

complaint

Mr M complains that a vehicle he has been financing through an agreement with Moneybarn No. 1 Limited ("Moneybarn") has been of unsatisfactory quality.

background

I issued my provisional decision in January 2020. I explained why I was planning to uphold Mr M's complaint. An extract of that provisional decision is set out below:

Mr M took receipt of a used car in September 2018. He financed the deal through a conditional sale agreement with Moneybarn. At the point of supply the car had already completed a little over 62,000 miles. Mr M has had problems with the car, as follows:

- September 2018 Exhaust Gas Recirculation (EGR) cooler and valve replaced;
- November 2018 EGR valve replaced and anti-freeze topped up;
- November 2018 further visit to garage. Car juddering and software updated;
- late November 2018 RAC identify vibration at speed;
- 11 January 2019 independent inspection arranged. Engineer finds no fault;
- 14 January RAC identifies juddering suggests referral to dealership;
- 14 January mileage is 65,528.

The dealership have subsequently noted spluttering when engine is warm and have suggested further work is required to identify the problem. That work will cost £450 and Moneybarn have offered to fund half of it.

Mr M was unable to resolve the issue with Moneybarn and referred his complaint to this service. Our adjudicator agreed that the problem hadn't been resolved. She noted that the independent inspector hadn't been able to replicate the fault but she thought that may be because he hadn't driven the car at the necessary speed. She noted that there had been two separate confirmations that faults existed with the car that required further investigation. She thought it was therefore reasonable to suggest Moneybarn allowed Mr M to reject the car and terminate his contract with them. In those circumstances, she thought it would be fair for Moneybarn to refund the deposit; reimburse some consequential costs for car hire, repairs and travel and pay Mr M £200 to compensate him for the trouble and upset he'd experienced. She also suggested that Moneybarn should refund any finance instalments made by Mr M from the point she issued her view on 29 March 2019 to the point of settlement.

Moneybarn didn't agree with the adjudicator's view. They said the independent inspector had said the vehicle was in average condition for its age and mileage and the main dealer health check hadn't identified the issues Mr M now complained of. So they asked for a final decision by an ombudsman.

my provisional 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 but I'm not expecting to agree with the actions she suggested Moneybarn take to put things right.

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 M 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. A car that hasn't proven sufficiently durable can also be considered not to have been of satisfactory quality at the point of supply.

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 M. The car here was around seven years old and had travelled about 62,000 miles.

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.

I understand that the independent inspector wasn't able to identify any problem with the car but two subsequent inspections have demonstrated that a problem exists and that when the engine has warmed up it splutters. I think it's likely that the independent inspector may have missed this as it's unclear whether he mimicked the conditions that the dealership identified were necessary before any juddering or spluttering became apparent. The condition has been noted by two separate organisations and I'm persuaded that it's likely the fault is therefore present.

As the fault appears to have presented very early on, within the first couple of months, I think it's reasonable to suggest it was present or developing when Mr M took receipt of the vehicle. The relevant legislation allows Moneybarn one opportunity to repair a problem of this kind and I think it's fair to say Moneybarn had that opportunity in November 2018 but that the repair was unsuccessful. In those circumstances legislation would suggest they allow Mr M to reject the car and terminate his finance agreement. So I would agree with the adjudicator's view on that.

Mr M has explained that there have been some costs associated with having a fault on his car. He's explained that he's had to hire a car in the meantime; that he's had to pay for public transport and that he's had to commission a health check on the car and has paid for a software update. Our adjudicator suggested all of these costs were refunded.

I think the health check costs and software updates were charges Mr M should not have had to incur and I therefore think it would be fair to ask Moneybarn to refund them and to add interest to compensate him for being deprived of that money.

I don't think it would be fair to ask Moneybarn to refund the costs of car rental and public transport and return the finance instalments. That would mean that Mr M would not in effect be paying anything at all for his transportation. I'm therefore not expecting to ask Moneybarn to refund the rental costs or the public transport expenditure. Instead, I'm asking them to refund all the instalments Mr M has paid towards the car from and including his January 2019 payment. I think it's fair to ask Moneybarn to pay interest on these refunds too as it's clear Mr M has been deprived of this money.

I'm suggesting Moneybarn refund the instalments rather than the car rental and public transport costs, as I think the monthly instalments better represent the quality of the vehicle Mr M was leasing. Refunding rental charges would leave the question, of whether Mr M had been using a car of similar value, still to be decided.

I'm suggesting Moneybarn refund the instalments from January 2019 and not from March 2019, as the adjudicator suggested. I think it's fair to compensate Mr M for the loss of use he had from the car in the months prior to it being effectively taken off the road.

Mr M has clearly been inconvenienced by all of these issues and in those circumstances I think Moneybarn should compensate him for the trouble and upset he's experienced. I'd agree with the adjudicator that £200 would seem reasonable here.

Moneybarn will also need to refund the deposit so that Mr M is in a position he would have been in if this issue didn't happen. And they'll need to pay some interest to compensate Mr M for being deprived of money when making his unsuitable investment.

my provisional decision

For the reasons I've given above I uphold this complaint and tell Moneybarn No. 1 Limited to:

- cancel the finance agreement and collect the car at no cost to Mr M;*
- refund Mr M's deposit and add 8% simple interest from the date of payment to the date of settlement;*
- reimburse £58.99 for the health check and add 8% simple interest from the date of payment to the date of settlement;*
- reimburse £120 for the software update and add 8% simple interest from the date of payment to the date of settlement;*
- pay Mr M £200 to compensate him for the trouble and upset he's experienced;*
- refund all instalments Mr M has paid towards his finance agreement from, and including, January 2019. Add 8% simple interest from the date of payment to the date of settlement. This is to compensate Mr M for lack of use of the car;*
- remove any adverse records they may have made to Mr M's credit file in relation to this issue.*

my findings

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

Mr M didn't dispute my provisional findings and Moneybarn accepted them. So I've not found cause to change my provisional decision.

my final decision

For the reasons I've given above I uphold this complaint and tell Moneybarn No. 1 Limited to:

- cancel the finance agreement and collect the car at no cost to Mr M;
- refund Mr M's deposit and add 8% simple interest from the date of payment to the date of settlement;
- reimburse £58.99 for the health check and add 8% simple interest from the date of payment to the date of settlement;
- reimburse £120 for the software update and add 8% simple interest from the date of payment to the date of settlement;
- pay Mr M £200 to compensate him for the trouble and upset he's experienced;
- refund all instalments Mr M has paid towards his finance agreement from, and including, January 2019. Add 8% simple interest from the date of payment to the date of settlement. This is to compensate Mr M for lack of use of the car;
- remove any adverse records they may have made to Mr M's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 April 2020.

Phil McMahon
ombudsman