

complaint

Mr R complains that a car he acquired through a conditional sale agreement with Moneybarn No.1 Limited ("MNL") wasn't fit for purpose. He wants to reject the car and unwind the finance agreement.

background

Mr R entered into a conditional sale agreement with MNL in late August 2016 to acquire a car. The car broke down twice in the first eight days after he'd acquired it. Mr R said that the main faults were:

- Grinding and squealing noise coming from the rear axle;
- Squeaking brakes in both wet and dry conditions;
- Very poor starting in the morning due to an issue with the electronics. The battery would lose power overnight, despite initially being recharged and then ultimately replaced;
- Intermittent power loss.

The car was investigated by the car's manufacturer, ("N"), in early September 2016 for 15 days. The exact cause couldn't be found, but N noted that there was an intermittent power loss. The car continued to have problems and so the dealership which had sold the car, ("D"), inspected the car on 6 October 2016. D carried out various work at no cost to Mr R and the car was returned to him on 14 October 2016. Mr R doesn't know any details about the work D had undertaken. Mr R emailed D in mid-October 2016 to say that he wanted to reject the car, and he sent a letter to it to confirm this in late October 2016. The car broke down again on 6 and 7 November 2016, and Mr R was unable to use the car after that. D then arranged for an independent inspection and collected the car, which had to be jump started, at the end of November 2016. The independent inspection found nothing wrong with the car. In an attempt to resolve the issue, D suggested that they re-sell the car, but this didn't happen. Mr R remained unhappy because the power loss issue had never been resolved. MNL said that the car was satisfactory and that the various minor faults were due to normal wear and tear or caused by Mr R's own actions. It suggested that the installation of a camera by Mr R was the cause of the intermittent power drain.

our investigator's view

The investigator didn't agree with MNL's conclusions. With regard to the intermittent power drain which was Mr R's main issue, he noted that N had the car in its possession for about a week early on and couldn't find the cause of the power drain. He said that this made it difficult to accept that the use or installation of a camera had caused the problem. He noted that the car had broken down on a number of occasions, probably as the result of the power problem. He also noted that no other professional organisation had suggested that the camera installation had caused the problem, including N and the recovery agents. So, he doubted MNL's conclusions. And whilst the independent inspector couldn't find the fault, this wasn't surprising as the fault was intermittent. The investigator thought that it was most likely that the car had been sold to Mr R with the fault already in existence. So, he concluded that:

- The hire purchase contract should be rescinded and the car taken back. Mr R's deposit should be returned.
- Some use had been made of the car by Mr R. As roughly two payments were outstanding and Mr R had use of the car for a little under a month, he thought that only two payments out of the five due should be recoverable from Mr R; and

- The record of this loan should be removed from Mr R's credit file.

MNL disagreed and responded to say that it believed that the camera installed by Mr R was responsible for the power drain. It didn't think that the camera was simply plugged into the cigarette lighter as Mr R had suggested. It referred to D's comments that upon inspection, it had found cabling fitted around the windscreen and down the left side pillar, and behind the glove box. It said that the glove box had been removed for the cabling to be fitted. So, the installation of the camera was more involved than Mr R had suggested (ie not simply a dashcam plugged into the cigarette lighter), and could be responsible for the electrical fault. MNL also said that when fitted, third party cameras can put an undue strain on a car's battery depending on the camera model, how it had been installed and how it was subsequently used. MNL also said that as Mr R had failed to collect the car from D, he would be responsible for any storage costs it chose to charge.

Mr R disagreed with MNL's comments. He said that the dashcam was nothing more than a 12 volt plug-in piece of equipment which was plugged into the car's cigarette lighter. It was specifically designed to be put into and taken out of cars, and to date he had used this in his previous car and in his current hire car which he'd used for several months without issue. He also said that the dashcam wasn't 'installed' into the car as MNL had suggested, but plugged-in as a temporary solution in order for him to be able to unplug it and put it into another vehicle from time to time. There would be no need for him to carry out the type of installation suggested by MNL.

