

complaint

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

background

In September 2016 Mr G took out a conditional sale agreement with Moneybarn to acquire a used car.

Within a few weeks Mr G noticed some problems with the car. In October 2016 Mr G had an appointment with the garage so they could assess the car. He missed this appointment. He's said the time wasn't convenient for him.

In November and December 2016 Mr G contacted Moneybarn and the garage with a list of faults. He said there were problems with the tyres, droplink bar and instrument cluster. He asked them to put these right. He also explained that due to his personal circumstances he needed to have a working car.

In November 2016 the garage said they were only willing to sort the droplink bar. They also wouldn't talk to Mr G on the phone anymore. They told Mr G to take his car to another garage for some repairs to the instrument cluster, under a warranty they provided with the car. This was done in December 2016 following some issues with payment for the repairs.

As a result of the breakdown in relationship between Mr G and the garage in January 2017 Moneybarn got an independent report. The report said the car has some significant problems that were present or imminent at the point of sale. They also said the car couldn't have been in a condition suitable for sale or fit for its intended purpose.

After this the garage offered to do some remedial work and the director offered to be Mr G's personal contact. Mr G wasn't happy. He'd believed the garage had the opportunity to fix the car already and he wanted to reject it.

Our investigator looked into the complaint. She explained the report concluded the car wasn't sold in a condition fit for purpose. And considering the breakdown in relationship, Mr G should be allowed to reject the car.

Moneybarn didn't agree. They say the Consumer Rights Act 2015 is clear that the garage should be allowed to repair the faults. So the case has been passed to me.

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 this, I think it's fair to uphold it. And I'll explain why.

Because Mr G acquired the car through a conditional sale agreement, Moneybarn is liable if the car was not of satisfactory quality at the point of sale. In this case the evidence suggests the car did have issues at the point of sale.

When there are issues at the point of sale there are different options available under the Consumer Rights Act 2015. If the goods are faulty, consumers have a right to reject them within 30 days. It's clear from the independent report Mr G was supplied with a car that was not of satisfactory quality at the time of the sale.

Customers also have a further right to reject the goods later on if repair is unsuccessful. So I do understand why Moneybarn thinks the garage should try to fix the car first.

I can see some repairs were carried out to the instrument cluster. There's an outstanding balance due for this repair. I understand if the instrument cluster had been faulty at the point of sale, this would've been obvious. And electrical faults can happen suddenly. But it seems other issues were also present within a few weeks of getting the car and the report says these were present and/or imminent at the point of sale.

I accept repairs weren't carried out on these issues. And the report says the car isn't unrepairable. I understand the garage has now offered to look at the car. But, it's clear the garage have already had an opportunity to repair the car. And previously they've said they weren't willing to do this. I've seen the director of the garage also confirmed there'd been *"some kind of lack of resolve"*.

There was clearly a significant breakdown in relationship. And considering Mr G's personal circumstances which made it important he had use of a car I don't think it would be fair to let the garage repair the car now. I've seen that Moneybarn even suggested this wasn't appropriate in an email to the garage. This said *"I appreciate that you haven't yet had the opportunity to address the faults and as such you do have the right to do so, however in light of the breakdown in the relationship it may be more appropriate to bring the agreement to an end"*.

Because of everything I've seen and said above I don't think it's reasonable in the circumstances to attempt the repairs now. I think it would be fair to unwind Mr G's finance agreement.

I'm aware Mr G hasn't made all his payments. Mr G has had some use of the car. But it's also been in the garage and off road some of the time. And he's clearly had loss of enjoyment of the car during the short time he has used it.

Because of this I think Moneybarn are entitled to keep the payments he's made but it shouldn't ask Mr G to make any further payments. But Moneybarn are entitled to charge if there's any damage to the car due to lack of reasonable care or modifications in breach of the agreement.

my final decision

My final decision is that I uphold this complaint and Moneybarn No.1 Limited should:

- Arrange collection of the vehicle at no cost to Mr G.
- Unwind the finance agreement at no cost to Mr G.
- Remove all information about the finance agreement from Mr G's credit file.
- Refund the deposit Mr G paid plus interest from the date of initial payment until the date of settlement at 8% simple per year*.
- Refund any admin fee Mr G may be charged to transfer his insurance to another car or cancel his insurance (subject to Mr G providing proof of this charge).
- Pay any outstanding payment due for the repair of the instrument cluster. If Mr G has paid this himself Moneybarn should also pay interest from the date Mr G paid this until the date of settlement at 8% simple per year*.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 April 2017.

Melissa Grove
ombudsman

*If Moneybarn No.1 Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr G how much it's taken off. It should also give Mr G a certificate showing this if he asks for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.