

complaint

Miss B complains that Moneybarn No.1 Limited won't cover the cost of repairs to her car that she acquired on conditional sale with it in February 2018.

background

Miss B signed the conditional sale agreement for her car on 25 January 2018. She took delivery of the car on 2 February 2018. When acquiring the car she wasn't able to view it as she'd recently had surgery on her foot, but she did have discussions with the dealership.

Although she couldn't drive the car, Miss B tells us that she started the car every day and she noticed a knocking noise coming from the engine. She also noticed a problem with her tyres as one appeared to have a slow puncture.

Miss B made a complaint about the quality of the car on 9 February 2018, within seven days of taking delivery of it. Moneybarn referred the matter to the dealership and the broker and told Miss B she'd need to take the matter up with them. She did so and was told not to make too much fuss, but as the knocking continued she referred the matter back to Moneybarn. Although Moneybarn said it would look into it, it referred the matter back to the dealership.

On 20 February 2018 Miss B reported a further issue to Moneybarn regarding evidence of a historic leak that appeared to be continuing and provided photographs of the damage which she believed to originate from a broken aerial mount. She also mentioned having a flat tyre, a stiff door handle and the radio didn't work. Miss B said she'd had no response from the dealership and was questioning whether the car was fit for purpose. Moneybarn referred the matter back to the dealership and asked Miss B if she'd been able to establish the source of the knocking via a report or diagnostic.

Miss B was hesitant to do anything that could disadvantage her and wanted an independent review to be agreed in writing by Moneybarn. But having considered her rights under the Consumer Rights Act 2015 she was willing to put aside any issues relating to the tyres. Moneybarn explained the photos provided illustrate matters of wear and tear and that if she wanted reject the car Miss B would have to provide evidence of a fault. And if it upheld her complaint about the quality of the car it would be happy to reimburse any reasonable costs associated with this.

On 15 March 2018 it was discovered the dealership had ceased trading and so Moneybarn referred the matter to the broker for resolution.

Miss B arranged for her car to be given the once over. But nothing was found in relation to the engine knocking. However, there were problems with the heating, the air-conditioning unit, and the timing belt which she replaced. Miss B had done 600 miles since having the car and Moneybarn referred the matter back to the broker.

During this time Miss B had further work done on the car to replace the cam belt and water pump. And it was discovered that the tyre with a slow puncture had a nail imbedded into it. And there were issues with the turbo intake pipe. Miss B felt that all the problems with the car should have been covered by the three month warranty she got with it but as the dealership was no longer trading that wasn't possible.

In May 2018, the broker arranged for an inspection of the car. The inspector found the knocking noise had reduced since the timing belt and water pump had been replaced. He found there was no evidence of leaks in the air-conditioning unit and there was some deterioration consistent with its age and mileage, but it wasn't working – he concluded as it wasn't a critical system it wouldn't impinge on the car being fit for purpose at the point of sale. He did, however, recommend the turbo intake pipe be replaced. Overall, he considered the car was of satisfactory quality at the point of sale.

Because of that Moneybarn didn't agree it was responsible for any repairs outside of the turbo intake pipe which it was happy to organise. But Miss B had arranged that repair herself.

Not happy with how Moneybarn had dealt with her complaint, Miss B asked us to look into the matter. Our investigator concluded the problems with the car were likely present at the point of sale and so Moneybarn should reimburse her for any costs in getting the car repaired, aside from the tyres as this is damage that could have occurred at any time.

Miss B agreed with the outcome. Moneybarn received the view and asked for an extension to reply. That extension was granted. But when that deadline wasn't met the investigator referred the matter to an ombudsman to review. Moneybarn was provided with further opportunity to provide any further evidence or arguments but still hasn't responded. So the matter has been referred to me for review and determination.

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 uphold the complaint for broadly the same reasons as the investigator.

Miss B acquired the car using a conditional sale agreement in January 2018 and took delivery on 2 February. When products are acquired on finance through a conditional sale agreement or a hire purchase agreement there is a transaction going on the background that means the seller sells the product to the finance provider, who in turn 'hires' it to the customer until final payment is made.

So as the finance provider Moneybarn is responsible for the quality of the car provided. And because the car was acquired in February 2018, the relevant legislation for me to take account of is the Consumer Rights Act 2015. In summary, this means the car provided using the agreement should be of satisfactory quality.

