

complaint

Mr M 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 M under a conditional sale agreement with Moneybarn that he electronically signed in November 2017. The car was about six and a half years old and its mileage was about 117,000. Within a few weeks there was a fault with the car's diesel particulate filter and Mr M arranged for the car to be repaired in January 2018. But the fault recurred and further repairs took place in March and April 2018. Mr M then complained to Moneybarn. The car was inspected by an independent expert in June 2018 and Mr M complained to this service later that month. He voluntarily surrendered the car in July 2018 and he entered into a hire purchase agreement with a third party under which a replacement car was supplied to him.

The investigator recommended that this complaint should be upheld. She didn't think that it was reasonable for the car to have the fault with the diesel particulate filter so soon after the car had been supplied to Mr M. And she recommended that Moneybarn should:

- treat the voluntary surrender of the car as if it had been rejected;
- refund Mr M's deposit with 8% interest;
- remove any adverse information from Mr M's credit file;
- refund one monthly instalment to reflect the times at which Mr M has been unable to use the car;
- pay compensation of £200 for the trouble and upset experienced;
- arrange to refund the cost of the regenerations/cleans with interest; and
- refund the outstanding loan amount added to his new finance agreement which is £5,575.42 (and she said that it ought to be paid either to Mr M or directly to his new finance provider with interest of 6.25% from the date of his new agreement until the refund is made).

Moneybarn has asked for this complaint to be considered by an ombudsman. It says that the diesel particulate filter was reaching the end of its serviceable life at the time of sale and, as the car had covered 117,000 miles at that time, it's not unexpected for there to be a number of items nearing the end of their life and requiring replacement.

my findings

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

The car was supplied to Mr M in November 2017. It was about six and a half years old and its mileage was recorded as 117,000. There was an issue with the car within the first few weeks. The car was repaired in January 2018 when its mileage was recorded as 117,456. But the faults continued and further work was required in March and April 2018. Mr M says that the diesel particulate filter was cleaned or regenerated twelve times (three of which were under warranty).

Mr M then complained to Moneybarn about the issues with the car. It arranged for the car to be inspected by an independent expert in June 2018. The expert's report records the car's mileage as 120,461 and says:

“...[the] DPF filter is probably been in an advanced state of contamination at the point of sale and the current owners driving style is not subjecting the DPF filter to a regular regeneration...”.

Mr M then complained to this service. But he says that he couldn't rely on the car and he needed a replacement – so he voluntarily surrendered it and a replacement was supplied to him under a hire purchase agreement with a third party in July 2018. That agreement included the £5,575.42 that was needed to settle Mr M's agreement with Moneybarn.

The independent expert says that the car's diesel particulate filter was probably in an advanced state of contamination when the car was supplied to Mr M. He first experienced issues with the car within a few weeks and after he'd driven it for less than 500 miles. The diesel particulate filter has required regular cleaning and regeneration since then. And I consider it to be more likely than not that the car wasn't of satisfactory quality when it was supplied to Mr M because of the issues with its diesel particulate filter.

So I find that it would be fair and reasonable for Moneybarn to treat the car as if it was rejected (rather than voluntarily surrendered) in July 2018. And I find that Moneybarn should refund Mr M's deposit (with interest).

Mr M wasn't able to use the car all of the time that he was paying for it – so I consider that Moneybarn should refund one monthly payment under the agreement to Mr M (with interest from when the faults started) to compensate him for the times that he wasn't able to use the car. Mr M has provided receipts to show that he's paid a total of £900 for the diesel particulate filter to be cleaned or regenerated. I find that Moneybarn should reimburse him for those amounts (with interest).

These events have clearly caused considerable distress and inconvenience for Mr M. And I find that Moneybarn should pay him £200 to compensate him for that distress and inconvenience. Moneybarn should also ensure that no adverse information about the hire purchase agreement is recorded on Mr M's credit file.

I also consider that Moneybarn should refund to Mr M the £5,575.42 that was paid to settle his credit agreement and that it should pay interest on that amount from the date of his new hire purchase agreement to the date of settlement at the interest rate set out in that agreement.

I consider all of that to be fair and reasonable in the circumstances.

my final decision

For these reasons, my decision is that I uphold Mr M's complaint. And I order Moneybarn No. 1 Limited to:

1. Treat Mr M's conditional sale agreement as if the car had been rejected (rather than voluntarily surrendered).
2. Refund to Mr M the deposit that he paid for the car.
3. Refund to Mr M one monthly payment under the agreement to compensate him for the times that he was unable to use the car.

4. Pay £900 to Mr M to reimburse him for the costs of having the diesel particulate filter cleaned and regenerated.
5. Pay £200 to Mr M to compensate him for the distress and inconvenience that he's been caused.
6. Ensure that no adverse information about the conditional sale agreement is recorded on Mr M's credit file.
7. Refund to Mr M the £5,575.42 that was paid to settle the conditional sale agreement (and it should pay interest on that amount from the date of his new hire purchase agreement to the date of settlement at the interest rate set out in his new agreement).
8. Pay interest on the amounts at 2, 3 and 4 above at an annual rate of 8% simple from the date of each payment to the date of settlement.

HM Revenue & Customs requires Moneybarn to deduct tax from the interest payments referred to above. Moneybarn must give Mr M a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 January 2019.

Jarrold Hastings
ombudsman