

complaint

Mr W complains the car he acquired with the benefit of a conditional sale agreement with Moneybarn No 1 Limited wasn't of satisfactory quality.

background

In June 2015 Mr W acquired a car under a conditional sale agreement with Moneybarn. The car at this point was under a year old and had done 3,779 miles. It cost £11,695.

Mr W says that problems with the roof mechanism and the boot lock began within the first two months. The motor for the roof was replaced in April 2016 but he feels its still not as it should be, which has restricted its use as a convertible. He says there've been persistent fault with the boot lock.

In May 2017 the clutch was replaced due to a failed flywheel. Shortly after it failed again. Mr W says the car had only done 9,000 miles in the interim so he doesn't agree its wear and tear. And he notes the first clutch last more than 40,000 miles which shows it's not his driving style that's at fault. Mr W says there've been a number of other faults, including problems with the wiper blades, the tyres and tracking and shock absorbers. These have been repaired under warranty but Mr W feels the number and nature of the faults are excessive for a car of this age and show the car wasn't of satisfactory quality at the point of sale. He'd like it replaced or to be compensated for his trouble and inconvenience.

Moneybarn acknowledged there'd been a number of repairs done under warranty but didn't agree the faults had been present at the point of sale. It said the garage believed the problems with the roof and clutch were due to Mr W's use of the car, for which it couldn't be responsible. And although there'd been other problems with the car, these had arisen later on in the agreement and as such, should be seen as wear and tear not an inherent fault. It felt the car had been of satisfactory quality and rejected Mr W's complaint.

Our adjudicator said in order to recommend a rejection or replacement of the car, she'd need to be satisfied that the car had been of unsatisfactory quality at the point of sale and that the issues weren't simply wear and tear. She'd taken into account the car's mileage, age, faults and price in looking at the quality.

In this case she'd seen a number of invoices from November 2015 through to August 2018 detailing the various repairs and health checks. These showed that Mr W had reported problems with the roof and boot some four or five months after he'd acquired the car. These had been repaired under warranty along with a number of issues that had arisen during the next twelve months. However looking at the nature of the problems she felt they were wear and tear and not unusual for the mileage the car had done.

She'd taken into account the clutch had been replaced in May 2017 and then replaced again shortly after. But at the time of the first replacement the car had done 44,516 miles at this point and on that basis, she considered it more probable it was caused by the general wear and tear to be expected of a car of this mileage. And the fact it had had to be replaced again shortly after suggested a faulty repair rather than an inherent fault. Overall our investigator didn't agree the car had been of unsatisfactory quality at the point of sale and for that reason, she wouldn't be asking Moneybarn to do anything more.

Mr W disagreed and maintained his view that a car of this age shouldn't have had as many faults as it had unless it was of poor quality. He said in summary:

- It had gone in for repairs more than 14 times and he felt the number of faults showed the car was substandard;
- He'd first raised his concerns within the first two months but the selling garage hadn't responded
- The first clutch failed due to a mechanical fault and not his driving style. If it was his driving that was the issue, then it would have failed earlier but it hadn't so it was unlikely this was the cause of the second clutch replacement.
- The repairs had been done under warranty but he'd still incurred costs and expense in having to take time off work to deal with them.

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 know this isn't the decision Mr W was hoping for but having done so, I won't be asking Moneybarn to do anything more as I'll now explain.

Where there's no evidence -or the evidence available is disputed as it is here on some points - I've made my decision on the balance of probabilities, in other words what's more likely than not to have happened.

Mr W acquired this car in May 2015 under a conditional sale agreement so the relevant legislation in this case is the Sale of Goods Implied Terms Act 1973. This Act says that it's expected that any goods supplied by the hirer- in this case Moneybarn - will be of satisfactory quality. That is what a reasonable person would consider to be satisfactory taking account of the description of the goods, the price and all other relevant circumstances.

For the purposes of the Act, quality includes the state and condition of the goods, their fitness for purpose, safety, durability and freedom from minor defects. In general it's considered that faults that develop within the first six months are likely to have been there at the point of sale but after that it's for the consumer to show that's the case.

I've taken this into account in my decision, along with all the other relevant law and regulations, but my role is not to offer a strict legal interpretation on the law as that's something that's better suited to the courts. Instead I've gone on to consider what's fair and reasonable in the facts of this case and, in doing so, I may reach a decision that a court would not.

At the time Mr W acquired the car it had done less than 3,779 miles and was in effect, new so it's reasonable to expect that a car like this would be problem free, even of minor faults, for a reasonable period of time. But in this case Mr W reported a problem with the roof and boot lock in November 2015. I note he says they started within the first two months but the first information I've seen about any repairs is the invoice of 13 November 2015. On the basis that Mr W would have followed up any problems as soon as possible I think it's fair to take this as the relevant date.

It seems the garage couldn't find a problem with the roof mechanism at this inspection. But in January 2016 Mr W reported similar problems and again in April 2016 when the roof motor was replaced. Mr W's description of the problems with the roof and the boot have been consistent throughout so although the roof motor wasn't replaced until April 2016, it's possible, although not certain, that this was the same problem that had been present since November.

But even if that's the case it doesn't mean the car wasn't of satisfactory quality. It depends on the problem and its impact. In this case the information shows that once the fault was identified it was repaired. I note Mr W says he still feels uncertain about the roof mechanism but despite various checks and services in August 2016 and May and September 2017 no further similar problems were recorded. I've seen Mr W says there's been another repair but if I look at the invoices I can't see that there's been an ongoing problems that can be linked back to the original fault. If there was then I'd expect it to have been noted at the various inspections in 2016 and 2017 but that's not the case. On what I've seen I consider the repair in April 2016 was effective so I don't think it's necessary or reasonable at this point to ask Moneybarn to do anything more than has already been done in this regard.

I note Mr W says there've been a number of other problems as shown by the invoices. I've seen these have been repaired under warranty but I can understand this has been very frustrating for Mr W. However I can only hold Moneybarn responsible for faults that were present or developing at the point of sale. The information I've seen shows the other faults occurred after Mr W had had the car for more than twelve months and had done more than 20,000 miles.

Its clear Mr W does a significant mileage each year- roughly twice the usual average mileage- so its not unexpected that faults will occur over time. Looking at when these other problems arose, what they were and the mileage of the car at the time, I think it more likely that these were caused by general wear and tear rather than an inherent fault with the car. And on that basis I can't agree Moneybarn is responsible for these or that they suggest the car is fundamentally of poor quality.

I note Mr W feels there's an inherent problem with the clutch. He points to the fact it's been repaired twice within a short time. But at the time it was first replaced, the car was almost two years old and had done 44,519 miles so I consider this was most likely the usual wear and tear to be expected of a car of this mileage. And although it then failed again shortly after, I'd agree with the adjudicator that this is more likely to be a failed repair rather than an inherent fault. That's outside the scope of this decision but Mr W may wish to pursue this with the repairing garage.

I realise Mr W may be disappointed by my decision but for the reasons set out above, I do not think it would be fair or reasonable to ask Moneybarn to do anything further with regard to this complaint.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 June 2019.

Cerys Jones
ombudsman