

complaint

Mr H 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

In January 2016 Mr H acquired a used car under a conditional sale agreement with Moneybarn. The car was seven years old and had a mileage of around 112,000. Around six months later Mr H complained first to the broker, and then later to Moneybarn, that he was having problems with the car in relation to the gearbox, auxiliary belt and power steering.

As Mr H had possessed the car for six months Moneybarn asked for him to arrange for the car to be independently inspected by an expert engineer. The car was inspected in August 2016.

The engineer prepared a report which said that the clutch assembly was reaching the end of its serviceable life and the transmission needed further investigation. There was a possible head gasket failure. The engineer thought the car was "generally in a deteriorated state taking into consideration its age and recorded mileage". In relation to the clutch the engineer said that "for such a defect to have developed so soon after sale and as the type of issue suggests the issue/s were in the early stages of failure at point of sale to at best the components were at least compromised". The report added that "it would not be expected for a customer to be presented with such costs for them to settle so soon into the ownership."

Moneybarn said the independent report was contradictory as it accepted that the clutch would've been coming to the end of its serviceable life due to the car's mileage and age. And that the cost of repairing this part should be anticipated. It thought the report wasn't conclusive that the fault was present at the point of sale taking into account the 6000 miles Mr H had driven in the car. It didn't uphold Mr M's complaint.

Mr M complained to this service. Moneybarn asked if the car could have another independent inspection carried out as it thought the original was unclear. Our adjudicator thought this was fair and the car was inspected by a different engineer in November 2016.

Unfortunately, by this time the car couldn't be driven due to the power steering reservoir being empty, a flat battery and a flat tyre. The engineer prepared a report which said that he'd been unable to inspect the clutch, but he thought that the 6000 miles driven by Mr H would've been enough to cause the clutch wear. The report said that the power steering leak had occurred after the sale as without any fluid Mr H wouldn't have been able to drive the number of miles he had. But it concluded it was "unable to confirm at the point of inspection that the vehicle was not fit for purpose at the point of sale and of satisfactory quality".

The adjudicator recommended upholding Mr H's complaint. He said he thought the car had some developing faults at the point of sale and so wouldn't be Mr H's responsibility to cover the cost of repairing. He said the first independent report said the car shouldn't have been sold with the clutch in that condition.

But he thought that, looking at the two independent reports that the power steering and auxiliary belt problem had arisen after the point of sale. The engine and exhaust problems that had been identified needed further investigation. So, our adjudicator recommended that Moneybarn cover the costs of the repairs to the clutch and gearbox and at the same time investigate the other engine/exhaust problems.

Moneybarn disagreed with our adjudicator's opinion and the complaint was passed to me. I sent Mr H and Moneybarn a provisional decision setting out my initial thoughts along the following lines.

I'd seen both of the reports written by the independent engineers. Moneybarn said that the fault with the clutch and gearbox were ones that arose from wear and tear and weren't rapid or unexpected deterioration. And that deterioration of parts should've been expected by Mr H taking into account the age and mileage of the car.

But I didn't agree that the first independent report was unclear. The engineer's opinion in respect of the gearbox and clutch was that although these faults arose from wear and tear they were present or at least developing at the point of sale. The engineer also said that if the car had been checked before the sale these problems would've been seen so that either Mr H could've been advised, or the car could've been repaired prior to sale. It was unfortunate that the delay in resolving this matter had led to the car's condition deteriorating further.

I'd seen that the second inspection was unable to investigate the gearbox and clutch as by then, the car had developed further faults and its battery was flat. So, although the engineer gave an opinion about the possible effect of Mr H driving 6000 miles on the clutch/gears this wasn't based on actually having tested the parts as the first engineer had done.

The first independent report also noted that the engine had been heavily contaminated by the power assisted steering fluid having leaked. It gave no diagnosis for the leak. But the second report said the leak had likely been caused by the pipes being "repaired unsuccessfully". Mr H said he hadn't carried out any repairs to the power steering system.

