

complaint

Mr C complains that a used car he bought with finance from Moneybarn Limited is faulty. He wants to return it and end the agreement.

background

Mr C says that when he bought the car he was told by the garage that the engine light might come on at times but there were no faults linked to this issue. A few weeks later he had problems with the gears and the car broke down. The car went to the garage a number of times and problems continued. A report showed many issues, some with the power supply, gearbox and brakes. The garage refused to take the car back saying Mr C had been made aware there was an undiagnosed and intermittent fault with the car.

Moneybarn agreed to pay for an independent engineers report. But Mr C didn't think that was fair and wanted to return the car.

Our adjudicator felt this complaint should be upheld. She said:

- The order form said Mr C was "*informed the engine light comes on occasionally*" and the proposal form says "*customer is aware engine light is on*". There's nothing to show Mr C was aware of any undiagnosed faults with the car. He was only told the engine light might come on sometimes.
- It also doesn't seem reasonable that Mr C would've bought the car knowing this light was linked to unidentified faults or that any other faults were present such as power issues or problems with the brakes.
- Moneybarn says the car was bought for considerably less than its value. But research doesn't support this. And it doesn't show Mr C knew of any undiagnosed faults or that he was given a discount for them.
- The garage has agreed the car was sold with undiagnosed faults. And there's no evidence Mr C was aware of this. Getting an independent report to identify the faults isn't the best course of action.
- Mr C was sold a car that wasn't fit for purpose from the start. He should be allowed to return the car and the finance agreement should end with no further cost to him. Any missed payments should be waived and no adverse information recorded against him.

Moneybarn doesn't agree. In summary it says Mr C was aware when he bought the car of the engine light coming on intermittently and this indicates an undiagnosed fault. That would include a fault with the gearbox or an electrical issue. The advert for the car also said "*engine light intermittent*". It hasn't been established that the light is linked to power or brake issues. This is why an independent engineer's report is needed. It still doesn't know what the faults are or whether the car is usable. It doesn't know if the gearbox issue is intermittent or if it has failed completely. It should be allowed the opportunity to carry out a proper investigation into the faults and to repair them.

my findings

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

Some of the evidence in this case is incomplete, inconclusive or contradictory. So, I've made my decision based on what I think is more likely to have happened than not.

I agree with the adjudicator's conclusions for the same reasons.

It isn't disputed that Mr C was told before and when he bought the car that the engine light came on intermittently. But he wasn't told of its significance or what other faults or issues this may've indicated. I don't think he was also told, or should reasonably have been aware, of any other undiagnosed faults.

Taking everything into account I agree with the adjudicator that the car wasn't fit for purpose when he bought it. And I think its more likely the faults with it were present at the point of sale, than not.

Overall I think its fair for Mr C to be allowed to return the car and end the finance agreement. And I think the adjudicator's proposed resolution of this complaint is fair and reasonable.

So, I don't see any compelling reason to change the proposed outcome in this case.

my final decision

I uphold this complaint and require Moneybarn Limited:

1. To terminate the agreement without further liability to Mr C including waiving any missed payments;
2. To arrange to collect the car, at its expense, from Mr C at a time and from a location convenient to him as soon as is reasonably possible; and
3. To remove any adverse information about the loan agreement from Mr C's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 May 2017.

Stephen Cooper
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