Mr R also said that the fact that the car broke down so soon after he acquired it, and continued to display issues, was evidence that the car was sold with the fault already in existence.

With regard to the car remaining with D, Mr R said that there had been a possibility that D had found another buyer for the car and that D had come to his home to collect the V5 document from him. But, the sale didn't materialise. Also, as he had formally rejected the car, he didn't agree to pay any storage costs for it.

Mr R is also claiming a refund of road tax (an initial payment of £87.50 and monthly payments of £43.75) and insurance (monthly payments of £41.20) paid on the car. He has also had to pay for a hire car which is costing him £412 each month.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr R and to MNL on 28 March 2017. I summarise my findings below.

As the evidence was incomplete, inconclusive, or contradictory, I reached my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and the wider circumstances.

I noted that as Mr R acquired the car through a conditional sale agreement, MNL was liable if the car wasn't of satisfactory quality at the point of sale. I could see that the car suffered faults and breakdowns from around a week after the car was delivered. It had suffered five breakdowns in total. From 7 November 2016, it had failed to start. Neither D nor MNL had proven that the car didn't have the faults when Mr R acquired it. It had been investigated by N and D, but the faults remained. After the car had been seen by D, Mr R had continued to have problems with the car starting and the car had broken down again on 6 and

7 November 2016. I had seen recovery agents' reports, two from the end of August 2016 and two dated 6 and 7 November 2016 respectively. The first report referred to an ignition switch fault, the second referred to the car not starting and the battery volt being low. The third referred to the car having no power and the battery needing rebooting. The fourth on 7 November 2016 referred to a temporary repair although Mr R had said that the recovery technician didn't fully fix the car, and the technician couldn't get the car started. From this date, the car had been completely unusable. In this case, because of the car breaking down twice within eight days of sale, I thought that the evidence suggested that the car did have issues at the point of sale.

I also noted that MNL had said in its response to the investigator's view that it understood from the legislation that the onus was on Mr R to evidence that there was a fault with the car within the first 30 days that was inherent or developing from the point of purchase. I disagreed. When Mr R acquired the car, the Consumer Rights Act 2015, ("CRA"), was the relevant legislation. This says that if a fault arises within the first six months, it is presumed to have been there since purchase, unless the supplier can prove otherwise. It's not up to the consumer to prove it was there. The CRA also says that if the fault arises in the first six months after purchase, and an attempt at repair is unsuccessful, the consumer can choose to reject the car.

I could see that MNL thought that the dashcam installed by Mr R could have caused the power drain. But I'd asked Mr R if the dashcam had been installed each time the car had broken down, and he'd said that the dashcam had only been installed after the car had been investigated for the second time. So, I could see that the dashcam couldn't have been responsible for the power drain issues before then. So I thought it was unlikely that the power drain had been caused by the dashcam.

I also understood that most dashcams would need a 12V (cigarette lighter) socket for power. Mr R had said the dashcam's instructions had said that it was a plug and play device, which plugged directly into the car's 12V cigarette lighter socket, and the adapter supplied only 5V to the camera. He'd said that this shouldn't be anywhere near enough to render a car's battery dead.

I also noted that Mr R had confirmed that his dashcam was plugged into the cigarette lighter and wasn't installed in the way suggested by MNL. MNL had referred to cabling being installed around the windscreen. I'd asked Mr R if he had installed this cabling and if so what was it for? Mr R had said that he hadn't at any time fitted cabling around the windscreen. He thought that MNL was referring to the cable for the camera. And he'd supplied photos to show that the cabling wasn't put around the windscreen.

I also understood that Mr R had used the dashcam in the courtesy car provided by N, in his previous car, and in his current hire car. I'd thought that if the dashcam had malfunctioned and had caused the power failures on the car, then I would have expected it to affect these other cars similarly. But, I could see that he's had no such problems with those cars. So, on balance, I didn't think it was likely that the dashcam had caused the car's power failures.

