

complaint

Mr M complains that Moneybarn No. 1 Limited refused to let him reject a car.

background

In February 2018 Mr M bought a second hand car by means of a conditional sale agreement with Moneybarn. The car was some eight years old and had done 39,400 miles. About a week later Mr M contacted Moneybarn to say he had some problems with the car. He said the trim next to the gear lever was damaged, the key didn't open the boot and the sunroof was damaged. He also noted that there was moisture inside the boot, the fuel cap was broken, and the CD player was faulty.

Moneybarn says it contacted the garage which said that the issues were cosmetic. It asked Mr M for evidence of the defects and he provided a list of the alleged faults, but no supporting evidence. Later he provided invoices for routine repairs and photographs showing the damaged trim and the diesel cap which appeared to no longer be connected to the vehicle but was intact.

Mr M left the car at the garage and Moneybarn asked it for comments on the faults. It was unable to locate an issue with the CD player and considered that this may be due to user error, and it explained that the boot doesn't have a remote opening function and must be opened manually.

Mr M was unwilling to collect the car which was incurring storage charges. He called Moneybarn on 18 April and its records show that: *"Customer called following missed call, he advised he is terminating the contract and wants his money back. Stated this is not an option, advised VT means he will owe something, customer stated will not pay a penny then stated he wanted this in writing and hung up."* Moneybarn arranged for the car to be sold at auction with the proceeds being set against Mr M's account. However the proceeds were not sufficient to cover the full amount due.

Mr M brought his complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He said that

in order for this service to conclude he was entitled to reject the car and cancel the contract, we would need to see evidence that showed the car wasn't of satisfactory quality when it was supplied to him.

However, as the car had been sold, it wasn't available for an independent assessment. He considered the limited evidence available and concluded the apparent faults were not of such a nature as to merit rejection. He said the faults relating to the ripped vanguard trim, the detached fuel cap and the loose rear view mirror could all be considered as cosmetic.

He noted the car didn't have a remote boot opening function and the garage said it could find no fault with the CD player or any dampness in the boot.

He said that when considering satisfactory quality, we consider what faults are present and whether this can reasonably mean the car is of unsatisfactory quality. We also need to be satisfied that the faults of the car were present at the point of sale and were caused due to an inherent defect rather than general wear and tear.

Mr M didn't agree and said that the car was faulty and the manager of the garage agreed.

my findings

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

In 2018 Mr M bought a new car which was financed by Moneybarn by means of a conditional sale agreement. As it is the supplier it can be held liable for the quality of the goods at the point of supply or if they weren't what was ordered.

Mr M claims there were faults that entitled him to reject the car and so he left it with the garage and refused to make any payments to Moneybarn. That was unfortunate as I regret to say that he has not provided evidence to show that the car was in such a state to allow him to reject it.

The garage says the broken trim had been fixed before he picked the car up, but in testing it Mr M broke it again. The garage says it agreed to repair the trim. The fuel cap plastic connection is broken. But this is minor matter and not unreasonable for a car of this age. The boot catch wasn't broken; the car just didn't have the feature which Mr M presumed it had.

The garage disagrees that the CD player was broken and as the car has been sold I cannot say whether it is right or whether Mr M is right on this issue. Similarly with the boot dampness I cannot say if this was present or was so bad as to merit rejection. Overall I cannot say that Mr M has demonstrated that the car wasn't fit for purpose and Therefore I cannot agree with him that he should be allowed to reject it.

I am satisfied that Moneybarn gave Mr M due notice of its intention to sell the car and recover its losses and I cannot say that it did anything wrong in so doing.

my final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before
7 February 2019.

Ivor Graham
ombudsman