

## **complaint**

Mr S acquired a used car in mid October 2016, by means of a conditional sale agreement with Moneybarn No. 1 Limited. He complains that Moneybarn terminated his agreement in late January 2017. He wants Moneybarn to allow him to continue with his agreement, and to remove from his credit file any adverse information it has recorded about the agreement.

## **background**

Mr S's car was about three years old, and had travelled just over 20,000 miles, when he acquired it. He said:

- He started experiencing a significant mechanical problem with his car within days of acquiring it
- He reported this fault to the supplying dealership, and agreed that his car would be inspected in mid-November, and that another problem with worn out parts would be resolved by their replacement
- But the dealer ceased trading before the inspection date, and he then complained to Moneybarn

Moneybarn said Mr S arranged for the worn out parts to be replaced, and it refunded his expenditure. It also asked Mr S for the cost of repairing his car's mechanical problem, and for the mileage travelled by his car since the point of sale – the cost was just over £100, and the mileage travelled was about 5,400.

Moneybarn then wrote to Mr S in mid January 2017, saying:

- The mechanical problem was a wear and tear issue, and so not its responsibility – although, as the dealer had ceased trading, it would be willing as a goodwill gesture to meet the repair cost
- But Mr S was not making the monthly payments, as required under his agreement, and he was also not satisfying another requirement to insure his car
- A Default Notice had been sent to Mr S in late December 2016
- Mr S needed to meet the requirements of his agreement within the next four days – if he did so, it would then be able to consider meeting the repair cost

Mr S referred his complaint to us in early February 2017. Moneybarn provided evidence to us indicating:

- Mr S did not make payments due in early December 2016 and early January 2017
- Mr S contacted it in late January 2017, and was told that his agreement had been terminated because the requirements had not been met
- Mr S said he had not received its letter responding to his complaint
- Mr S contacted it again in late January 2017 – he told it the car had been fully repaired, and he also made one monthly payment

Mr S told us:

- The mechanical problem was evident as soon as he acquired his car – it was not a wear and tear issue
- There was a delay in contacting Moneybarn about this fault, because he initially tried to resolve the matter with the supplying dealership
- He withheld monthly payments because the car was faulty at the point of sale
- As the problem had been resolved, he wanted the agreement to continue

Our adjudicator did not think the complaint should be upheld. He said Mr S had breached the terms of his agreement, and so Moneybarn was entitled to terminate it. He was unable to conclude that Moneybarn had acted unreasonably or unfairly in these circumstances.

Mr S disagreed with our adjudicator, and asked for his complaint to be reviewed 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 find that I have come to the same conclusion as our adjudicator, for similar reasons.

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.

If Mr S had not breached his agreement:

- I would have agreed that Moneybarn was responsible for the costs of repairing his car's mechanical problem – because I have seen no evidence indicating this fault was absent when Mr S acquired his car
- Under the Consumer Rights Act 2015, if faults are discovered within six months of acquisition, the burden of proof rests with Moneybarn and the supplying dealership to show they were absent at the point of sale
- Although this does not really matter, as Moneybarn said it would have met the repair costs (albeit as a goodwill gesture)

But Mr S acknowledges that he withheld payments. And Moneybarn has evidenced that Mr S made no monthly payments at all, and he also did not insure his car. So I can safely conclude that Mr S breached his agreement.

The agreement's terms and conditions are clearly set out in a document signed by Mr S in October 2016. They entitle Moneybarn to end Mr S's breached agreement, to repossess and sell the car, and to receive immediate repayment of everything owed by him.

Like our adjudicator, I do not think Moneybarn has acted unreasonably or unfairly. And so it would be inappropriate to require Moneybarn either to continue this agreement, or to amend entries made on Mr S's credit file.

### **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 S to accept or reject my decision before 5 June 2017.

Roy Mawford  
**ombudsman**