

complaint

Mr B complains about a car he acquired through a conditional sale agreement with Moneybarn No 1 Limited. He says the car has extensive damage to it and he either wants a full refund, the damage repaired or a reduction in the purchase price.

background

On 16 September 2014 Mr B acquired a car through a conditional sale agreement. 9 months later, he was involved in an accident which damaged the rear passenger door. The mechanic who repaired the car noticed there was additional damage to the front of the car, which had been repaired prior to the accident in May 2015. Mr B says he has not been involved in another accident. And he wants Moneybarn to pay for the repair, give him a refund or reduce the price of the car.

Moneybarn did not uphold his complaint. It said it was his responsibility to inform it of damage at the point of sale and the repair did not stop him using the car for 9 months.

The adjudicator upheld the complaint. She said one day before he bought the car, it failed its MOT because amongst other things, it had a broken headlight bulb. She felt the damaged light may have been related to the damage to the bumper, and so present at the point of sale. She thought it reasonable to conclude the dealer that supplied the car knew about the repairs because it failed the MOT. She felt it should have made Mr B aware of this as if he had known about the damage he would have paid less for the car. She recommended that Moneybarn pay for the repairs.

Moneybarn did not agree with this. It says Mr B wants compensation for cosmetic damage. He only reported the problem eleven months after purchase. By the time he reported it the car had travelled a further 8,000 miles. There was no evidence the damage was there when he bought it and the car failed its MOT due to wear and tear issues. It was not prepared to pay compensation or repair the car.

In my provisional decision I explained why I felt Mr B's complaint should not uphold. I invited further comments from the parties before I reconsider the complaint and issue my final decision. No further comments were provided by either party.

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 so, I am departing substantially from the conclusions of the adjudicator. I am not upholding this complaint for essentially the same reasons as I set out in my provisional decision.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Conditional sale agreements are covered by the Sale of Goods Act 1979, which says that, in a conditional sale agreement, there are implied conditions including a condition that the goods will be of satisfactory quality (s.14). The concept of 'satisfactory quality' is expanded by the Sale and Supply of Goods Act 1994 and includes; fitness for purpose; appearance

and finish; freedom from minor defects; safety; and durability.

Mr B was buying a used car that was around six years old and had travelled 75,000 miles. I would not therefore expect the car to be in the same condition as it was when it was first manufactured. When Mr B complained, it had travelled a further 8,401 miles.

To uphold this complaint I must be satisfied the car was not of satisfactory quality when it was supplied to Mr B.

I am not persuaded that a failed headlight bulb indicates that the car had been in an accident before Mr B bought it, or that the third party dealer that supplied the car must have known about damage. Headlight bulbs fail regularly on second hand cars with 75,000 miles on the clock.

Moneybarn thinks Mr B could have caused the damage, which he denies. There is no conclusive evidence either way. But this point is not crucial to my decision. Even if the accident damage was there at the point of sale, on balance, I find that the dealer was unaware of the repair and therefore could not inform Mr B about it. I also find the repairs were done satisfactorily as Mr B did not notice them, even though he drove the car for 8 months. The repairs only came to light when he was involved in an accident and a mechanic closely scrutinised the car during the repair.

Considering its age and mileage, it is not unreasonable to expect a car of this age to have had prior accident damage and repairs. There is nothing to suggest the dealer knew the car had been repaired, and therefore it was under no obligation to tell him about it. The repairs appear to have been carried out satisfactorily as they were not noticed until the car came under close scrutiny. Furthermore, the repairs did not prevent Mr B from driving the car for 8 months. I do not find that the car was in an unsatisfactory condition when it was supplied to Mr B.

I appreciate this decision will be disappointing for Mr B but I am not persuaded there is sufficient evidence to uphold this complaint.

I note Moneybarn says Mr B has not made all his payments on the car. I would urge him to seek debt advice if he is having difficulties meeting repayments.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 April 2016.

Clare Hockney
ombudsman