

complaint

Mr H complains that a car he has been financing through an agreement with Moneybarn No. 1 Limited ("Moneybarn") has not been of satisfactory quality.

background

Mr H took receipt of a used car in September 2017. He financed the deal through a conditional sale agreement with Moneybarn. At the point of supply the car was six years old and had already completed nearly 90,000 miles.

In April 2018 Mr H noticed an engine noise and a garage replaced the clutch and dual mass fly wheel. But during a subsequent test drive the engine seized. An inspection noted that the manifold had broken; the cam belt was worn; oil was thick and dirty and the air conditioning needed re-gassing. The garage noted that on the pre-sale checklist the dealership had stated there was an *"oil leak from oil filter seal and oil return pipe on back of sump and nsf inter cooler pipe"*. Mr H says the mechanic suggested it may be linked to the current problem so he complained to Moneybarn and asked them to pay for repairs.

Moneybarn didn't think they were liable. They said that they were only responsible for the quality of the car at the point it was supplied to Mr H and that as it had failed after six months it was his responsibility to demonstrate the fault had been there or was developing when he took receipt of the car.

Mr H referred his complaint to this service and an independent engineer was asked to inspect the car. Because the car was in a stripped down condition the engineer was asked to review the paperwork and provide an opinion rather than complete a visual inspection. The independent engineer said as the car had covered 7,000 miles since it was supplied and Mr H had been in charge of the vehicle for eight months, he said it was most likely that the faults it now had were issues related to wear and tear and not ones that were present at the point of supply. Our adjudicator agreed with the independent inspection and didn't think there was therefore any need for Moneybarn to take any further action.

But Mr H disagreed and he asked for a final decision by an ombudsman.

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 agree with the adjudicator's view. I know that will disappoint Mr H so please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr H acquired his car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then Moneybarn, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would likely include things like the age, mileage and price at the time the car was supplied to Mr H. The car here was around six years old and had travelled almost 90,000 miles when the finance agreement started and I think a reasonable person would therefore expect some wear and tear and to consider that some components may be reaching the end of their useful life.

I take account of relevant law when deciding what is fair and reasonable. On this basis if I thought the car was faulty when supplied and this fault made the car not of satisfactory quality, I'd think it fair and reasonable to ask Moneybarn to put this right.

But Moneybarn's responsibility for the car is not unlimited. Whilst they are responsible for its condition at the point of supply they are not responsible for faults that develop afterwards such as those relating to wear and tear.

Moneybarn are right to suggest that legislation would encourage us to assume that if a car developed a fault in the first six months it was likely to have been there from the point of supply. The relevant legislation says that:

"...goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day."

As this fault happened after that I think it's reasonable to expect Mr H to prove that the problems the car is now suffering from were there from the beginning.

But the independent inspector doesn't think that is likely to have been the case as Mr H has been able to cover a reasonable mileage in the vehicle since he took receipt of it and the faults should be classed as wear and tear and costs associated with the running of the car. He's an expert in these matters and I'm persuaded to agree with him.

I understand that Mr H would've preferred a more in depth visual inspection but I'm not persuaded this would have made any difference. The car was stripped down and I think it's likely this would have prevented the independent engineer from being able to provide any additional meaningful correlation between the oil leaks that had been identified in the pre-sale inspection and the faults the car was exhibiting prior to strip down. In those circumstances I can understand that the best solution would be to ask for a review on the paper evidence and having seen that review I can understand the engineer's opinion and agree with it.

I can also see that Mr H is upset he wasn't presented with the pre-sales checklist findings when he took receipt of the car. But I can see that the oil leak is listed as an advisory and I don't think it was necessarily incumbent on the garage to tell Mr H about issues that were simply advisory. For instance, they wouldn't in my opinion, have to tell him about tyre treads

that were getting a bit low - as long as they were roadworthy. So I don't think there's evidence this car was misrepresented to Mr H.

I'm therefore not asking Moneybarn to take any further action.

my final decision

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 October 2019.

Phil McMahon
ombudsman