

complaint

Mr M complains that he was mis-sold a used car via a conditional sale agreement with Moneybarn No.1 Limited. He says the amount of the monthly payments weren't what had been agreed and the car wasn't fit for purpose. Mr M wants to reject the car and end the agreement.

background

In August 2018 Mr M entered into a 42 month conditional sale agreement for a used car. The car was eight years and had a mileage of around 80,000.

Mr M says that as the car had an issue with the clutch, and the dealership were aware of this, it was agreed the price would be reduced and Mr M would arrange himself to get that part fixed. He says it was agreed that the repayments would be £250 per month.

However, when the financial documents were received in the post by Mr M they showed the repayments had been set at £349 per month. Mr M says he also discovered that all four of the tyres were illegal due to their tread and that the DVLA advised him not to drive it. He says he stored the car at a compound at his work.

Mr M says he raised the issues with the agreement and with car with the dealership and it was agreed he could return the car. He also contacted Moneybarn and said he wanted to reject the car. Moneybarn said it was happy for Mr M to unwind the agreement if the dealership had agreed with this course of action.

Mr M returned the car to the dealership at the start of October 2018. Moneybarn didn't receive any confirmation that the dealership had agreed to unwind the contract and so requested that Mr M make the monthly payments as set by the agreement. Mr M complained as he said it had been agreed he could return the car.

Moneybarn didn't uphold Mr M's complaint. It said that Mr M had signed the conditional sale agreement in August 2018, together with the direct debit mandate, and this had clearly set out the amount of credit, interest rate and the monthly payments of £349. Moneybarn also said a "Welcome Pack" had been sent out to him in September which set out the monthly payments so it thought Mr M was aware of the amount of the monthly instalments.

Moneybarn said that it had asked Mr M to supply information about the condition of the car but he hadn't done so. It said that the dealership had taken the car to an independent garage when Mr M had dropped it off in October 2018. This garage had confirmed there were no issues with the car and it was of satisfactory quality. Moneybarn noted that the tyres had been changed even though they had been legal at the point of sale. It said there wasn't enough evidence to say the car wasn't roadworthy or fit for purpose. Mr M was advised to collect the car back from the dealership.

Mr M says that he tried to collect the car but it wasn't at the dealership as it was being stored somewhere else. He says that when he got the car back it was dirty, had rubbish inside and a large number of miles had been added. He complained again to Moneybarn.

Moneybarn said it had fully investigated his complaint as to whether he was entitled to reject the car and there was no evidence to support a rejection. It said the dealership had stored the car in a more secure location and hadn't been expecting Mr M when he'd gone to collect it. The car had since been returned to him. It didn't uphold his second complaint.

Mr M complained to this service. He also said that the agreement set out that he'd paid £400 as a deposit but he hadn't and he thought this indicated a fraud had taken place.

Our adjudicator didn't recommend that his complaint should be upheld. She said she'd seen the signed agreement and this set out both the deposit and the amount of the monthly instalments. Our adjudicator said this showed Mr M had agreed to the terms.

Our adjudicator said there was no evidence that the dealership had agreed that the car could be rejected by Mr M so she didn't think she could fairly find that the dealership had said this.

Our adjudicator said that the car had been inspected by another garage in October 2018 and it hadn't found that the clutch was faulty. What the engineer had noted was that there was a slight noise from the dual mass (flywheel). The garage had said the car was fit for purpose.

An invoice had also been provided by Moneybarn stating that the tyres had been changed at Mr M's request in mid-September 2018.

Our adjudicator said she didn't think Moneybarn had acted unfairly in not allowing Mr M to reject the car.

Mr M disagreed with our adjudicator's view. He said he could supply proof that the dealership had agreed the car could be rejected. Mr M has supplied a number of text messages between himself, the dealership and finance broker.

As the parties weren't able to agree the complaint 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.

I've seen a copy of the conditional sale agreement together with the direct debit mandate. Both of these documents were signed on the same day in August 2018. I think the agreement sets out clearly the price of the car, the credit amount and the interest rate. It says that the monthly repayments would be £349.

I've seen a text that Mr M sent to the dealership in mid September querying the monthly repayment figure. Mr M is told that he will receive a call back. However I have no evidence that the dealership agreed there was an error with the monthly repayment amount recorded in the agreement. And I don't think I can't reasonably go behind this signed agreement.

Mr M says that the agreement is also wrong because it says he paid a £400 deposit. But this is inconsistent with what is recorded in the contact notes made by Moneybarn. Moneybarn has noted that Mr M told it he'd been reimbursed his £400 deposit by the dealership when he'd taken the car back in October 2018. He said this was evidence it had been agreed he could reject the car.

So I'm unclear about this deposit and whether Mr M paid this figure or whether it was something the dealership put towards the car. But I don't think that, although there is a query about this deposit, it's enough for me to say that the signed agreement I've seen isn't what Mr M agreed to in August 2018. I think it's more likely than not that Mr M may have misunderstood what had been discussed when he was at the dealership.

Mr M says the car wasn't fit for purpose due to the faulty clutch and tyres. And that this was another reason why the dealership agreed he could reject the car. He says it was due to a relative posting a poor review that led to the dealership changing its mind.

I have read the texts provided by Mr M but I can't say that they show that the dealership agreed to Mr M rejecting the car. It appears it was agreed Mr M would take the car back into the dealership but it doesn't show what purpose was of taking the car back.. And I've seen

that the dealership took the car for an inspection at another garage in October 2018. That garage found the car was fit for purpose. The only issue noted was a slight noise from the dual mass but that part was still considered to be serviceable. The tyres were also checked and all found to have legal tread.

So I don't think I can reasonably say without any supporting evidence that the dealership agreed Mr M could reject the car.

I've also seen via an invoice that the back tyres were replaced at the start of September 2018 at the request of Mr M. Mr M says that he suffered a puncture due to the tyres' poor condition and I've seen a text he sent in late September to the dealership about that. But I've also seen that in October the tyres were found to be legal by the independent garage. So without other evidence I can't reasonably find that the tyres were defective at the point of sale. However, even if the car's tyres had been defective I don't think this alone would justify Mr M having the right to reject the car.

So I don't think I have enough evidence to say that the car was mis-sold to Mr M and that the payment terms of the conditional sale agreement were altered after Mr M had agreed to purchase the car. I also haven't seen enough evidence to say the dealership had agreed to Mr M rejecting the car due to its faults and/or the changes to the monthly payments. The evidence I have seen shows that the car was of a satisfactory condition and fit for purpose at the point of sale. I can't reasonably say that Moneybarn has acted unreasonably in not allowing Mr M to reject the car and unwind the agreement. I'm not upholding Mr M's complaint.

my final decision

For the reasons given above I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 September 2019.

Jocelyn Griffith
ombudsman