Where evidence was contradictory or missing I had to decide what I thought was the most likely thing to have happened. Looking at this evidence I thought it was fair and reasonable to give more weight to the first independent engineer's opinion about the clutch and gears, as by the time the second engineer inspected the car it hadn't been moved for four months and its condition had deteriorated. And as he wasn't able to switch the car on his report isn't as detailed as the first. So I thought the fault with the gears and clutch was more likely than not to have been present or developing at the point of sale.

I also thought it was likely that the problem with the leaking power assisted fluid was due to a repair carried out before Mr H acquired the car. I didn't think the first engineer's report contradicted this as he'd recommended the car undergo a further investigation for the engine issues. He wasn't able to diagnose all the issues that were present. I appreciated a car that has no steering fluid was unusable, but the repair was described as "unsuccessful" and I thought it was likely that meant it was inherently faulty and so would've been developing as a problem at the point of sale.

Moneybarn says that Mr H should've expected repair costs to arise when acquiring a used car, especially as it was seven years and had a mileage over 100,000. But I think a car that

suffers with a defective gearbox and clutch, and has issues with a repair to its power assisted steering system, which were all present at the point of sale and have deteriorated over time, wasn't of satisfactory quality.

I intended to uphold Mr H's complaint and to require Moneybarn to collect the car at no cost to Mr H and to cancel the agreement and rewind it. Looking at the amount of use Mr H's had had of the car I also thought it was fair and reasonable for Moneybarn to repay Mr H any monthly repayments he's made from July 2016 to date together with interest. And I also thought it would be fair for Moneybarn to repay Mr H the cost of the first independent engineer's report. Moneybarn should also ensure there was no adverse information on Mr H's credit file.

Moneybarn disagreed with my provisional decision. It said that the auxiliary belt, which drives the power steering pump, had been changed after Mr H took possession. That repair hadn't raised any issues with the power steering. Nor had an MOT carried out on the day Mr H took possession.

It also said it had spoken with the first independent engineer who'd provided a response that generally if the car had been driven for 6000 miles or more then repairs would be considered the driver of the car's responsibility.

Moneybarn said that it was Mr H who'd sourced the car and the advert had been clear that it had an outstanding service which Mr H hadn't had carried out. It was fair that he should have some responsibility for the car. Moneybarn said it would be fair it be given the opportunity to repair any faults this service thought the car had at the point of sale.

my findings

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

My view hasn't changed. I think the first independent engineer's report was clear that the fault with the clutch was developing at the point of sale. I don't think it's fair to now rely on a 'general' comment that Mr H should be responsible for the cost due to the distance he has driven.

It was the second independent engineer who said that the leak of the power steering fluid was likely to have been caused by an "unsuccessful repair" to the pipes. I appreciate there had been earlier repairs to the auxiliary belt which don't appear to have highlighted any problem with a leak from the pipes, and nor did the MOT, but I don't think I can rely on this as meaning the earlier repair to the pipes wasn't the cause of the subsequent leak. Mr H hadn't had any repair work carried out on the power steering pipes. So this repair had been carried out before the point of sale.

I appreciate Mr H sourced the car himself. He says he didn't see the full advert sent to us by Moneybarn so didn't know the car had been reduced in price, or the date that a service was due. But as the car was faulty at the point of sale I don't think it's fair to say that a delay in servicing the car means that Mr H isn't now entitled to reject the car.

So looking at the evidence I'm still upholding Mr H's complaint with the settlement set out above.

my final decision

I'm upholding Mr H's complaint. I require Moneybarn No. 1 Limited to do the following:

- Collect the car at no cost to Mr H
- Cancel the agreement with nothing further owed
- Repay any monthly payments made by Mr H under the agreement since July 2016 to date together with interest at the rate of 8% per year simple from the date of payment to the date of settlement.
- Ensure there is no adverse information recorded on Mr H's credit file.
- Repay Mr H £192 being the cost of the first independent engineer's report arranged by him together with interest at the rate of 8% per year simple from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 April 2017.

Jocelyn Griffith
ombudsman