

complaint

Mr F complains that a car he obtained with finance from Moneybarn Limited was not as described.

background

In July 2015 Mr F signed a conditional sale agreement to purchase the car with finance from Moneybarn. It was about four years old. The following day he discussed with Moneybarn the possibility of withdrawing from the agreement, but in the end did not do so and the car was delivered to him by another company. He had not seen the car until then as it came from a dealer some distance away. Shortly after the car was delivered Mr F complained to Moneybarn that it was not as described. He says a rear window was scratched, the car smelled of smoke, there were cigarette burns on seats and a mat, and the bodywork had “dings” and scratches. Moneybarn said the dealer was prepared to repair it but wanted Mr F to take it back to it for that purpose. It also said that, if the dealer agreed, it would unwind the agreement. However it said the issues described were cosmetic and did not make the car of unsatisfactory quality.

Our adjudicator did not recommend that the complaint was upheld. He said that Mr F had relied on the delivery company to identify any issues, therefore any not raised at the time were accepted. The company had produced an inspection report and the issues weren't mentioned. He said that the dealer had asked Mr F to bring the car back to it, so it could inspect the problems. That offer stood and the adjudicator thought it was reasonable.

Mr F disagreed. He emphasised that his complaint was that he would not have bought the car if the dealer had not misrepresented it. He had made it clear to all before he received the car that he did not want it. Moneybarn had been happy to unwind the deal but the dealer had refused. As the agreement had been signed and the dealership had received their money the car had to be collected regardless. He had not known about the burn marks until the delivery driver pointed them out: and the driver had only seen them after he got the keys. The interior had not been the driver's concern, only the exterior and he had reported two dents. Mr F felt he was being wrongly accused of having caused the marks. He said he had asked the salesman if there were any marks other than two visible on the photo. He should have been told about the other damage, and the car should have been valeted as promised.

my provisional findings

After considering all the evidence I issued a provisional decision to both parties on 22 December 2015. I summarise my findings.

Mr F arranged to buy the car from a dealer some distance away, and the day afterwards wished to withdraw from the deal. He had a right, under the terms of the credit agreement, to withdraw from it within 14 days. Moneybarn accepted that but, having spoken to the dealer, told him that the dealer was unwilling to unwind his contract with it. When he rang Moneybarn again it said an unwind was not an option.

That advice was incorrect. Generally, even though the credit agreement gave Mr F a right to withdraw from it within 14 days, he would still be committed to buying the car from the dealer. However Mr F did not go to the dealer's to buy the car: his contract with the dealer was a distance selling contract. So under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, he also had a right to withdraw from the contract

with the dealer within 14 days. Unwinding the whole arrangement (both with the dealer and with Moneybarn) was possible: and Moneybarn was wrong to tell Mr F that it was not an option.

If Moneybarn had not misadvised Mr F in that way, it is clear that he would have opted to unwind the whole deal and not gone ahead with getting the car delivered. The issues he is raising now about the description of the car would not have arisen.

If Mr F would still like to unwind the deal and return the car to Moneybarn, I thought Moneybarn should ensure he could do so. Moneybarn should then arrange to collect the car at no cost to him, refund to him the advance payment of £400, the cost of the delivery and the cost of any work to the car he had paid for. Mr F had had use of the car for several months, so should still be liable for payments under the agreement until the car was collected. He should also be paid £200 for the inconvenience, trouble and upset of the situation.

However Mr F might now prefer to keep the car. I had not so far been able to obtain a copy of the advertisement for the car, to see how it was described in that and whether anything was said in that about a valet being done. I had seen photos of the exterior of the car, which generally appeared to be in a reasonable condition for a car of its age. The sheet completed by the delivery driver noted a mark on the front bodywork, a few marks on the seats, and a chip on the front screen. All other items were described as OK.

While I had not seen anything to make me think the car was in a particularly poor condition for its age, it was clear that Mr F would not have bought it if he had known about all the marks it did have, and that he expected it to have been valeted. Mr F had sought £410 to put right the various marks plus the cost of a full valet. In the circumstances I did not think it would be right at this stage to expect Mr F to arrange to return the car to the dealer, miles away, for inspection and repair as had been suggested previously. I thought it would be fair and reasonable for Moneybarn to pay Mr F £500 towards work on the car and valeting and an additional £200 for the trouble, upset and inconvenience.

So subject to any further comments or evidence from either party, my provisional decision was to uphold the complaint. Depending on whether or not Mr F now wished to keep the car I intended to order Moneybarn Limited either:

If Mr F wished to return the car:

- to collect the car at no cost to Mr F; and
- to refund to him with interest at 8% per year from date of payment to date of settlement;
 - o the advance payment of £400; and
 - o the £210 cost of the original delivery to Mr F; and
 - o the cost (supported by receipts or invoices) of any work Mr F has had done to the car.
- to expect Mr F only to make payments under the agreement covering the period until the car was collected and then to cancel it; and
- to pay Mr F £200 for the inconvenience, trouble and upset of the situation.

If Mr F wished to keep the car

- pay him £500 towards work on the car and valeting; and

- pay another £200 for the inconvenience, trouble and upset of the situation.

Moneybarn disagreed. It simply repeated a view (which it had previously given before my provisional decision) that the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, did not apply to conditional sale agreements.

In response to my provisional decision Mr F said that he no longer wished to keep the car, so wanted the agreement to be unwound and relevant payments made. Mr F reiterated his view that the dealer had misrepresented the car to him. He provided some additional documents and emails and photographs he said he had taken on the day the car was delivered and a sales contract annotated by hand saying "Full sales Service + 12 Months MOT + Full Valet". He asked what action could be taken, particularly about the dealer, but also the credit broker involved. He felt the dealer should be penalised.

my findings

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

Although I have considered carefully the comments of both parties, those have not significantly changed my view. Whether or not the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 apply to credit agreements is not a crucial issue in this case. Moneybarn has never disputed that the explicit terms of this particular credit agreement allowed Mr F to withdraw from it within 14 days. My point was, and still is, that the Regulations applied to Mr F's contract with *the dealer*, and Moneybarn wrongly led Mr F to believe that he could not withdraw from that contract.

Mr F has now provided more evidence about the state of the car and what was agreed when he agreed to take it. But (particularly when he wants to return the car) that doesn't affect my decision, which is based more on the incorrect information Moneybarn gave him, than the details of the issues he raised about the car.

I appreciate that Mr F is very concerned about the dealer's actions and would like to see the dealer penalised. But my decision is on a complaint about Moneybarn not the dealer (or the credit broker). And it is not the role of this service to impose punishments, but to settle disputes in a fair and reasonable way. I think the settlement I am proposing will settle the dispute between Mr F and Moneybarn in that way.

my final decision

My final decision is that I uphold this complaint. In full and final settlement I order Moneybarn Limited to:

- arrange to collect the car at no cost to Mr F; and
- refund to him with interest at 8% per year from date of payment to date of settlement;
 - o the advance payment of £400;
 - o the £210 cost of the original delivery to Mr F; and
 - o the cost (supported by receipts or invoices) of any work Mr F has had done to the car.
- expect Mr F only to make payments under the agreement covering the period until the car is collected and then to cancel it; and
- pay Mr F £200 for the inconvenience, trouble and upset of the situation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 March 2016.

Hilary Bainbridge
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