

complaint

Mr E complains about issues he's experienced with a car purchased with finance from Moneybarn No. 1 Limited.

background

In January 2018 Mr E was supplied with a second hand car and entered into a conditional sale agreement with Moneybarn. At the point of supply the car was approximately 4 years old and had covered approximately 60,000 miles.

In March 2018 Mr E experienced issues with the car including:

- Air conditioning not working
- Car shuddering when braking
- Handbrake not working
- Stop/start system not working
- Faulty battery

Some of the issues were repaired under warranty. But Mr E continued to experience problems and in May 2018 he reported the following issues to Moneybarn:

- Car shuddering when braking
- Stop/start system not working
- Faulty battery
- Rear windscreen washer not working
- New DPF filter required

Moneybarn rejected the complaint. It said the issues were wear and tear items rather than faults which were present or developing at the point of supply. Mr E wasn't happy with Moneybarn's response so he complained to this service.

Our investigator upheld the complaint. He said that although the car had passed an MOT and had undergone a pre sale inspection before the agreement started, the pre sale inspection had listed a number of items which weren't checked, some of which related to the issues which Mr E had complained about. The investigator concluded that the faults with the car were more likely than not to have been present or developing at the point of supply and recommended that the agreement was unwound.

Moneybarn didn't agree. It said the faults would have been noted in the MOT test if they existed at the point of supply.

my findings

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

Because Moneybarn has supplied the car under a conditional sale agreement there's an implied term that the car has to be of satisfactory quality. Vehicles are of satisfactory quality if they are of a standard that a reasonable person would expect taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the vehicle and the price paid. I would expect a second hand car to have a degree of wear and tear. So in order to uphold this complaint I would need to be satisfied that the car was not of

satisfactory quality at the point of supply due to an inherent defect rather than general wear and tear.

Mr E and Moneybarn disagree about whether the car had faults at the point of supply. In order to reach a conclusion I need to look at all of the available evidence and determine on the balance of probabilities whether the car was of satisfactory quality at the point of supply.

Mr E experienced issues with the car approximately 2 months after the point of supply. Some of the issues were covered by the warranty and were repaired. However, despite the repairs (which resolved the issues with the air conditioning and the handbrake) Mr E continued to have problems with the brakes, the battery and the stop/start system.

I'm satisfied that Mr E reported these issues to Moneybarn within 6 months of the agreement starting. Under the Consumer Rights Act 2015 it's the responsibility of the seller to prove that the faults weren't present or developing at the point of supply where the faults present themselves within the first 6 months.

I'm not persuaded that Moneybarn had any evidential basis to say that the problem with the stop/start system was due to the battery not being charged enough and was therefore a wear and tear issue. Given that the car had already been returned once for repairs with issues relating to the battery and the stop/start system (amongst other issues) and given the persistent nature of these problems, I think that Moneybarn should have arranged for an independent inspection to comment on whether the faults were present or developing at the point of supply.

I can see that the car was inspected before the agreement started. Moneybarn has said that this inspection is evidence that the car was likely to have been fit for purpose and of satisfactory quality at the time. However, I can see from the inspection report that a number of items weren't checked. These include items relating to the brakes, the exhaust emissions and the technical system (including the DPF). Mr E has reported issues with (amongst other things) the brakes and the DPF. It's clear from the inspection report that these items weren't checked, so I'm not persuaded that the inspection report is good evidence that the brakes and DPF were of satisfactory quality at the point of supply.

Moneybarn has said that the faults would have been noted on the MOT if they were present at the point of supply. I can see that the car passed an MOT test on 9 January 2018 just before the agreement started. No issues were noted on the MOT.

I've thought about whether the items complained about by Mr E would have been checked as part of the MOT test. In relation to the battery this is usually checked to make sure it is secure and not leaking electrolyte. However, the MOT test doesn't test the functionality of the battery.

In relation to brakes, the MOT test checks the overall condition of the brakes, pedals and levers. A brake performance test is carried out to test brake efficiency. In relation to the DPF, all MOT tests now include specific checks to see whether the car emits visible smoke of any colour. These DPF checks were introduced in May 2018, which is after the MOT on Mr E's car was carried out.

Whilst I'm satisfied that the MOT test carried out in January 2018 would have identified any faults with the brakes on Mr E's car, I'm not persuaded that it would have identified faults with the battery, the stop/start system or the DPF.

Based on the available evidence I think its more likely than not that the faults with the battery, the stop/start system and the DPF were present or developing at the point of supply. Based on what I've seen, I don't think these items were checked as part of the pre sale inspection or as part of the MOT test.

my final decision

My final decision is that I uphold the complaint. Moneybarn No 1 Limited should:

- Unwind the conditional sale agreement
- Arrange for the car to be collected at no cost to Mr E.
- Refund any deposit paid by Mr E together with 8% simple interest per year from the date of payment to the date of settlement
- Refund 50% of the payments made by Mr E.
- Remove any entries relating to the conditional sale agreement from Mr E's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 7 April 2019.

Emma Davy
ombudsman