

complaint

Miss B complains that a car that was supplied to her under a conditional sale agreement with Moneybarn No. 1 Limited wasn't of satisfactory quality. And she complains that it won't contribute towards the repair costs.

background

A used car was supplied to Miss B under a conditional sale agreement with Moneybarn in April 2014. Less than three weeks later the car needed repairs which included an engine rebuild. Miss B took the car to the manufacturer in November 2015 for a recall upgrade and it was found that a new engine was required due to the condition of previous repairs. The manufacturer offered to pay 50% of the repair cost, the dealer offered to pay 25% and Miss B asked Moneybarn to pay the remaining 25%. It didn't agree to pay it due to the time that had passed since the initial repair was completed. And it said that Miss B wouldn't have been able to drive 9,000 miles since the repair if the repair hadn't been satisfactory. Miss B wasn't satisfied with Moneybarn's response so complained to this service.

The adjudicator recommended that this complaint should be upheld. The manufacturer had said:

"The pictures indicate prior repair to the engine (machining/honing) causing substantial and unnatural bore score to the pistons. The images can also confirm that the vehicle has been fitted with a non-genuine timing chain, damaged/broken bolts, evidence of sealant on the gasket and efforts of poor sealing at the back of the cylinder head and around the oil sump."

So he concluded that the initial repairs weren't of a satisfactory quality. As the car wasn't of satisfactory quality when supplied and that the attempt to repair it wasn't of satisfactory quality, he concluded that Miss B should be entitled to reject the car and cancel the finance agreement. He recommended that Moneybarn should refund her deposit and one month's payment under the agreement for the time she had spent dealing with the faults and any loss of enjoyment and that it should pay her £150 compensation. But Miss B hadn't made all of the payments under the agreement so the adjudicator said that Moneybarn was entitled to deduct the outstanding amount from the settlement. He also said that Moneybarn should remove any reference to the account from Miss B's credit file.

Moneybarn has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- it doesn't dispute that the car wasn't of satisfactory quality at the point of supply – but the engine was rebuilt and Miss B raised no issue with the repairs and has driven the car for a further 9,000 miles;
- it's a used car which is more than seven years old and has driven over 10,000 miles since the point of supply so the engine rebuild must've been of satisfactory quality; and
- the car's MOT expired in October 2015 - two months before the current problem was reported to it - and the car would've been due a service: so the problems that Miss B's now experiencing may have been apparent had the car been serviced (and her failure to do so could've exacerbated the issues and caused the engine failure).

my findings

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

Moneybarn accepts that the car wasn't of satisfactory quality when it was supplied to Miss B in April 2014. So the car was repaired in May 2015 – which included an engine rebuild. The car was due a manufacturer's recall upgrade in November 2015. At that time the manufacturer noted some problems with the earlier engine rebuild as set out above. The estimated repair cost was over £10,000 and it offered to pay 50% of that amount. The dealer offered to pay 25% but Moneybarn refused to pay the balance – so the engine wasn't repaired and the car was returned to Miss B.

The manufacturer's report clearly says that the prior repair to the engine has caused substantial and unnatural bore score to the pistons. So I find it to be more likely than not that the May 2014 repair wasn't performed to a satisfactory standard. I'm not persuaded that there's enough evidence to show that the faults with the engine have been caused by any failure by Miss B to MOT or service the car. As the car wasn't of satisfactory quality when it was supplied to Miss B in April 2014 and the repair in May 2014 wasn't performed to a satisfactory standard - I find that it's fair and reasonable for Miss B to reject the car in these circumstances (even though she was able to use it between May 2014 and November 2015 and has driven more than 9,000 miles). I find that Moneybarn should also refund the deposit to Miss B.

These events will have caused Miss B trouble and upset – so I find that Moneybarn should refund to her one month's payment under the agreement and that it should also pay her £150 compensation. But I understand that Miss B hasn't made all of the payments to Moneybarn that are due under the agreement – so it would be fair and reasonable for it to deduct the outstanding amount from the payments that I am ordering it to make to Miss B. I also find that it should remove any reference to the agreement from Miss B's credit file.

my final decision

For these reasons, my decision is that I uphold Miss B's complaint. In full and final settlement of it, I order Moneybarn No. 1 Limited to:

1. Collect the car from Miss B and to cancel the conditional sale agreement – both at no cost to her.
2. Refund to Miss B the deposit that she paid for the car.
3. Refund to Miss B one month's payment under the agreement.
4. Pay £150 compensation to Miss B.
5. Remove any information about the conditional sale agreement from Miss B's credit file.

Moneybarn can deduct from the above amounts any payments that are owed to it by Miss B under the conditional sale agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 16 June 2016.

Jarrold Hastings
ombudsman