I noted that an independent inspection of the car was carried out on 30 November 2016. The report had said that the car was without fault, fit for purpose and of satisfactory quality. But Mr R had said that the major issue with the power drain didn't occur straight away. If the car battery was fully charged and D had already started the car, then no drain would show. He'd referred to a picture of the temperature gauge, which showed the car's engine had been on for a length of time and the engine had warmed up. I also noted that the independent

inspector had only undertaken a four mile road test. So, I could see that it wasn't surprising that the intermittent fault hadn't been located. On balance, I wasn't persuaded by the contents of the independent report. And as evidenced by the car's breakdowns and failures to start from early on, I thought, on balance, that the car was more likely than not faulty at the point of sale and not fit for purpose.

I could understand that Mr R would have lost all faith in the safety of the car, and I noted that he sought to reject it in October 2016 after previous repair attempts hadn't been successful. I noted that Mr R had sent a rejection letter to D on 21 October 2016 by recorded delivery, but he'd received no response to this. I thought that Mr R's rejection of the car should be permitted in line with the CRA, and that MNL should cancel his agreement.

I was aware Mr R hasn't made all his finance payments. But he did make three payments from September to November 2016. And I also noted that Mr R only had about a month's use of the car in total as it was being repaired and off road some of the time. But, I could also see that Mr R was provided with a courtesy car whilst his was being repaired by N and D (on the first occasion). As Mr R was kept mobile, I didn't think it would be fair that his finance payments should be refunded until he lost use of the car on 7 November 2016. But after that date, I thought his finance payments should be refunded to him, and that he shouldn't be required to make any further finance payments for the period after that date.

I also thought it would be reasonable for MNL to refund Mr R with the tax and insurance for the car from 7 November 2016 when he lost use of the car, as he'd had to pay these for a car he couldn't use. I said that these should be paid by MNL to Mr R upon receipt of proof of payment. Mr R had also asked for his hire car fees to be repaid. But, as I didn't think he should be liable to make his finance payments after 7 November 2016, I didn't think that it would be fair to ask MNL to pay his hire car fees.

So, for the reasons set out above, I thought that it would be fair and reasonable for MNL to cancel the conditional sale agreement, to collect the car at no cost to Mr R, and to refund his repayments, insurance and road tax from 7 November 2016. And I said that 8% simple interest should be paid on the refunds. MNL should also remove any information about the agreement from Mr R's credit file. I also found that Mr R had spent considerable time and trouble in pursuing his complaint. I thought that MNL should pay him £150 compensation for his inconvenience. I also noted that the investigator had recommended the refund of Mr R's deposit but I couldn't see from the agreement that a deposit had been paid. If Mr R did pay a deposit, I said that he should provide evidence of this to us in his response to this provisional decision.

Subject to any further representations by Mr R or MNL my provisional decision was that I was minded to uphold this complaint in part. I intended to order Moneybarn No. 1 Limited to:

1. Arrange for the collection of the car and cancel the remaining finance at no cost to Mr R;
2. Refund Mr R's finance repayments, insurance and road tax from 7 November 2016;
3. Pay yearly simple interest at 8% on the refunds from the date of payment to the date of settlement;
4. Remove any information about the credit agreement from Mr R's credit file; and
5. Pay Mr R £150 compensation in relation to distress and inconvenience.

Both Mr R and MNL responded to say that they accepted my provisional decision.

my findings

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

As both parties accepted my provisional decision, I find no basis to depart from my earlier conclusions.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Moneybarn No. 1 Limited to:

1. Arrange for the collection of the car and cancel the remaining finance at no cost to Mr R;
2. Refund Mr R's finance repayments, insurance and road tax from 7 November 2016;
3. Pay yearly simple interest at 8% on the refunds from the date of payment to the date of settlement;
4. Remove any information about the credit agreement from Mr R's credit file; and
5. Pay Mr R £150 compensation in relation to distress and inconvenience.

MNL must pay the compensation within 28 days of the date on which we tell it Mr R accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If MNL considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 June 2017.

Roslyn Rawson
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