

complaint

Mr B complains that a car that was supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited wasn't of satisfactory quality.

background

A used car was supplied to Mr B under a conditional sale agreement with Moneybarn that he electronically signed in November 2017. He complained to Moneybarn in January 2018 that the engine management warning light was on. It arranged for the car to be inspected by an independent expert and said that he could reject the car. But Mr B said that he wanted the car to be repaired by a manufacturer approved garage. That didn't happen so he complained to this service.

The investigator recommended that this complaint should be upheld. He felt that rejecting the car would still be the fairest outcome as he'd not seen any evidence that the faults were repaired and that the car had since developed new faults. And he said that Mr B had now bought another car. So he recommended that Moneybarn should collect the car, cancel the agreement, refund Mr B's hire car costs of £288.64 and reimburse him for the £160 cost of the diagnostic test.

Moneybarn has asked for this complaint to be considered by an ombudsman. It says, in summary, that Mr B told the dealer that he'd paid for the car to be repaired and that it has no evidence to suggest that there remain any issues with the car so it doesn't consider a rejection to be an appropriate resolution. It says that Mr B was in possession of the car from November 2017 to July 2019 - when he voluntarily terminated the agreement - but that the last payment received from him was in May 2018. It says that the car passed MOT tests in August 2018 and 2019 but that there was extensive damage to the car when it was returned in July 2019 and it's applied a charge of £589.89 to his account for that damage. And it says that the outstanding balance on his account is £4,668.24.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr B and to Moneybarn on 22 November 2019. In my provisional decision I said as follows:

"Moneybarn, as the supplier of the car, was responsible for ensuring that the car was of satisfactory quality. That will depend on a number of factors, including the age, and mileage of the car and the price that was paid for it. The car that was supplied to Mr B was about eight years old, had been driven for more than 60,000 miles and had a price of £5,990. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

Mr B complained about the car's engine management warning light being on soon after the car was supplied to him. Moneybarn arranged for the car to be inspected by an independent expert in March 2018. The inspection report concluded:

"After inspection and road test of the above vehicle we would confirm that the engine did misfire from cold, the handbrake has excess travel and is inefficient and a noise was noted from the nearside front suspension, all of

which would warrant investigation. The "door open" warning light also flashed on several occasions, which again would warrant investigation".

Moneybarn said that Mr B could return the car because of those faults but he said that he wanted the car to be repaired by a manufacturer approved garage. He says that the car broke-down in May 2018 and had to be recovered to a garage and that he paid £160 for diagnostic testing. Mr B says that he stopped using the car then and Moneybarn says that it's received no payments under the agreement from Mr B since then.

Mr B says that he arranged for the car to be repaired in October 2018 but said in November 2018 that the car was losing power constantly with traction control on. He says that he paid £240 for the repair but he's not been able to provide any receipts or other detailed evidence about the repairs that were undertaken or about the further faults with the car. And he says that he's incurred taxi and car hire costs of £640 because he was unable to use the car. He's provided evidence to show that he incurred some of those costs – but he hasn't provided enough evidence to persuade me that it would be fair or reasonable in these circumstances for me to require Moneybarn to refund those repair or car hire costs to him.

The car passed an MOT test in August 2018 when its mileage was recorded as being 65,135 miles. Moneybarn says that Mr B voluntarily terminated the agreement in July 2019 and returned the car when its mileage was 70,478 miles. The car passed an MOT in August 2019 when its mileage was recorded as 70,538.

Moneybarn says that there was extensive damage to the car when it was returned by Mr B in July 2019 – and it's applied a charge of £589.89 to his account for that damage. And it says that the outstanding balance on his account is £4,668.24.

I'm not persuaded that there's enough evidence to show that Moneybarn has acted unfairly or unreasonably in these circumstances. There was a fault with the car and Moneybarn said that Mr B could return the car. But he said that he wanted it to be repaired. Mr B has had the car repaired and has used it to drive about 10,000 miles(including more than 5,000 miles between August 2018 and July 2019) but hasn't made any payments under the agreement since May 2018. The car passed MOT tests in August 2018 and 2019 so must've been in a roadworthy condition at those times – and the August 2018 MOT test was about five months after the date of the independent inspection.

Mr B voluntarily terminated the conditional sale agreement in July 2019 but the inspection report shows that there was considerable damage to the car. So I consider that it's fair and reasonable for Moneybarn to seek repayment from Mr B of the outstanding balance on his account (to the extent that it's legally entitled to do so). But I find that it would be fair and reasonable for it to reduce that balance by the £160 that he paid for the diagnostic report".

So subject to any further representations by Mr B or Moneybarn, my provisional decision was that I was minded to uphold this complaint in part.

Moneybarn has accepted my provisional decision and Mr B says that there's a lot of inaccurate information about the complaint – but he's not going to bother contesting it. He says that he hasn't driven the car for over 10,000 miles and the mileage data when he got

the car didn't match up with what was stamped in the service book. He says that the car's faulty, it's been out of his possession for weeks at a time and it's not fair that he has to pay all that money and walk away with no car.

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 B says that he hasn't driven the car for over 10,000 miles. I said that he'd used it to drive *"about 10,000 miles (including more than 5,000 miles between August 2018 and July 2019)"*. The conditional sale agreement shows that the car's mileage when it was supplied to Mr B in November 2017 was 60,883 miles (and he electronically signed the agreement to say that he wanted to be legally bound by it). And Moneybarn says that the car's mileage when it was returned in July 2019 was 70,478 miles. That's 9,595 miles more than the mileage shown on the agreement and I consider that it's reasonable to round that up to *"about 10,000 miles"*. Mr B hasn't complained to this service about an issue with the car's mileage before now and the mileage shown on the agreement is consistent with the mileage shown on the MOT test data for the car.

I can understand Mr B's frustration about the faults with the car and that he has to pay a lot of money for a car that he's now returned. But he used the car to drive about 10,000 miles between November 2017 and July 2019 but he stopped making payments for the car in May 2018 and he returned the car to Moneybarn with extensive damage. So I'm not persuaded that that I should change my provisional decision.

my decision

For the reasons set out above, my decision is that I uphold Mr B's complaint in part. And I order Moneybarn No. 1 Limited to reduce the outstanding balance on Mr B's account by £160.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 January 2020.

Jarrold Hastings
ombudsman