

complaint

Mrs W complains that the car she acquired through a conditional sale agreement with Moneybarn No. 1 Limited was misrepresented. She wants to reject the car and be refunded £8,000.

background

Mrs W entered into a conditional sale agreement with Moneybarn in March 2016 to acquire a used car. In January 2018, she was considering her options in regard to the car and received a settlement figure from Moneybarn. Mrs W took her car to garages to discuss part exchange and discovered that there was a significant mileage discrepancy meaning the garages were not interested in her car.

Mrs W contacted Moneybarn to explain the situation and that she would not have entered into the agreement had she known about the mileage discrepancy. She says that Moneybarn made her an offer but this was not adequate. She wants to reject the car and receive a partial refund of £8,000 to reflect the fact she will not own the car but has made payments towards it.

Moneybarn says that Mrs W contacted it on 4 January 2018, explaining she wished to upgrade her car and requesting a settlement amount. This was sent. Mrs W then contacted it on 15 January saying she had taken the car to a garage which had refused to buy it due to a mileage discrepancy. Moneybarn contacted the supplying dealer which offered to pay Mrs W compensation of £1,000. It says it also offered to take back the car, cancel her agreement and pay her £200 for the trouble and upset caused.

Our investigator upheld this complaint. He said a misrepresentation had occurred but also noted that Mrs W had been able to drive the car since acquisition. He did not think that that offer made by Moneybarn was sufficient and recommended that the agreement be unwound and Mrs W's deposit refunded.

Our investigator said that given the agreement was a conditional sale agreement Mrs W was making payments towards keeping the car and noted she had paid over £11,000. He said that although Mrs W had some use of the car this was below average. He said that the value of the car was hard to establish given the exact mileage was unknown. He thought that a refund of £8,000 was reasonable.

Moneybarn did not accept our investigator's view noting that the mileage discrepancy arose before it acquired the car and that it bought the car in good faith. It said that it was fair that the agreement should be unwound and that it had offered this to Mrs W. It also said it had offered to pay Mrs W £200 for the inconvenience caused and that the dealer had offered her £1,000. It noted the comments about Mrs W not having a high mileage but said this was not due to an issue with the car but her choice. It said that Mrs W had intended to sell the car and in that case the payments she made to that point would not have been refunded.

my provisional conclusions

I issued two provisional decisions on this complaint. The reason for the second provisional decision was primarily to take into account additional information Mrs W had provided in regard to the repairs she had undertaken on the car.

My provisional conclusions were:

- Mrs W discovered there was a discrepancy with the mileage on her car in January 2018 and it was not clear what the accurate mileage of the car was;
- the car had been misrepresented to Mrs W and I accepted that she would not have acquired it had she known at the time about the mileage issue;
- because of the misrepresentation, Mrs W should be released from her agreement and the car should be taken back by Moneybarn at no cost to Mrs W and her deposit should be refunded;
- Mrs W asked that £8,000 of payments be refunded but I did not find that this was reasonable;
- Mrs W had use of the car (apart from when it required repairs which is dealt with separately) and before January 2018, when the mileage issue was discovered, Mrs W would have been using the car to meet her needs without any concerns about mileage. That said, I noted that the mileage of a car can have an impact on its value and so had the car Mrs W acquired had a higher mileage at the time of acquisition the price may have been slightly lower. Because of this I found it reasonable to apply a partial refund of her rental payments from the start of the agreement of 10%;
- following discovery of the mileage issue Mrs W's enjoyment of the car would have been reduced although she still had use of the car. Because of the loss of enjoyment I thought a refund of the rentals of 25% from when she became aware of the issue (she contacted Moneybarn on 15 January 2018) was fair;
- Moneybarn offered to pay Mrs W £200 compensation for the trouble and upset she experienced which I found reasonable;
- Mrs W provided information about the repairs she had to undertake on the car. I noted that although the repairs were not linked directly to the mileage issue it was possible that Mrs W would have been more aware that future repairs might be needed if she had known the correct mileage of the car at acquisition;
- I did not find it fair that Mrs W should be responsible for major repairs which given the need to return the car she would not get the benefit of. Based on this I set out the repairs I thought it reasonable Mrs W be reimbursed for;
- Mrs W asked that the costs of her tax and insurance be refunded from January 2018. I said that as she was required to pay these to continue to use the car these did not need to be refunded.

Both parties accepted the resolution I set out in my second 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.

Both parties accepted the resolution I set out in my second provisional decision and so the resolution in this final decision remains the same. I think this is a fair outcome to reflect the misrepresentation and the costs Mrs W incurred along with recognising the use she had of the car.

my final decision

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

1. cancel Mrs W's conditional sale agreement with nothing further owing;
2. collect the car at no cost to Mrs W;
3. refund Mrs W her deposit of £400;
4. refund Mrs W 10% of her rental payments from the start of the agreement up to 15 January 2018;
5. refund Mrs W 25% of her rental payments from 15 January to date;
6. refund Mrs W the costs of the repairs carried out in June 2016 (excluding the new tyres- £160); October 2016 (£890); December 2016 (£280); February 2017 (£1,446.40); February 2018 (£70) and June 2018 (£807). Invoices have been provided;
7. remove any adverse information regarding this agreement from Mrs W's credit file; and
8. pay Mrs W £200 compensation for the trouble and upset this issue has caused.

Items 3, 4, 5 and 6 are subject to 8% simple interest from the date of payment to the date of settlement.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 8 November 2018.

Jane Archer
ombudsman