S hasn't responded. Moneybarn accepts my decision in the main, but it has asked me to consider charges incurred for storing the car after Mr S returned it earlier this year.

my findings

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

Moneybarn says it's been charged over £500 for storing this car since Mr S returned it in April 2017. It asks me to take that into account in my final decision - by which I take it to mean Moneybarn would like me to hold Mr S liable to pay those charges.

I haven't seen any evidence to show that Moneybarn told Mr S in advance about these charges. But, even if it did, looking at everything that's happened here I'm not persuaded it would be reasonable for me to conclude he should have to pay them now.

I say this because I can see why Mr S had lost faith in the dealer's ability to fix this car by April this year. Mr S was clearly very frustrated by that stage. And I find it understandable that he wasn't convinced when the dealer said it had tested the head gasket and it wasn't the problem – and the issue had been resolved by simply replacing some spark plugs.

The dealer has now supplied additional evidence of the work undertaken at that time. And it has explained why there's no paperwork to show the head gasket isn't faulty. On balance, I think it's likely some or all of the storage charges could have been avoided if this information had been provided sooner. So, overall, I'm not persuaded it would be fair for me to find Mr S should be responsible for those storage charges now.

As neither party has raised any other issue in response to my provisional findings, I see no reason to depart from my provisional decision. For the reasons I've given, I find it fair that Moneybarn should refund three months instalment payments to reflect loss of use and compensate Mr S for upset and trouble.

Mr S seems to have stopped making his monthly payments due under the finance after he handed the car back. I have not found that he was entitled to do so. And Moneybarn may apply this refund to reduce any outstanding balance.

my final decision

For the reasons I've explained, my decision is I uphold this complaint in part.

In full and final settlement, I require Moneybarn No 1 Limited to refund three months instalment payments for loss of use and to compensate Mr S for upset and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 November 2017.

Claire Jackson
ombudsman

copy provisional decision

complaint

Mr S complains that Moneybarn No 1 Limited supplied a used car of unsatisfactory quality under a finance agreement.

background

Mr S acquired this car in February 2017. After about ten days a warning light appeared so he took it back to the dealer. It arranged for the thermostat to be replaced but the warning light came back on. The dealer replaced a sensor in early March but the same light reappeared not long after Mr S collected the car. The dealer had the radiator replaced in early April but the light came on again a few days later.

Mr S took the car to a third party garage on 20 April 2017. It ran diagnostic tests that produced fault codes for a light in the boot, the electronic coolant pump control circuit, the oil gauge and a BSI (body system interface) internal fault. Mr S says the garage owner also told him the engine had been damaged because of fuel in the oil and the head gasket is likely to fail soon. Mr S took the car back to the dealer the next day and said he wanted to reject it. He rang Moneybarn on 24 April 2017 to lodge a complaint.

Moneybarn says it was reasonable to give the dealer the chance to repair given the car's age and mileage - and the car wasn't faulty when Mr S returned it at the end of April. It thinks the fault codes found by the third party garage were caused by worn spark plugs - a wear and tear item. So Moneybarn shouldn't be held responsible. And Mr S isn't entitled to reject the car.

Our investigator doesn't recommend the complaint should be upheld. He's satisfied the first three repairs were successful and the most recent issues resulted from wear and tear. He thinks it fair that Moneybarn offered to have the car checked independently. And considers it would be unreasonable to require Moneybarn to take the car back in these circumstances.

Mr S says he's never had any proof that the work the dealer says was done was actually carried out. He doesn't think spark plugs could have caused all of the problems. And he considers the dealer should've replaced those before it sold the car anyway – instead of telling him the car didn't need a service because it hadn't done enough miles since the last one.

Mr S says he's found all of this very stressful. The car was unreliable from the start - it was off the road for most of the time he had it and he lost work as a result. He's not convinced the car is fault free and thinks it's not fair he should have to keep it.

my provisional findings

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

Moneybarn supplied this car under a finance agreement so it was obliged to ensure the car was of satisfactory quality at the point of supply under the Consumer Rights Act 2015 (CRA).

