

complaint

Mr and Mrs P acquired a used car in September 2015, by means of a conditional sale agreement with Moneybarn Limited. They say that they have experienced a number of problems with their car, which was mis-sold to them as fit for purpose. They also say the car was advertised as having a tow-bar, which is not fitted, and so it does not correspond to its description.

They want Moneybarn to agree to the car's rejection, with all payments made under the agreement refunded. They also want Moneybarn to remove all adverse information it has recorded on their credit files, relating to this agreement.

background

Mr and Mrs P's car was first registered in 2013, and had travelled about 16,000 miles when they acquired it. They initially raised their concerns about the car with Moneybarn in April 2016, and again in May 2016.

Mr and Mrs P then phoned Moneybarn in June 2016, to say that they no longer wanted the car, and had stopped making the monthly payments required under their agreement. Moneybarn told them that they were still financially liable under their agreement, and it offered to discuss with them options for ending this agreement. They told it that they wanted to reject the car, on the grounds that it had not been fit for purpose at the point of sale.

A few days later, Mr and Mrs P returned the car and related documents to the supplying dealership. The dealer asked them to remove the car, but they declined to do so.

Moneybarn took the view that Mr and Mrs P had broken their agreement, by no longer keeping the car in their possession. It acted to terminate their agreement, notice of which was issued to Mr and Mrs P in August 2016. It arranged as well to recover their car from the dealer, and subsequently to sell it at auction.

Moneybarn also responded to Mr and Mrs P's complaint in August 2016. It noted that, in July 2016, they had told it that their car had travelled about 7,000 miles since September 2015. It said they would need to demonstrate that their car had been advertised as having a tow-bar, and so did not correspond to its description. It concluded that, in the absence of evidence that their car was mis-sold, it was unable to uphold their complaint.

Mr and Mrs P then referred their complaint to us.

Our adjudicator did not think the complaint should be upheld. She questioned why Mr and Mrs P had not raised concerns about their car much sooner than they did, and said:

- She had seen no evidence to suggest that their car was not as described
- In her view, Moneybarn had acted reasonably, and in accordance with the terms and conditions of the agreement it and Mr and Mrs P had signed
- Moneybarn had also acted correctly in recording adverse information on their credit files, because Mr and Mrs P had stopped making the monthly payments required under their agreement

Mr and Mrs P disagreed with our adjudicator, and asked for their complaint to be reviewed by an ombudsman. They said that Moneybarn had behaved outrageously, and was now claiming that they owed it over £11,000 (which was more than their car's value at the point 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. Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

Moneybarn has a responsibility to ensure that goods of satisfactory quality, and corresponding to their description, have been supplied. This means that a reasonable person would have regarded the goods as satisfactory, taking into account all relevant circumstances, which for cars include age and mileage travelled. But there are limits to Moneybarn's responsibilities. In particular, faults must be present or developing at the point of sale.

Mr and Mrs P argue that their car was mis-sold and, in particular, that their car did not correspond to its description. But they offer no evidence in support of these arguments, which Moneybarn does not accept. Taking all the other factors affecting this case into account, I find it is more likely than not that their car was of satisfactory quality – and was as described – at the point of sale. And so I am unable to agree that their car was mis-sold.

Moneybarn provided a recording of the phone conversation it had with Mr and Mrs P in June 2016. It is clear from this conversation that Moneybarn explained to Mr and Mrs P the possible consequences of not continuing to make the monthly payments required under their agreement. It is also clear that Mr and Mrs P firmly believed that they could reject their car. And so they chose not to consider other options, such as Voluntary Termination (VT) of their agreement.

I agree with our adjudicator that Moneybarn acted reasonably when it exercised its right to terminate Mr and Mrs P's agreement – because the car was no longer in their possession, and they had chosen both to stop making payments and not to opt for VT. The exercising of this right was probably to Mr and Mrs P's financial detriment (compared with VT), but I am unable to say that Moneybarn acted in error when it did so.

Finally, I have seen no evidence to support Mr and Mrs P's argument that adverse entries recorded by Moneybarn on their credit files should be removed. And so I find that I have come to the same conclusions as our adjudicator, for similar reasons.

my final decision

For the reasons explained above, 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 and Mrs P to accept or reject my decision before 16 January 2017.

Roy Mawford
ombudsman