

complaint

Mr T complains that Moneybarn No 1 Ltd supplied a used car under a conditional sale agreement that wasn't as described or of satisfactory quality.

background

Mr T got this car in June 2016. He had a number of problems and took it back to the dealer who couldn't find a fault. Mr T had the car looked at by another garage. It said there was a problem with the water pump and the car has a 1.4 litre engine. Mr T understood the car had a two litre engine when he agreed to the finance. He has also found out the car had an MOT a few months before he got it and the mileage recorded then is more than the mileage set out in his finance agreement. He wants Moneybarn to give him a refund.

Moneybarn says an independent expert looked at the car and he's satisfied it's a 2.0 litre engine. And this is supported by information held on the HPI database, at the DVLA and on the car's registration document. It accepts the expert found the water pump was faulty. But he says that's a wear and tear item and the car was likely of satisfactory quality at the point of supply - given the mileage travelled since then.

Our investigator thinks the car was probably of satisfactory quality when Mr T got it. He accepts the finance agreement says the car had 84,000 miles on the clock, which is less than the mileage recorded at the MOT five months before. But he thinks the mileage on the agreement is likely to have been an estimate or a mistake. And Mr T would probably have raised the issue much sooner if the mileage on the odometer wasn't what he was expecting. Our investigator is satisfied the car probably has a 2.0 litre engine and he doesn't recommend the complaint should be upheld.

Mr T disagrees. He accepts the DVLA records say the car has a 2.0 litre engine. But he's had an independent diagnostics report done that says it's a 1.4 litre engine. Mr T says this means the records don't match up with the engine that's in the car and it wasn't sold "as described".

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'm sorry to disappoint Mr T but I have reached much the same conclusions as our investigator for much the same reasons.

I should explain at the outset this service offers informal dispute resolution. And where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr T acquired this car with finance provided by Moneybarn. So legislation says Moneybarn was required to ensure the car was of satisfactory quality when Mr T got it. The level of quality that's considered satisfactory will depend on a number of factors including the car's age, mileage covered and the price paid. I wouldn't expect a used car to meet the same standard of quality as a new one. And I think a reasonable person would accept that parts might need to be repaired or replaced.

This car was seven years old when Mr T got it. The cash price was £7,000 and it looks as if it had at least 84,000 miles on the clock. There's some question over the actual mileage at the point of supply. This is because the finance agreement mentions 84,000 miles but 85,000 had been recorded when the car went in for MOT five months before that. The business says this is probably due to an administrative error on the paperwork.

I can't be sure what the actual mileage was on the day Mr T collected this car in these circumstances. But, I think Mr T would probably have noticed fairly soon after he got it if the mileage recorded on the odometer was significantly different to the mileage he was expecting to see. Mr T doesn't seem to have mentioned the mileage until several months later. And, on balance, I'm not persuaded I can fairly find that the car was mis-sold or mis-described because the mileage figure in the finance agreement wasn't accurate.

I accept Mr T complained about the car a few months after he got it – it was noisy and he had problems with the oil and water. The Consumer Rights Act 2015 says faults that appear within six months are deemed to have been present at the point of supply unless there's evidence to the contrary. So Moneybarn instructed an independent expert to inspect the car.

I have considered the expert's report carefully. The expert acknowledges the water pump failed but he thinks it's unlikely to have been faulty when Mr T got the car - given the distance he was able to drive before there was a problem. It looks as if Mr T was able to drive this car several thousand miles before he began to have trouble. And, on balance, I'm not persuaded I can safely find the water pump was faulty when Mr T got the car - or reasonably conclude that this car was of unsatisfactory quality at the point of supply.

Mr T says the salesman told him the car had a 2.0 litre engine before he bought it. He believes the engine is in fact much smaller and he has a diagnostics report from a third party garage that says the engine is a 1.4 litre. I've considered that report and I note the service book and a label from the car's chassis also say the car has a 1.4 litre engine. Moneybarn thinks the confusion may have arisen because the model was originally a 1.4 and the engine was replaced at some stage with a 2.0 litre one - and official DVLA records confirm that.

On the evidence I've seen, it's impossible for me to be certain what size the engine is. I have to weigh up the fact that some of the car's original documentation and the diagnostics report say it's got a 1.4 litre engine – but DVLA records, the HPI database and the expert who inspected the car all say it's a 2.0 litre engine.

I think driving a car with a 1.4 litre engine probably feels different to one with a 2.0 litre engine. I've asked Mr T about that and he says it's not as different as you might think because of the turbo. Mr T also confirmed that he took the car for a test drive before he accepted it. I think Mr T must have been happy with that driving experience or he wouldn't have agreed to take out the finance. I would have expected Mr T to complain about the engine size very soon after he got the car - if it wasn't as powerful as he was expecting. And I note Mr T doesn't seem to have mentioned the engine size until he'd had the car for several months.

Overall I'm not persuaded, on balance, that there's enough evidence here for me to reasonably conclude that this car was mis-sold, mis-described or of unsatisfactory quality at the point of supply. So, I don't think it would be fair or reasonable for me to require Moneybarn to provide a refund or do anything further in response to this complaint.

I realise this isn't the outcome Mr T wanted and I'm sorry if he's disappointed. But Mr T doesn't have to accept what I've said, in which case it remains open to him to pursue the matter by any other means that may be available. '

my final decision

My decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 July 2017.

Claire Jackson
ombudsman