

complaint

Mr M acquired a used car in mid March 2015, by means of a conditional sale agreement with Moneybarn Limited. He complains that the car's air conditioning system is faulty. He wants Moneybarn to pay for this fault to be repaired. If that is not possible, he wants Moneybarn to take back the car and to terminate the agreement.

background

Mr M said, since taking delivery of his car, he noticed that the air conditioning system did not work properly. He arranged for the system to be serviced by a specialist firm in early August 2015. It then worked well for a few weeks, before again not working properly. The specialist firm inspected the system again at the beginning of September, and told him that it needed repairs costing around £500. The dealership that supplied the car to Mr M agreed to carry out the repairs, but it was unwilling to pay for them.

Mr M then complained to Moneybarn. It said in response:

- His complaint had been made just within six months of the start of his agreement, and the car had travelled about 3,800 miles in that time
- The fault was a result of normal wear and tear, and it was unable to uphold his complaint

Mr M referred his complaint to us in mid September 2015. His car was about four and a half years old, and had travelled about 19,200 miles, when he acquired it. He told us the specialist firm were surprised that the problem requiring repair had arisen in a car of this age and mileage. He provided a report from the specialist firm on its investigation of the car's air conditioning system.

Moneybarn said to us:

- Mr M had made reasonable use of his car for almost six months, before raising this matter with it – it questioned why he had not made contact sooner, given that he was using the car during the summer months
- The specialist firm's report could not be considered to be independent, given that it had worked on Mr C's car
- The report indicated that the system had been recharged shortly before the problem requiring repair became apparent – so, it was probable that the recharge had caused this problem

Our adjudicator did not think the complaint should be upheld. She noted the importance of establishing whether a fault was present at the point of sale – Moneybarn would only be responsible for the fault if this could be established. She said there was no evidence showing that the problem requiring repair in September 2015 was present in March 2015.

Mr M disagreed. He said it was more likely that this fault did exist at the point of sale, given his car's age and low mileage. He asked for his complaint to be reviewed 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. Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

Moneybarn has a responsibility to ensure that goods of satisfactory quality have been supplied. This means that a reasonable person would have regarded the goods as satisfactory, taking into account all relevant circumstances, which for cars include age and mileage travelled. But there are limits to Moneybarn's responsibilities. In particular, faults must be present at the point of sale.

It is often helpful if an independent inspection of the car, by an appropriately qualified expert, has been undertaken. This might have been able to clarify whether the car was fit for purpose at the point of sale. But I agree with Moneybarn that the specialist firm's report cannot be regarded as independent.

It is unfortunate as well that Mr M did not make earlier contact with Moneybarn about this matter. Had he done so, and had the matter been investigated then, this might also have been able to clarify whether the car was fit for purpose at the point of sale.

In these circumstances, I must decide on the balance of probabilities whether or not fit for purpose goods were supplied. I sympathise with Mr M, but I find the weight of evidence is in Moneybarn's favour, and I am unable to conclude that the goods were not of satisfactory quality. This means that I have come to the same conclusion as our adjudicator, for the same reasons.

my final decision

For the reasons explained above, 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 8 February 2016.

Roy Mawford
ombudsman