

complaint

Mr K complains that a car supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited wasn't of satisfactory quality.

background

A brief summary of the circumstances leading to this complaint, and my initial conclusions, were set out in my provisional decision, a copy of which was sent to both parties.

In short, in January 2016 a used car was supplied to Mr K under a conditional sale agreement with Moneybarn. The car soon experienced a problem with the head gasket, which was repaired later in the January. But the car experienced further problems, including another problem with the head gasket in April 2017. This was fixed in May 2017 at Mr K's expense. Mr K says the original issue regarding the head gasket was never properly sorted so he wants to return the car and terminate his agreement with Moneybarn.

In my provisional decision I set out why I thought Mr K's complaint should be upheld and proposed what Moneybarn should do to put things right. I invited both parties to tell me of anything else they wanted me to consider before I finalised my views. Mr K made some comments but accepted my provisional decision. Moneybarn had some further points it wanted me to take into account. It has also spoken to Mr K's mechanic, which it wasn't able to do previously.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as set out in my provisional decision and for the same reasons.

In my provisional decision, I said the following:

I've decided to uphold the complaint because neither party disputes that there was a problem with the head gasket when Mr K took out his agreement. And the car suffered another problem with the head gasket just 16 months later, which suggests to me that the issue was never properly rectified in the first place.

I realise that an independent engineer's report says that the fact that the car was driven for 16 months (and 6,000 miles) after the original repair means the repair was done to a "satisfactory standard". It says if it hadn't been the car would have experienced problems almost immediately. But this isn't quite the issue under review. The issue isn't whether the original repair was good enough to prevent an immediate recurrence of the problem. The issue is whether the initial problem with the car was rectified. And given the exact same problem reoccurred within 16 months, I can't reasonably say it was.

I recognise there are grey areas here. If the head gasket had been problem-free for a number of years after it was initially repaired, for example, then I'd be more inclined to say the initial problem had been resolved and I would have put any recurrence of the fault down to bad luck or wear and tear. But I don't think I can say 16 months is a long enough period to fairly draw this conclusion. Buying the car and having to repair it immediately, and then having to repair it again 16 months later for exactly the same reason, strikes me as being

more than bad luck. It strikes me as being the result of a problem with the car that was never really put right.

I've taken into consideration Moneybarn's comments about Mr K not taking good care of the car. But I haven't seen any persuasive evidence that Mr K's actions caused the problem with the head gasket in either 2016 or 2017, so this doesn't change my thinking.

I think all the above still holds true. I've taken into account Moneybarn's conversation with Mr K's mechanic. It says the mechanic didn't provide any detail on why the January 2016 repairs were unsuccessful. In Moneybarn's view, this casts doubt on Mr K's claim that the head gasket problem was never originally fixed. But I've listened to the call and I don't find Mr K's mechanic to be as unconvincing as Moneybarn suggest. And I certainly don't find the conversation to be reason enough to make me now think the January 2016 repairs sorted the problems with Mr K's car.

Moving on to the issue of redress, my thoughts in my provisional decision were as follows:

Our investigator proposed that Mr K hand the car back to Moneybarn and have the agreement marked as settled. He also proposed any missed payments remain on Mr K's credit file, but for Moneybarn to remove any record of there being a default. And he said the arrears should be written off because of the amount Mr K paid for the repair of the head gasket and as recognition for the time Mr K wasn't able to use his car whilst the head gasket issue was being sorted.

Neither party has questioned the overall approach to putting things right, so I'm satisfied at this stage that it's reasonable. But Moneybarn did have some more specific comments which I address below.

My understanding is that Mr K paid £1,459 for the repairs, and that his arrears stand at £1,728. Moneybarn has pointed out that Mr K's arrears are higher than the cost of the repairs, so writing off the arrears would be unfair. But, as our investigator explained, Mr K was without use of his car for some time. We've checked with Mr K and he says he was without his car for three weeks in January 2016 because of the head gasket problem, and a further six weeks when the problem resurfaced earlier this year. So I think the cost of the repairs in addition to some recognition for the loss of use of the car for approximately two months in total is broadly equivalent to the arrears. I recognise that this is a pragmatic solution to the position both parties have found themselves in. So, as this is a provisional decision, both parties are free to add anything they think is relevant.

