

Complaint

Mr D complains about a car supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited.

Background

In June 2018 Mr D took out a conditional sale agreement with Moneybarn to cover the cost of a used car. The car was six years old and had travelled 101,000 miles.

In November 2018 Mr D noticed the heating in the car wasn't working. At the beginning of December 2018 he took the car to a garage where it was inspected and the problem was identified as a faulty head gasket.

In January 2019 Mr D complained to Moneybarn. It said that because the complaint had been made more than six months after he'd bought the car, the onus was on him to show the fault was present at the time of sale. It said he hadn't provided sufficient evidence to show this was the case. It also said it didn't consider there to be an issue with the quality of the car because he'd driven the car for more than 5,000 miles before reporting the fault.

Our investigator thought Mr D's complaint should be upheld. He felt that Mr D had provided sufficient evidence to show the car was not of satisfactory quality. He thought Moneybarn should pay the full cost of the repair. He also said that it should repay Mr D three monthly instalments as he didn't have use of the car for this time.

Moneybarn disagreed and asked for an ombudsman decision.

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'm upholding this complaint. I'll explain why.

Moneybarn supplied Mr D with the car under the conditional sale agreement it had with him. There's a term implied in the agreement that the car would be of satisfactory quality. What is satisfactory is determined by what a reasonable person would consider satisfactory given the price, description and other relevant circumstances. In this case this would include things such as the age and mileage of the car.

Mr D's car was six years old and had 101,000 miles on the clock when he got it. So, a reasonable person might expect to have to repair or replace some of the parts of the car over time.

Moneybarn agreed with the car dealer who supplied the car that the part may have failed because of a low level of coolant. And it said it was Mr D's responsibility to keep the car properly maintained.

I disagree. The mechanic's report obtained by Mr D states that after investigation it was clear that a poor attempt had previously been made to repair the head gasket. The report explains an attempt to fix a leak, and damage where someone had tried to clean up the repair job. The report says it was this that caused the head gasket to fail. So I'm satisfied that it wasn't

Mr D's fault. And because the report is clear about the cause of the failure, I'm also satisfied that the fault didn't develop due to wear and tear.

The report also shows that the engineer first looked at the car on 1 December 2018. And Mr D made the car dealer aware of the issues shortly after. So I'm satisfied that the faults were apparent within six months of him getting the car.

The Consumer Rights Act 2015 says that goods must be of satisfactory quality, and where they're not, there is a breach of contract. The Act explains the consumer has a right to have faulty goods repaired if the fault is notified 30 days after the start of the contract. And it also says that the trader, in this case Moneybarn, must pay for the necessary costs to do this.

I'm satisfied that the report supplied by Mr D shows that it was the earlier repair that caused the damage. I've not seen any evidence to suggest the repair was carried out while Mr D had the car. Moneybarn hasn't provided any evidence to suggest the work had been carried out after the car was supplied to Mr D. I've also thought about the length of time he had the car before he discovered the fault. He says he first raised the issue when he had a problem with the heating as winter approached, and that sounds reasonable to me. I'm also satisfied that the report indicates that the previous attempt to repair the problem is likely to have prevented the fault from being noticeable sooner.

I find the mechanic's evidence to be persuasive, and for that reason, I'm satisfied that it's more likely than not that the fault was present at the time the car was supplied. The fault resulted in the need to replace the head gasket, a key engine part that can lead to engine failure if not working properly. This means that the car was not of satisfactory quality when it was supplied to Mr D.

Mr D has already paid for the car to be repaired. As it's likely that Moneybarn would have had to carry out the same repair as he's paid for, I think the fair thing to do here is for Moneybarn to pay for the cost of the work done, plus interest. It should pay the cost as stated on the invoice supplied by Mr D. The garage that completed the repair has confirmed to our investigator that all work on the invoice was essential to fix the faulty head gasket.

I'm also satisfied that Mr D was without the use of the car while waiting for it to be repaired. The car went into the garage on 1 December 2018, and the invoice is dated 4 February 2019. This is in line with Mr D's statement that he was without the car for two months – not three as our investigator had said. I'm aware that Mr D had use of a courtesy car, but for only four days. So I think it's reasonable for Moneybarn to refund the two monthly payments made by Mr D covering December 2018 and January 2019, plus interest. I accept that Moneybarn hadn't been made aware of the problem with the car. But I think it was reasonable for Mr D to use his own garage, as the dealer had only offered to repair the cost at Mr D's own expense.

I note that neither Moneybarn nor the dealer that supplied the car had the opportunity to inspect it. The test here is whether or not it was reasonable to conclude that the fault was present at the point of sale and meant the car was not of satisfactory quality. And I'm satisfied that the report provided by Mr D's mechanic shows that was more than likely to be the case.

My final decision

For the reasons given above, I uphold this complaint. To put things right Moneybarn No. 1 Limited must:

- Pay Mr D £2,099.01 for the repair, plus 8% simple interest per year from the date it was paid to the date of settlement*
- Refund Mr D the two monthly repayments he made for the period December 2018 and January 2019, plus 8% simple interest per year from the date each payment was made to the date of settlement*

*If Moneybarn No. 1 Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs S how much it's taken off. It should also give Mrs S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 August 2020.

Gordon Ramsay
Ombudsman