When deciding whether something was of satisfactory quality, there are a number of factors to consider, such as the age and mileage of the car. This car was nearly six years old and had done over 55,000 miles so it's likely it would have shown signs of wear and tear. Moneybarn wouldn't be responsible for any wear and tear as this isn't a defect or fault but it would be responsible for any defects or faults you wouldn't expect (or reasonably be aware of) for a car of this age and mileage.

Miss B notified Moneybarn of the problems with her car within a matter of days of taking delivery. Given its responsible for the quality of the car I'm disappointed to see it referred the matter, and Miss B, back to the dealership and then the broker throughout.

Under the Act goods which do not conform to contract at anytime with a period of six months beginning on the day on which the goods were delivered, are taken to have not conformed on that day. Miss B raised problems with her car within seven days. Of particular note, is the car hadn't been driven by Miss B as she was still recovering from foot surgery. Given that, I'm satisfied the issues with the engine must have been present when she took delivery of the car.

And within a matter of weeks more issues came to light:

- A slow puncture in the tyre.
- A leak which appeared historic but continued.
- The radio didn't work.
- The air conditioning didn't work.

The presumption under the Act applies unless it can be shown that it doesn't.

Every time Miss B contacted Moneybarn the matter was referred to another party. I'm not surprised therefore, that she arranged for a number of the issues to be repaired. And it wasn't until after some of those repairs had taken place that Moneybarn (via the broker) arranged for an inspection to be done.

The inspection found the engine knocking had reduced since the timing belt and water pump had been replaced. It mentions the manufacturer's recommendation that they are replaced within six years or at 75,000 miles and suggests this had been exceeded but there is no comment on whether this fault was present at the point of sale. It's no longer possible for that to be determined. But given the close proximity of the discovery of the issue to the date of delivery and that Miss B hadn't driven the car, I'm satisfied it most likely was.

Miss B has also provided pictures of the interior of her car and the aerial mount. The pictures show a historic leak as the ceiling fabric of the car is stained. But I'm aware the leak continued and the radio didn't work. Whilst a radio might not be intrinsic to the running of the car, I'm nevertheless satisfied that any reasonable person sold a car with a radio would expect it to work. And whilst repairing an aerial might be something a person might expect to need to happen on a second hand car, I don't think that would reasonably extend to a defective mounting causing a leak through to the inside of the car.

The report also shows the air-conditioning wasn't working in the car. And whilst I agree this also isn't intrinsic to the running of the car itself, I think any reasonable person buying a second hand car that has air-conditioning would expect to be able to use it. The report doesn't make any comment about whether this was defective at the point of sale or not. But again, this was reported within a matter of weeks and Moneybarn hasn't shown the defect is wear and tear or wasn't present when Miss B took delivery of her car.

All of the problems Miss B had with the car came to light within weeks of her taking delivery of it. In the absence of any evidence to the contrary, I'm satisfied the defects and faults were present at the time and are therefore something Moneybarn is responsible for rectifying.

how Moneybarn need to put this right

Miss B has already arranged repairs for a number of the problems. So Moneybarn needs to:

- Refund £350.41 plus VAT for the timing belt and water pump
- Refund £80.15 plus VAT for replacing the turbo intake pipe
- Refund £141.56 plus VAT for repairing the aerial and fixing the radio.
- Arrange for the air-conditioning unit to be fixed at no additional cost to Miss B. It should arrange this within 28 days of Miss B's acceptance of my decision. If Miss B has already repaired the air-conditioning unit then Moneybarn needs to refund the cost incurred, including any applicable VAT.

If Miss B used credit to pay for the above, then on receipt of evidence, Moneybarn also needs to reimburse any interest charges she has incurred in paying for the above. If Miss B didn't use credit then Moneybarn needs to add 8% simple interest to each of the payments from the date they were made to the date of settlement.

If Moneybarn thinks it's legally required to deduct income tax from any interest, it must send a tax deduction certificate to Miss B if she asks for one.

my final decision

For the reasons given above, I uphold this complaint and require Moneybarn No.1 Limited to put this matter right in line with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 18 October 2018.

Claire Hopkins
ombudsman