

complaint

Miss W complains that the car she acquired through a conditional sale agreement with Moneybarn No. 1 Limited had a fault. She wants the repairs paid for by Moneybarn.

background

Miss W entered into a conditional sale agreement with Moneybarn in October 2017. She had the air-conditioning unit re-gassed in April 2018 and complained that this was leaking in June 2018.

Moneybarn says that Miss W reported the issue more than six months after acquisition. It says the dealer said it was unwilling to get involved in repairs due to the eight months that had past since the car was provided. The dealer also said that the car was fit for purpose at the point of supply. It noted that Miss W had covered over 10,000 miles since acquiring the car.

Moneybarn says that it is up to Miss W to show that the car was not of satisfactory quality at the point of supply.

Our investigator understood that Miss W didn't raise the issue with the air-conditioning within six months of acquisition. But said it was reasonable to accept that she had not used the air-conditioning from acquisition until April 2018 and so it was only at that point that she would have been reasonably aware of any issues. He noted that Miss W paid for the air-conditioning to be re-gassed when she first wanted to use it and at this point realised there was a fault. Based on this he recommended that Moneybarn pay for the repairs required to get the air-conditioning system working and refund Miss W 10% of her monthly instalments from April 2018 to September 2018.

Moneybarn did not accept our investigator's view. It noted that air-conditioning is a wear and tear item and reiterated that Miss W had not provided evidence to say there was a fault present at the point of supply. It noted the recommendations regarding air-conditioning systems. These said that they needed to be maintained and recommended among other things that they should be run at least once a week throughout the year. The recommendations were also for air-conditioning units to be serviced every 30,000 miles or two years.

Moneybarn further said that Miss W was unwilling to get a diagnostics report carried out to enable a full investigation and assessment as to whether the issue was inherent at the point of supply.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. My role is to consider the individual merits of each case. I take relevant regulations into account but my decision is based on what I consider fair and reasonable given the circumstances of each complaint.

Miss W acquired a used car through a conditional sale agreement with Moneybarn. Under the regulations, Moneybarn can be held liable if the car provided was not of satisfactory quality at the point of supply.

Miss W contacted Moneybarn on 1 June 2018 saying that she had noticed the air-conditioning unit was leaking after she had it re-gassed in April. Miss W's agreement is dated 4 October 2017 and so she raised her concerns with Moneybarn around eight months after acquisition.

Moneybarn has referred to the Consumer rights Act 2015 (CRA 2015) and said that as the issue was raised more than six months after acquisition it was up to Miss W to show that there was fault with the car that was present from the point of supply.

I accept that it is often the case that after six months the customer is required to show the faults were present from the point of supply. However considering the circumstances of this case I find it reasonable to accept that Miss W would have only been aware of any issue from the point she re-gassed the air-conditioning in April 2018. I say this because it is unlikely she would have wanted to use the air-conditioning between acquisition and April 2018.

Miss W had the air-conditioning re-gassed on 18 April and reported the leak to Moneybarn on 1 June after having already discussed this with the dealer. This shows that as soon as she was aware of the issue she made contact with the relevant parties.

Miss W has provided information from the garage that confirms the air-conditioning was re-gassed on 18 April 2018 and the following morning the car was returned due to the air-conditioning not working as it should. On further inspection a leak was detected at the rear of the engine from one of the pipes. So while I accept that full diagnostics have not been undertaken, Miss W has provided evidence of a leak being identified following an inspection of the car.

I note the comments made about air-conditioning being a wear and tear item. However the fault that has been identified is a leak from one of the pipes, and this was identified on the first use of the air-conditioning. As the air-conditioning had not been used by Miss W until this time I do not think it fair to say the issue was due to reasonable wear and tear while in her use. I find it more likely than not that the issue is due to a fault that was present or developing at the point of supply.

On balance while I have taken into account the comments made by Moneybarn, in this case I find the fair resolution is for Moneybarn to pay for the repairs required to the air conditioning system.

This issue was not addressed when it was first raised and so Miss W was without use of the air-conditioning throughout the summer months. This would have reduced her enjoyment of the car and so I find it reasonable that she is refunded 10% of her monthly rentals from April 2018 to September 2018.

my final decision

My final decision is that I uphold this complaint. Moneybarn No. 1 Limited should:

1. pay for the repairs required to get the air-conditioning system in a satisfactory condition (estimates for the work should be provided in advance); and
2. refund Miss W 10% of her monthly instalments for the period April 2018 to September 2018 due to the loss of use of the air-conditioning system.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 26 March 2019.

Jane Archer
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