

complaint

Miss L complains that a conditional sale agreement with Moneybarn No. 1 Limited was mis-sold to her and that the car that was supplied to her wasn't of satisfactory quality. She's being helped with her complaint by her representative.

background

A used car was supplied to Miss L under a conditional sale agreement with Moneybarn that she signed in November 2018. The car was about two and a half years old and had been driven for 23,852 miles. There were some issues with the car so Miss L took it to a manufacturer's dealer and the faults were repaired under warranty. But Miss L's representative then complained to Moneybarn about those issues, some damage to the car and the interest rate and amount repayable under the agreement. Miss L wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. She said that the faults had been repaired under warranty and that Miss L hadn't told the dealer or Moneybarn about the faults before they were repaired so they weren't given the opportunity to repair or investigate them. And she thought that the interest rate was clearly set out in the documentation when Miss L entered into the agreement. So she couldn't see that Moneybarn had made any error when dealing with Miss L's complaint.

Miss L's representative, on her behalf, has asked for this complaint to be considered by an ombudsman. He says that issues with the car were reported to the dealer the day after it was supplied to Miss L and that he's called out a recovery service four times - but it wouldn't recover the car because he hadn't paid his subscription. He also says that the car's brake pads need to be changed and he shouldn't have to pay for that.

my findings

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

Miss L signed a conditional sale agreement with Moneybarn in November 2018. I consider that it was clear from the agreement that the credit was being provided by Moneybarn and that the dealer was acting as a credit intermediary. The dealer sold the car to Moneybarn and it supplied the car to Miss L under the agreement.

She also signed a proposed finance explanation document. Both the agreement and the explanation document set out the price of the car, the amount of credit that was being provided, the total amount payable, the interest rate and the number of, and the amount of the, monthly payments.

Immediately above Miss L's signature on the agreement it says:

"This is a Conditional Sale Agreement regulated by the Consumer Credit Act 1974. Sign it only if you want to be legally bound by its terms".

I consider that the agreement and the explanation document contained the required information about the credit that was being provided to Miss L and that she knew, or ought

reasonably to have known, the terms that she had agreed to. So I'm not persuaded that there's enough evidence to show that the agreement was mis-sold to Miss L.

Moneybarn, as the supplier of the car, was responsible for ensuring that the car was of satisfactory quality. That will depend on a number of factors, including the age, and mileage of the car and the price that was paid for it. The car that was supplied to Miss L was about two and a half years old, had been driven for 23,852 miles and had a price of £21,999. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

Miss L's representative says that he contacted the dealer about some issues with the car soon after it was supplied to Miss L. And he says that a recovery service was called out four times but the car couldn't be recovered because he hadn't paid his subscription for the service. But he's previously said that he didn't contact the dealer about the issues with the car. And there's no evidence to show that he contacted Moneybarn about any issues with the car until after the car had been repaired.

Miss L's representative has complained about some cosmetic issues with the car. But the car was supplied to Miss L in the condition that it was in at that time – and I've seen no evidence to show that the dealer had agreed to make any changes to the cosmetic condition of the car. I'm not persuaded those cosmetic issues caused the car to not be of satisfactory quality when it was supplied to Miss L.

It's clear from the manufacturer's dealer's job card that repairs to the car's diesel particulate filter, tooth belt and tensioner, fuel flap, rear ashtray and leaking gear box were carried out in February 2019. Those repairs were free of charge and I've seen no evidence to show that the repairs haven't rectified the faults with the car. So I consider that the repairs have been an acceptable remedy to any faults with the car. I don't consider that there's enough evidence to show that the dealer or Moneybarn were told about those faults or were given an opportunity to investigate or repair them. And I'm not persuaded that there's enough evidence to show that the car wasn't of satisfactory quality when it was supplied to Miss L.

I'm not persuaded that there's enough evidence to show that the brake pads needed to be replaced when the car was supplied to Miss L. The brake pads are a wear and tear item for which the user of the car is responsible. And I don't consider that it would be fair or reasonable for me to require Moneybarn to pay for the car's brake pads to be replaced.

I'm not persuaded that Moneybarn has acted incorrectly in its dealings with Miss L (or her representative). So I find that it wouldn't be fair or reasonable in these circumstances for me to require Moneybarn to allow Miss L to reject the car, to end the agreement or to take any other action in response to her complaint.

Miss L says that she's had a change of jobs and is now in financial difficulty and can't afford the monthly payments under the agreement. Moneybarn is required to respond to any financial difficulties that Miss L is experiencing positively and sympathetically. So if she hasn't already done so, I suggest that she contacts Moneybarn to discuss her financial difficulties. In its final response letter to her it said that if the agreement was now unaffordable for her she should contact its customer operations team on the number that it provided. I consider that to have been fair and reasonable.

my final decision

For these reasons, my decision is that I don't uphold Miss L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 18 October 2019.

Jarrold Hastings
ombudsman