

complaint

Mr L has complained that after he entered into a conditional sale agreement with Moneybarn No. 1 Limited, he discovered that the car was 140bhp, rather than the 170bhp he had believed it to be.

background

Mr L entered into a conditional sale agreement for a second-hand car, which the finance agreement stated had 170bhp. However, when he received the logbook, he saw that it was 140bhp. Further, around six months later, the timing chain broke which damaged the engine.

Moneybarn subsequently terminated the agreement as Mr L had not kept up with his repayments. The car has now been resold, and Moneybarn is holding Mr L responsible for the remaining balance. Mr L has said that the agreement is invalid and he would not have entered into it if he had known the correct specifications. He also says that Moneybarn had agreed to pay for the repairs to the car.

The adjudicator did not recommend that the complaint should be withheld, as he believed Moneybarn had acted in a broadly reasonable manner. He felt that it was disproportionate for the entire agreement to be invalid because there had been a mistake in the bhp specification. Further, he was not satisfied that the fault with the timing chain had been present when Mr L entered into the agreement, or that Moneybarn had agreed to pay for the resulting repairs.

Mr L disagreed, so the complaint has been passed to me for my final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I am happy to accept that the car was in fact 140bhp (this cannot now be verified), and the finance agreement incorrectly showed this as 170bhp. Having checked the trade guides, an equivalent car to Mr L's but with the higher horsepower would, on average, have cost slightly more than Mr L paid. It therefore does not seem that Mr L was paying over the odds for the horsepower the car in fact had. I cannot conclude, on the evidence I have seen, that Mr L would not have taken out the finance had he known the correct horsepower. For this reason, I feel it would be disproportionate for the agreement to be invalidated.

As regards the timing chain, the issue with this was not raised until Mr L had had the car for nine months. Timing chains are damaged by wear and tear, and tend to need replacing during a car's lifetime. As nine months passed with Mr L driving the car with no apparent problems, I am satisfied, on balance, that the fault was not present when Mr L entered into the agreement. Further, I have seen no evidence that Moneybarn agreed to pay for the necessary repairs and the telephone recording that has been provided makes no mention of this.

As Mr L fell behind on his payments, I do not think it was unreasonable of Moneybarn to take the car back. It still owned the car and when the payments stopped, it recouped its loss by taking the car back and selling it on. However, this meant it would not receive as much

overall as it would have done had Mr L maintained his repayments. For this reason, I do not consider it unreasonable for Moneybarn to request the balance from Mr L.

I can see that there was a slight delay in Moneybarn responding to a letter it was sent by Mr L. However, it has apologised for this and I feel this is sufficient in the circumstances.

my final decision

For the reasons given above, it is my final decision not to uphold this complaint. I make no award against Moneybarn No. 1 Limited.

Elspeth Wood
ombudsman