Satisfactory quality is the standard of quality a reasonable person would expect taking all of the relevant circumstances into account - such as age, mileage and the price paid here. This car cost about £5,500 and was seven years old with over 50,000 miles on the clock at the point of supply. I think a reasonable person wouldn't expect it to be perfect and understand there's likely to be some wear and tear.

There's no dispute the car had to be repaired three times within two months of delivery. Looking at the nature of those repairs, I think it's unlikely the car was of satisfactory quality at the point of supply. Mr S seems to have agreed the dealer could carry out the first three repairs. When that happens the CRA says he still has the right to reject the car if the repairs aren't effective in bringing it up to a satisfactory standard. So I've got to consider whether the car was still faulty when he took it back at the end of April.

I've seen the results of diagnostic tests run by a third party garage. These suggest the car still had some faults and I can see why Mr S returned the car to the dealer. I've seen an email exchange between the dealer and Mr S at the relevant time. The dealer says it carried out further tests – including a pressure test on the head gasket – and couldn't find any faults. So the issue was considered to be down to worn spark plugs as the fault codes have gone since those were replaced - and not recurred after two days of road testing.

It's clear Mr S doesn't accept what the dealer says. I asked Moneybarn if there's any documentary evidence of the dealer's tests. The dealer says the pressure test is visual not diagnostic so there's no related paperwork – and it supplied invoices for replacement spark plugs. So, on the evidence I have at the moment, I think it looks as if worn spark plugs probably did cause the problem.

I appreciate Mr S feels the spark plugs should have been replaced before he got the car. Moneybarn was required to provide a car of satisfactory quality but I'm not persuaded that means it had to ensure the car had been serviced in line with the manufacturer's recommendations. I'm not satisfied worn spark plugs amount to a fault, in a car of this age and mileage, and I can't fairly find Mr S is entitled to reject it.

I realise this probably feels very unfair to Mr S. I can see he's worried the car may still be faulty – which is understandable, given what happened before. But Moneybarn has offered to have the car checked independently. I think that's a reasonable suggestion as it should give Mr S some peace of mind if no faults are found – or provide evidence to support his complaint if they are. I've asked Mr S if he wants to take up the offer now but he's declined.

For the reasons I've explained above, I am not satisfied there's enough evidence here for me to reasonably find this car was of unsatisfactory quality when Mr S took it back at the end of April 2017. So I don't think it would be fair or reasonable for me to require Moneybarn to take the car back for a refund.

Moneybarn seems to accept the car was of unsatisfactory quality when it was first supplied. It seems to have been off the road for six or seven weeks for investigations and repairs – it looks as if Mr S didn't have much use of the car at all over the first two months.

Mr S has told me he needed the car for work and lost a job in the first few weeks because it proved so unreliable. I've no doubt that must have been upsetting. And I'm sure it must have been inconvenient to have to take the car back to the garage so many times for repairs. I'm inclined to find Moneybarn should refund three months instalment payments to reflect this loss of use and compensate Mr S for the upset and trouble he experienced over those first two months.

Moneybarn says Mr S stopped making payments after he handed the car back at the end of April. I have not found Mr S was entitled to do so. So, if nothing changes my mind before I make my final decision, Moneybarn will be able to apply any refund to reduce the balance owing under the finance.

I want to make it clear that these findings are provisional. It's still open to Mr S to have the car looked at by an expert if he wants to. I invite both parties to think about what I've said. And let me have any further comments or evidence that they would like me to take into account before I make my final decision by 15 September 2017.

my provisional decision

Subject to any further submissions that I may receive from Mr S or Moneybarn by 15 September 2017, my provisional decision is I intend to uphold this complaint in part. And I'm going to require Moneybarn No 1 Limited to refund three months instalment payments for loss of use and to compensate Mr S for upset and inconvenience.