Moneybarn also says the cost of the head gasket repairs in 2017 were far higher than an earlier estimate from a different garage (and higher than the cost of the repair in 2016). This could make the redress outlined above unfair. But it would only do so if the amount paid by Mr K was unusually high – for example, because it included items that were unrelated to the head gasket problem. I've seen no persuasive evidence to support this. But I'm aware that Moneybarn – for good reasons – has not been in a position to question the garage about the invoice. My view is that Moneybarn should now be able speak to the garage if it has questions about the invoice and the repairs that were done.

Moneybarn has questioned the invoice for the repair work done by Mr K's mechanic. I agree that the invoice is laid out in a slightly confusing way. But the key point is that Mr K has provided a receipt for £1,310 which was paid to the mechanic. And whilst there is a difference between the receipt and the invoice, this is only a small amount. And Mr K has

said the £1,310 was paid by someone else – because he couldn't afford it – with Mr K making up the difference in cash. I don't think any of this is unreasonable. And I don't think any of this casts doubt on what Mr K is complaining about, which is the car had a head gasket problem when it was sold, and this had to be repaired twice.

Moneybarn has said the arrears would now be higher if the agreement hadn't been terminated in May. I don't know if this means Moneybarn is saying the redress should be altered to take into account what the total arrears would now be. If this is what Moneybarn is saying, then my view is that it wouldn't be fair for it to effectively reinstate the agreement just because it now wants to 'claw back' some arrears and reduce its redress. So I remain satisfied that the arrears figure of £1,728 is a reasonable figure to use.

I recognise that there's a broader issue here. Mr K has had use of the car for a considerable time. And he has fallen behind on his payments. So, for at least some of the time, he's effectively benefited from something he hasn't been paying for. But as I explained in my provisional decision, I haven't excluded the arrears from my redress consideration. I've included them. It's just that I've taken the view that the amount Mr K has paid for the car repairs (which he wouldn't have had to pay if the car had been sold in the right condition) and the amount of time he didn't have use of the car broadly cancels out the £1,728 arrears figure. I still think this.

Moneybarn has asked me to take into account the depreciation of the car. It says Mr K has driven the car for a significant number of miles and this has reduced its value – which puts Moneybarn at a disadvantage if it has to take the car back. But the reason Mr K is returning the car is because it was sold with problems and because these problems were never really rectified. This isn't Mr K's fault. And he was entitled to use the car when it was working. So whilst I understand why Moneybarn is reluctant to take back a depreciating asset without at least some compensation, I don't think it would be fair to make Mr K pay for this.

I recognise that Moneybarn would have recovered the car three months earlier, but didn't do so because of Mr K's complaint. And I recognise that the car could have depreciated further in that time. I've considered this carefully. But I think holding off recovering the car was the right thing to do in the circumstances. So I don't think Mr K should now be penalised because he happened to use the car in this period.

Besides, Mr K has said he incurred unfair costs during those periods he wasn't able to use his car – for example taxis, insurance, road tax and time off work. So I could just as easily add these back to the redress. I'm not going to do this. I think putting together a 'shopping list' of items like this (insurance, depreciation, taxis and the like), deciding on whether they're reasonable, and then trying to attach a value to each item goes against my remit to resolve disputes as quickly and as informally as I can. And the end result would probably still be imprecise and open to debate. So I don't think this level of spurious accuracy is helpful in this case. With this in mind, and taking into account everything both parties have said and my comments above, I remain satisfied that the redress proposed in my provisional is fair and reasonable.

my final decision

For the reasons given above, I uphold Mr K's complaint.

I require Moneybarn No. 1 Limited to do the following:

- Collect the car at no cost to Mr K.
- Cancel the agreement with nothing further owed.
- Remove the default from Mr K's credit file.
- Remove any arrears from the account.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr K to accept or reject my decision before 29 September 2017.

Christian Wood
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