

Complaint

Mr R, who is represented by Ms J, complains that Moneybarn No. 1 Limited didn't agree to him rejecting a faulty car.

Background

In June 2018 Mr R acquired a second-hand car at a cost of £6,712 funded by a conditional sale agreement. It was some eight years old and had done 96,000 miles.

Shortly afterwards a warning light came on and the car was returned to the dealer. Subsequently the Diesel Particulate Filter (DPF) warning light came on and the car went into limp mode. He left the car with the dealer and contacted Moneybarn. It said the DPF issue was one of wear and tear and Mr R had covered some 2,000 miles with the car.

The dealer said that Mr R had failed to bring the car back as had been agreed on a couple of occasions and did return it in November having SORN'd it for seven weeks.

In the meantime, Mr A had stopped making payments and his agreement was terminated. The car was recovered on 14 January 2019 and sold at auction leaving Mr R responsible for the shortfall of £8748.20.

The complaint was considered by one of our investigators who didn't recommend it be upheld. He said that Mr R had the right to reject the car if a fault was identified within the first 30 days. He took it back for repair and the was carried out by the dealer. The subsequent issue apparently related to the DPF which is a wear and tear item. Our investigator noted that when the car was collected it wasn't noted as a non-runner. He also said there was no evidence that the DPF issue was related to the initial fault.

He noted that Mr R had made only one payment and Moneybarn had acted correctly in terminating the agreement. Ms J didn't agree and said the car had gone into limp mode when on the motorway with three children in and that had been scary. She thought the car was unsafe.

The case was taken over by another investigator and she reviewed matters. She considered whether Moneybarn had given Mr R a sufficiently clear explanation of his options before terminating the agreement. She said that the business had asked Mr R on 16 November by text to make contact to discuss his options. She thought it could have done more. Given the severity of the situation it could have sent a letter or email outlining the position.

She then considered whether this would have affected the likely outcome. She noted that in January 2019 Mr R had said that he had chosen not to pay and will not be paying any money. He later said he was not prepared to pay and he would go bankrupt. Our investigator concluded that Mr R wouldn't have made any further payments and so even if Moneybarn had given him more details about his options she didn't believe the outcome would have been any different. However, she didn't think Moneybarn was right to charge him £25 for policing the car before auction. Ms J asked for clarification which our investigator provided. No further response was received from either party and so the matter has been passed to me to issue a final 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Mr R had an issue early on and the car was taken back to the dealer. It says it repaired the fault. However, later on a warning light came on relating to the DPF. I have seen no evidence to show that this was related to the earlier fault or that the repair wasn't effective. The car was elderly and had covered a lot of miles and it is not unusual for the DPF light to come on. This is a wear and tear item and while I accept it can be frightening to have a car go into limp mode it doesn't mean it wasn't fit for purpose.

Mr R laid the car off for seven weeks and that too can have an effect on the DPF. A diesel car needs a regular run at speed to keep the DPF clean and leaving it parked can lead to a DPF warning light coming on. Overall, I cannot say that the car wasn't fit for purpose.

As for the matter of the termination I agree that Moneybarn could have provided more information to Mr A about his options. It did let him know that he had options, but it seems that Mr R didn't want to engage other than to reject the car. He said that affordability wasn't an issue, but he didn't want to keep the car. It seems that he decided that he would simply not pay anymore.

As such I agree with our investigator that whatever Moneybarn had done Mr R would not have acted any differently. Mr R had made his mind up. I also agree that the minor charge of £25 for polishing should be written off.

My final decision

My final decision is that I do not uphold this complaint, but Moneybarn should not charge Mr R £25 for preparing the car for auction. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 April 2021.

Ivor Graham
Ombudsman