

complaint

Miss R complains that a car she bought under a conditional sale agreement from Moneybarn No. 1 Limited was not fit for purpose.

background

Miss R bought a car using a conditional sale agreement in April 2013. The car was under four years old, and had a mileage of approximately 40,000. Miss R experienced problems with the clutch, brakes and tyres straight away. One of tyres had a "blow out". Further, the car was dirty and smelly, and she was only provided with one key.

Miss R complained to Moneybarn about the car's problems, and also that she was finding it difficult to meet the payments due under the agreement. An independent engineer inspected the car in July 2013. He said that the tyres were within legal limits. There was, however, a noise from the brake which needed investigating. Further, the biting point for the clutch was high. This was likely to be due to wear and tear.

The engineer noted that there were some issues with the car's bodywork. These were repaired after the car returned to the dealer at a cost of £1,488.55.

The dealer offered to fix the car. Miss R had, however, lost faith in the dealer, and she wished to return the car.

Miss R complained to Moneybarn. It says that she wishes to reject the car as she cannot afford the monthly payments due, and the cost of running the car. Moneybarn has not been able to produce any pre-sale checks completed by the dealer.

Miss R brought a complaint to us as she wished to reject the car.

our adjudicator's view

The adjudicator recommended that the complaint should be upheld. She considered that the car was not of satisfactory quality at the point of sale. The adjudicator was persuaded by the lack of pre-sale checks, and the report of the independent inspector.

The adjudicator recommended that Moneybarn should cancel the agreement and amend Miss R's credit file to reflect this. It should also refund her deposit, along with 8% interest. The adjudicator did not recommend a refund of the monthly payments Miss R had made when she had possession of the car, as she had some use of it during this time.

Moneybarn is not prepared to accept the adjudicator's recommendation. It says, in summary, that Miss R would like to reject the car due to financial problems rather than as a result of problems with the car. She cancelled her direct debit payments to it. This means that she is in arrears. The car has been sold but there is an outstanding shortfall on her account.

Moneybarn points out that the inspection report showed that the brake pads were 50% worn which is acceptable. Further, the squealing noise from the brakes was possibly as a result of the dry and dusty weather. Moneybarn says that the inspector recommended that problems with the clutch and brakes needed further investigation, and it would have carried out any repairs that were necessary. In doing so, it could have mitigated its loss.

Moneybarn adds that Miss R's driving style could have caused the problem with the clutch.

my provisional findings

After considering all the evidence I issued a provisional decision on this complaint to Miss R and to Moneybarn on 30 September 2014. My findings were as follows:

Miss R took possession of the car in April 2013. It was four years old and had a mileage of 40,000. I acknowledged that there were some issues with the car following the purchase.

The car was inspected by an independent engineer in July 2013. He noted the following:

Paintwork problems

The engineer identified problems with the car's paintwork. These were repaired at no cost to Miss R. I considered that the dealership acted fair and reasonably in carrying out these repairs.

Tyres

The report showed that the tyre depths were above the legal limit. I noted that Miss R had driven the car for 2,105 miles before the car was inspected. Given that none of the tyres were below the legal limit after the car had been driven for this distance, I was not persuaded that the tyres were of an unacceptable quality when the car was sold to Miss R. I considered that worn tyres are wear and tear issues which could not be regarded as inherent defects with the car.

Clutch

The engineer's report concluded that the clutch was not slipping, and there was no failure of the clutch. It did however have a high biting point. This does not mean though that the clutch was faulty or broken. I considered this was down to wear and tear given that the car had a mileage of over 40,000. I was not persuaded that the clutch was so worn so that it was inherently defective at the time the car was sold to Miss R.

Brakes

The report noted a squealing from the front brakes. It recommended that this be investigated. The engineer suspected that the problem would be resolved by cleaning. I considered that it would have been reasonable to have allowed Moneybarn the opportunity to inspect the car to determine if the squealing could have been fixed by cleaning the brakes. I did not consider this minor issue showed that the car was inherently defective when it was sold to Miss R.

I noted that the inspector concluded that the faults identified were developing at the point of sale. I would however have expected some wear and tear in a four year old car which had been driven for 40,000 miles. I did not find that the fact the car had some wear and tear meant that there were inherent defects in the car when it was sold to Miss R. I therefore considered that the car was of satisfactory quality when it was supplied to her.

Financial difficulty

Miss R has suggested she can't afford the payments on the car. I noted that if she is in financial difficulty Moneybarn has an obligation to treat her positively and sympathetically. However, this is a two-way process. Miss R will need to provide information to Moneybarn to allow it to assess her financial situation, if she has not already done so. For the avoidance of doubt – and given my findings on her complaint – Miss R should understand that treating her positively and sympathetically would be unlikely to extend to cancelling the conditional-sale agreement outright, or unwinding the contract in any way.

I suggested that Miss R may wish to contact Moneybarn to discuss her obligations under the agreement, and see what options are available to her.

In light of the above provisional findings, I was minded not to uphold the complaint.

Miss R does not accept my provisional decision. She says, in summary, that the car had not been valeted when she collected it. Miss R had to pay for a valet at a cost of £55. She has asked Moneybarn to refund this but it has not done so.

Miss R says that the car was heavy to drive and the brakes squealed. The clutch felt like it was not biting. A tyre also exploded when she was driving it.

Miss R says that the amount of paintwork repair needed suggests the car had been involved in an accident before it was supplied to her. She adds that she was able to make the monthly contractual payments that were due.

Moneybarn has no comments on my provisional findings.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. The further representations that Miss R has made do not alter my opinion about what would be the fair outcome to this complaint.

Paintwork repairs

As I noted above, the issues with the paintwork to Miss R's car were repaired at no cost to her. As such I find that any problems in this respect were dealt with fairly and reasonably by Moneybarn. I note that Miss R says that the car had been involved in an accident. Given the age of the car however, I would expect that some cosmetic repair would be necessary. I do not consider that the extent of the paintwork repairs that were carried out indicated that the car had previously been involved in an accident.

Valet of car

Moneybarn says that it does not recall Miss R asking it to refund the cost of the valet she paid for. It has said that if she provides proof of this, it will credit her account with the sum she paid for the valet. I consider this to be reasonable.

Problems with car

I note that Miss R says that there was a problem with the clutch, tyres and brakes. As I have noted above, I find that the fact the clutch had a high biting point was due to wear and tear given the car was four years old and had a mileage of 40,000. I do not find that the problem with the clutch was due to an inherent defect which was present at the point of sale. A high biting point does not mean that the clutch was faulty or broken.

Further, the engineer's report recommended that the squealing from the brakes could likely have been resolved by cleaning. I consider that this minor repair does not mean that the brakes were inherently faulty when the car was supplied to Miss R.

As I have noted above, the tyres were still above the legal limit even after Miss R had driven it for over 2,000 miles. In light of this, I do not find that they were inherently faulty when they were supplied to Miss R. If this had been the case, I consider that she would not have been able to drive the car for this distance. I note that a tyre blew while Miss R was driving the car.

The tyre tread was however within the legal limit when the car was sold to her. I have not seen any evidence that the blow out was caused by a fault to the tyre. I appreciate that this incident would have been very distressing to Miss R. I do not however find that the blow out was caused by an inherent fault with the tyre.

my final decision

My decision is that I do not uphold this complaint. If however Miss R provides Moneybarn No 1 Limited with proof of the sum she paid for the valet of the car, it should credit her account with this sum.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss R to accept or reject my decision before 16 February 2015.

Rosemary Lloyd
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