

complaint

Miss W complains that the car she bought under a conditional sale agreement in November 2012 was not of satisfactory quality. She would like to reject the car and have her payments refunded.

our initial conclusions

The adjudicator did not recommend that the complaint should be upheld. Having considered the evidence he concluded that it was unlikely that the defect complained about was present when Miss W bought the car.

As Miss W did not agree with the adjudicator's assessment of the evidence, the complaint has been referred to an ombudsman.

my findings

I have considered all the available evidence to decide what is fair and reasonable in all the circumstances of this complaint. Having done so, I do not uphold the complaint for reasons which I give below.

background

In January 2013, not long after Miss W bought the car, Moneybarn's contact notes indicate that she complained about the car losing power and of a banging noise when the car was warm. The car was taken in for repair. According to Moneybarn and the repairing garage, there was a problem with the clutch, which was replaced under Miss W's warranty.

In around June or July 2013, Miss W complained about similar problems with the car. It was again taken in for repair and found to have a failed turbo, which was causing the car to lose power and to emit smoke from the exhaust. There was a dispute about payment for these repairs because they were not covered by Miss W's warranty. However, it is not necessary to go into the details of the payment dispute, save to say that Moneybarn eventually paid for the repairs to protect its interest in the car.

During the period that Miss W's car was at the repairing garage and payment for the repairs was being disputed, Moneybarn arranged for an independent inspection. The report is dated July 2013 and is based on an inspection carried out after the repairs were said to have been completed. The inspection was limited because the inspector was not able to test drive the car. However, based on the limited tests carried out at the garage, the inspector could not hear any abnormal noise, there were no poor exhaust emissions and the gears selected cleanly.

In addition, he concluded that the problems experienced by Mrs W were usual running and maintenance issues that one would expect when buying a second hand car. At the time of the inspection, the car's odometer showed that 13,000 miles had been covered since the date of purchase. The inspector did not consider that the car could have covered 13,000 if the defects had been present at the point of sale.

mileage dispute

Mrs W disputes that she had covered 13,000 miles since purchase. Therefore, I have considered the documentary evidence provided by the parties. The purchase and warranty documents indicate that the car had covered 65,000 miles when Miss W took delivery of it. Its MOT history recorded with the DVLA states that the car had covered just over 63,700 miles when it was tested in June 2012, a few months before Miss W bought it. Therefore, I think it is more likely than not that the recorded mileage in November 2012 was accurate. Certainly, Miss W does not appear to have challenged the recorded mileage at the time.

The paperwork relating to the clutch repair in January 2013 says the mileage at the time was 69,034. Miss W disputes this and has provided a copy of an invoice from the repairing garage which says the odometer reading was 78,000 miles at the time. It also says that repairs were carried out to the turbo. These repairs do not appear on the invoice of the same date provided by the garage. The repairing garage disputes that the copy invoice provided by Miss W is genuine.

Miss W has also provided copies of two breakdown recovery sheets. The first is dated December 2012 and records a mileage of 78,030 and suspected blocked ventilation system as the cause of breakdown. The second is dated June 2013 and records a mileage of 78,090. This suggests that Miss W only covered 60 miles in six months.

The mileage recorded on the first recovery sheet is higher, albeit by only 30 miles, than the copy invoice provided by Miss W for the January 2013 repairs, although it is earlier in time. In addition, the mileage on the second recovery sheet is greater than the mileage recorded at the time of the inspection (78,055) in July 2013, although it is earlier in time. Clearly, this cannot be correct.

Miss W has also provided an inspection report from another garage dated November 2012 which records the mileage as 68,200. Although the author has subsequently said that he made an error and that the mileage ought to have been recorded as 78,000, which would mean that Miss W had covered only 30 miles in the month before the first breakdown recovery.

Given the unexplained mileage inconsistencies in the copy documentation provided by Miss W, I consider the most reliable evidence about the car's mileage to be on the MOT history, the sales and warranty documents and the July 2013 report of the independent engineer. Therefore, I think it is more likely than not that the car had covered approximately 13,000 between November 2012 and July 2013. As there is no evidence that the car was in any garage for repairs between January 2013 and July 2013, it is likely that approximately 9,000 miles was covered during that period.

turbo fault

I have taken into account that Miss W reported problems with the car to Moneybarn in January 2013, which sound similar to the problems she experienced in June/July 2013.

However, there is no evidence that the two are connected. The opinion of the independent engineer is that it is unlikely that the car could have been driven for so long with the faults diagnosed in July 2013 not being apparent sooner.

I also note that Miss W made a partial settlement in March 2013 and made other enquiries about settlement figures between January and July 2013 without mentioning any problems with the car.

In addition, I cannot conclude that the issues Miss W complained about in January 2013 were present at the point of sale either, as the car had already travelled approximately 4,000 by this stage. I appreciate that Miss W has provided a copy of an inspection report dated November 2012, which lists a number of problems with the car some 19 days after she bought it. However, I can see no evidence on Moneybarn's contact notes that Miss W made any complaint about the car until January 2013.

Indeed, the notes indicate that only nine days after that report Miss W contacted Moneybarn to say she intended to make a partial settlement, which she went on to make the following month. This would be surprising if she had been experiencing serious problems with the car in November 2012. For these reasons, I am not satisfied that Miss W experienced any problem with the car until January 2013.

Finally, I acknowledge that the repairs carried out in July 2013 do not appear to have resolved the issues Miss W complained about. However, any remedy Miss W may have would be against the repairing garage rather than Moneybarn. Even though Moneybarn paid for the repairs to secure release of the car, as I am not satisfied that these defects were present at the point of sale, in my view, Moneybarn was not responsible for the faults.

my final decision

For the reasons given, my final decision is that I do not uphold Miss W's complaint.

I appreciate that Miss W will be disappointed with this outcome. However, she is not bound by my decision if she does not wish to accept it and any legal rights she may have remain intact.

Athena Pavlou
ombudsman