

complaint

Mr R complains that a car he has been financing through an agreement with Moneybarn No.1 Limited ("Moneybarn") has been of unsatisfactory quality.

background

Mr R took receipt of a used car in April 2018. He financed the deal through a conditional sale agreement with Moneybarn. At the point of supply the car, which was first registered in 2009, had completed almost 101,000 miles.

Mr R experienced problems with the car almost immediately. He took the car back to the garage and they replaced two coil packs and four spark plugs. But the next day Mr R experienced similar problems.

He complained to Moneybarn and they arranged for an independent inspection of the vehicle. The inspector didn't think it was likely that the fault Mr R complained of would have been present or developing at the point of supply. He thought it was likely a misfire would have been apparent at that time if that were the case.

So Moneybarn rejected Mr R's complaint as they said there was no proof the car had been supplied in an unsatisfactory condition. But Mr R disagreed with their view and he therefore referred his complaint to this service.

Our investigator disagreed with the independent inspector. He thought there was evidence of a misfire at, or very close to, the point of supply as Mr R had taken the car back to the dealership the day after he took receipt of it. He noted that a subsequent repair at the main dealership to resolve the problem had identified that all coil packs; spark plugs and fuel injectors needed replacing and that it had also identified that there was a fault with the fuel system that meant the car would misfire when the fuel level dropped. He thought this was evidence that the repair completed early had not been successful.

So he considered what action Moneybarn should take to put things right. He noted that the fault had now been repaired so he didn't think it would be fair to tell Moneybarn to allow Mr R to reject the vehicle. But he did think they should refund the costs of the repair which were around £1,700 and he did think they should refund two monthly finance instalments as it was clear Mr R had been without the use of his car for some time. He also accepted that Mr R had been inconvenienced by this matter and in the circumstances he thought Moneybarn should pay him compensation of £150.

Moneybarn accepted the adjudicator's view but Mr R didn't. He said he should be allowed to reject the car and he said he'd had a few other subsequent problems with the car e.g. with an engine warning light. He said he was constantly concerned the car would breakdown again. So he asked for a final decision by an ombudsman.

my findings

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

I agree with the investigator's view. I know that will disappoint Mr R so please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr R acquired his car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then Moneybarn, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would likely include things like the age, mileage and price at the time the car was supplied to Mr R. The car here was around nine years old and had travelled over a hundred thousand miles so I think a reasonable person would expect some problems but I don't think they'd expect the car not to be driveable.

I take account of relevant law when deciding what is fair and reasonable. On this basis if I thought the car was faulty when supplied and this fault made the car not of satisfactory quality, I'd think it fair and reasonable to ask Moneybarn to put this right.

I'm persuaded that this car was not of satisfactory quality when it was supplied to Mr R because I think there's evidence of misfiring problems from an early stage that have clearly not been resolved by the dealership as the car broke down the day after it was supposedly repaired. A subsequent repair from a main dealership has identified similar problems and also identified a fuel system issue that I think would reasonably explain the problems Mr R had been experiencing.

I'm not persuaded by the report from the independent engineer. He has commented that there is no evidence the fault was there from inception but I don't think he could have taken into account that Mr R returned the vehicle to the dealership the day after he took receipt of it and that he was complaining of the very same problem the independent inspector said was probably not evident at the point of supply. I think, given the limited time there had been for a fault to develop, it's clearly more probable than not that the fault was there from the beginning.

The car has now been repaired and I've seen no independent evidence of the problems Mr R says still remain. In those circumstances I think the fairest solution is to tell Moneybarn to refund the cost of the repairs that Mr R had done to the fuel injectors; coil packs; spark plugs on 24 July 2018, as these are costs that Mr R should not have needed to pay. They should also add 8% simple interest per year to that cost as Mr R has been deprived of the money.

I also think it's clear Mr R has been without the vehicle for some time whilst repairs have been conducted and that his use of the car will have been affected by the problems he

experienced. I therefore agree that it would be appropriate to tell Moneybarn to refund two monthly instalments that Mr R has made towards his finance agreement.

It's clearly been a distressing experience for Mr R's been inconvenienced by matters so in the circumstances I would agree that Moneybarn should pay him £150 compensation.

my final decision

For the reasons I've given above I uphold this complaint and tell Moneybarn No.1 Limited to:

- refund the cost of the invoice Mr R paid to have the car repaired on 24 July 2018. Moneybarn should add 8% simple interest per annum from the date of payment to the date of settlement.
- pay Mr R £150 to compensate him for the distress and inconvenience he's experienced
- refund two monthly finance instalments and add 8% simple interest per annum from the date of payment to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 November 2019.

Phil McMahon
ombudsman