

complaint

Mr T complains that a car that was supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited wasn't of satisfactory quality.

background

A used car was supplied to Mr T under a conditional sale agreement with Moneybarn that he signed in April 2018. He returned the car to the dealer about a month later because of an issue with its brakes – and the dealer replaced the brake pressure sensor as a gesture of goodwill. Mr T returned to the dealer because of an issue with the car's brakes in June 2018 and he complained to Moneybarn.

It arranged for the car to be inspected by an independent expert. It then said that it was unable to uphold Mr T's complaint because it was only able to establish faults that had occurred post sale. Mr T wasn't satisfied with its response so complained to this service.

The investigator recommended that this complaint should be upheld. He wasn't convinced that Moneybarn had sufficiently proven that the faults weren't present or developing at the point of sale and he said that the onus wasn't on Mr T to prove what the reason for the fault was. And he said that there had been a number of attempts to fix the gearbox but it needed to be completely replaced as there was still a major fault. So he recommended that Moneybarn should reimburse any costs Mr T had incurred in order to fix the gearbox and pay him £200 for his distress and inconvenience.

Moneybarn has asked for this complaint to be considered by an ombudsman. It says that it has evidenced that the issues weren't inherent at the point of sale which is supported by the evidence from the manufacturer's dealer. It says that Mr T was advised that the car required the transmission oil to be changed and a software update if the fault re-appeared. And it says that the manufacturer's dealer confirmed that the cause of the fault code didn't materialise until June or July 2018 so it can't be considered the responsibility of the selling agent.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr T and to Moneybarn on 16 June 2020. In my provisional decision I said as follows:

"Moneybarn, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality. Whether or not it was will depend on a number of factors, including the age, and mileage of the car and the price that was paid for it. The car that was supplied to Mr T was about eight years old, had been driven for 93,000 miles and had a price of £5,117. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

The car was supplied to Mr T in April 2018. He returned it to the dealer about a month later because of an issue with the brakes that was repaired. He returned the car to the dealer in June 2018 because of an issue with the gears. The dealer couldn't find a fault so Mr T complained to Moneybarn and it arranged for the car to be inspected by an independent expert in July 2018. The car's mileage was recorded in the report as being 95,342 miles and the report concluded:

“On the balance of probability in view of the low mileage the vehicle has covered since purchase we are of the opinion that there is most likely a fault in the gearbox that was present and or developing at the time of purchase. However, the codes need to be cleared and testing completed to confirm they reappear in service”.

And the manufacturer’s dealer said in October 2018 that the car needed a new gearbox and quoted a cost of £4,423.66 for that work. The price of the car was only £5,117 so I don’t consider that a repair of that cost would be appropriate.

Mr T returned the car to the dealer about two months after it was supplied to him because of issues with the car’s gears. The car was inspected by an independent expert the following month and it concluded that a fault in the gearbox was present or developing when the car was supplied to Mr T. A manufacturer’s dealer says that the car’s gearbox needs to be replaced.

For these reasons, I consider it to be more likely than not that either there was a fault with the car’s gearbox that was present or developing when the car was supplied to Mr T or that the car wasn’t as durable as it was reasonable for Mr T to expect it to be. And I find that it would be fair and reasonable in these circumstances for Mr T to reject the car.

I consider that Moneybarn should end the conditional sale agreement and collect the car from Mr T. Mr T has continued to use the car and I consider that it would be fair and reasonable for Moneybarn to keep the monthly payments that he’s made for the car as payment for that use.

The agreement shows that Mr T didn’t pay a deposit for the car. But these events will have caused him distress and inconvenience. And I consider that it would be fair and reasonable for it to pay him £200 to compensate him for that distress and inconvenience”.

So subject to any further representations by Mr T or Moneybarn, my provisional decision was that I was minded to uphold this complaint.

Moneybarn has accepted my provisional decision but Mr T says that between April and July 2018 he incurred more costs when the car was at the garage getting fixed and he’d like to be reimbursed for the amounts he paid for: insurance to drive a friend’s car; taxis to get to and from work and to take his son to school; and the car to be checked and fixed by a garage.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. Having done so, I’m not persuaded that I should change my provisional decision.

MOT test and servicing costs are usual costs of running a car and I’m not persuaded that it would be fair or reasonable for me to require Moneybarn to reimburse Mr T for the additional costs that he’s claimed. He’s provided evidence to show that he made a payment of £56.70 to an insurance company in August 2018 – but I don’t consider that the evidence that he’s provided is enough to show that he paid for insurance to drive a friend’s car when his car

was at the garage getting fixed – or that it would be fair or reasonable in these circumstances for me to require Moneybarn to reimburse him for that payment.

Mr T hasn't provided enough evidence of the taxi costs that he says that he's incurred for me to require Moneybarn to make a payment to him to reimburse him for those costs. So I consider that the outcome set out in my provisional decision and which has been accepted by Moneybarn is fair and reasonable in these circumstances.

my decision

For the reasons set out above, my decision is that I uphold this complaint and I order Moneybarn No. 1 Limited to:

1. End the conditional sale agreement and arrange for the car to be collected from Mr T – both at no cost to him.
2. Pay £200 to Mr T to compensate him for the distress and inconvenience that he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 24 September 2020.

Jarrold Hastings
ombudsman