

## **complaint**

Mr V has complained about a car he acquired using a finance agreement with Moneybarn No. 1 Limited. He's unhappy his car was fitted with software that affected the emissions it produced under certain conditions.

## **background**

Towards the end of 2015, Mr V found out his car had software installed that affected the emissions under test conditions.

Mr V was worried the car was now unsafe to drive, and that its value was lower.

Mr V also felt misled, as he didn't know that this software was installed in his car. He said if he'd been told, he'd never have entered into the finance agreement. He felt he should be compensated.

Moneybarn confirmed Mr V's car was affected and apologised for this. It told him his car was still safe to drive, and its performance hadn't suffered, but a service action would be required to remedy the issue. Moneybarn also said that as long as Mr V kept evidence it had been completed, his car's resale value wouldn't be impacted negatively.

Mr V explained he still felt misled, and thought the car would now be more expensive to maintain. He was also unhappy with the inconvenience of having to have the service action carried out. So he brought his complaint to this service.

Our adjudicator looked into the complaint, and told Mr V that she thought the proposed resolution - the service action - was reasonable. She didn't think the car had been misrepresented or that Mr V had lost out as a result of the software issue.

The service action has now been successfully completed on Mr V's car. But he still feels he was misled, and doesn't like the idea of driving an affected car.

The complaint's now been passed to me to make a final decision.

## **my findings**

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

Mr V acquired the car through a conditional sale agreement with Moneybarn No.1 Ltd. Under certain circumstances, Moneybarn can be held as responsible as the supplier of the car if there are issues with its quality, or if Mr V felt he was given incorrect information that led to him entering into the finance agreement.

### *information given to Mr V before he decided to buy the car*

I understand Mr V's strength of feeling about his complaint. But in order for me to be persuaded there was a misrepresentation, I'd need to be satisfied that Mr V was told something false, and that he relied on that information when deciding whether to enter into the finance agreement.

Mr V hasn't said the car's emissions were specifically discussed when he was deciding whether to buy it. So I can't find there was a misrepresentation about this that he relied on, and which induced him into entering into the agreement.

Mr V has also said that had he known about the software, it would have stopped him entering into the agreement. This is because he would have been concerned about the impact on the car's performance and higher running costs.

But in this case, the car's performance would only have been impacted during test conditions. The everyday performance of the car, and the costs associated with running it, haven't suffered as a result of this software.

The fact that Mr V has confirmed he's been able to use the car, and it's appeared to be working as it should've done whilst he's had it, lends further weight to this. I'm also satisfied that there's been no impact on performance since the update, which I hope gives Mr V some comfort, as I can understand his concerns.

As I don't believe the car was misrepresented to Mr V, I'm not upholding this part of his complaint.

#### *impact on value*

Cars generally depreciate in value the older they get, and the more they're used. There are various factors that affect how much a car's value drops. And I'd need to be satisfied that the presence of the software had a direct impact on Mr V's car. I've seen nothing to suggest that's the case.

I've also noted Mr V's comments that he believes he's paid the value of the car already, and thinks it's unfair he's tied into making further payments up to the overall amount of the agreement, for an affected car.

I should point out however that amount repayable under the agreement isn't just the car's value. It also factors in other amounts – in particular, interest. The service action has been carried out, and I've not seen anything to show the car's worth less than if there hadn't been an issue with the software. So I don't see there should be any discount to reduce the amount payable under the agreement.

#### *inconvenience*

I know Mr V was concerned about having additional inconvenience in order to have the software update completed. The proposed resolution was updating the software during a service or a routine trip to the garage, so it wouldn't have caused any additional inconvenience. But in any event, Mr V's car has now had the service update completed, and he hasn't reported any issues or particular inconvenience resulting from this. I'm therefore satisfied it was implemented successfully and with minimal trouble.

*conclusion*

So having carefully considered everything that's been presented here, I'm not going to uphold Mr V's complaint. I appreciate that, as he's said, Mr V doesn't like the idea of having a car that's been affected by this issue. But I'm not persuaded the car was misrepresented to Mr V, or that there's been any negative impact caused by the software or the service update. So I won't be instructing Moneybarn to make an award to Mr V.

**my final decision**

For the reasons given above, it's my final decision not to uphold this complaint. I make no award against Moneybarn No. 1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 19 January 2017.

Elsbeth Wood  
**ombudsman**