

complaint

Mr L complains that a car that was supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited wasn't of satisfactory quality. He's being helped with his complaint by his daughter-in-law.

background

A used car was supplied to Mr L under a conditional sale agreement with Moneybarn that he signed in August 2016. The car was about six years old and the agreement shows that the car's mileage at that time was 67,000. The car broke down later than month and was recovered by a recovery company. The car was repaired but it broke down again in May 2017. Mr L then complained to Moneybarn but wasn't satisfied with its response so complained to this service.

The investigator recommended that the car should be inspected by an independent third party. She said that (unless the report finds that the faults aren't linked - or that the second fault was due to wear and tear) Moneybarn should accept rejection of the car and unwind the finance agreement. Moneybarn arranged for the car to be inspected but the inspection couldn't be completed because the car's battery was flat and it couldn't be jump started because of the car's position.

Moneybarn has asked for this complaint to be considered by an ombudsman. It says that: it arranged the inspection as a gesture of goodwill; there's no evidence of the issues that Mr L reportedly took the car back to the dealer for at the beginning; it wasn't notified of those issues at the time – so Mr L didn't have the right to reject the car; and it has no evidence that the car was taken to the dealer or of any work that was completed. And it says that it's Mr L's responsibility to substantiate that the issues that he's now experiencing were inherent at the time of sale.

my findings

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

The car was supplied to Mr L in August 2016 and broke down later that month. It was recovered by a recovery company. It later wrote to Mr L and described the nature of the breakdown as: *"Diesel Injectors, leaking..."*. The car was recovered to the dealer which said that the water pipe was leaking and repaired it.

The car broke down again in May 2017. The dealer refused to help with the repair and said that it didn't keep records of its repairs. Mr L paid £50 for a diagnostic report which said that: *"No1 cylinder injector resetting outside tolerance"*. As a gesture of goodwill, Moneybarn then paid for the car to be inspected in August 2017– but the inspection couldn't be completed because the car's battery was flat and the inspector considered that it couldn't be jump started without blocking the road. But the car's mileage at that time was recorded as 72,171 – so it had been driven for about 5,000 miles since it was supplied to Mr L.

The car broke down in August 2016 – less than a month after it was supplied to Mr L because of leaking diesel injectors. And it broke down again in May 2017 because one of the cylinder injectors wasn't working correctly. So I consider it to be more likely than not that the two faults are linked and that the car wasn't of satisfactory quality when it was supplied to Mr L.

I find that it would be fair and reasonable in these circumstances for Mr L to reject the car. So I consider that Moneybarn should cancel the conditional sale agreement and arrange for the car to be collected from Mr L – both at no cost to him. Mr L paid a £400 deposit for the car and £50 for the diagnostic report - I consider that Moneybarn should refund those amounts to him (with interest). But Mr L has been able to use the car to drive more than 5,000 miles – so I'm not persuaded that it would be fair or reasonable for me to require Moneybarn to refund to him the monthly payments that he's made under the agreement. But it should ensure that no adverse information about the agreement is recorded on Mr L's credit file.

my final decision

For these reasons, my decision is that I uphold Mr L's complaint. In full and final settlement of it, I order Moneybarn No. 1 Limited to:

1. Cancel the conditional sale agreement and arrange for the car to be collected from Mr L – both at no cost to him.
2. Refund to Mr L the £400 deposit that he paid for the car.
3. Pay £50 to Mr L to reimburse him for the cost of the diagnostic report.
4. Pay interest on the amounts at 2 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
5. Ensure that no adverse information about the agreement is recorded on Mr L's credit file.

HM Revenue & Customs requires Moneybarn to deduct tax from the interest payment referred to at 4 above. Moneybarn must give Mr L a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 December 2017.

Jarrold Hastings
ombudsman