

complaint

Ms Y complains the car she acquired under a conditional sale agreement provided by Moneybarn No. 1 Limited wasn't of satisfactory quality. She wants to reject the vehicle and cancel the finance agreement.

background

Ms Y acquired the car on 27 July 2017. She made a small advance payment. The conditional sale agreement covered the rest of the cost, with repayments scheduled over 60 months.

The car was recalled for repairs by the manufacturer, with the work being completed by early November 2017. Ms Y was advised further work would need to be carried out once the garage received the parts.

On 15 November, Ms Y tells us she experienced some problems with the car. It was under warranty at the time, so repairs - to the rocker cover gasket and fuel rail - were carried out by the dealer. They told Ms Y everything had been fixed satisfactorily.

Ms Y tells us there were further issues with the car in early December. Again, the dealer took the car in for repairs. They returned it to her two days later, saying that the issue had been with a pressure sensor and had been fixed.

Just after this, the car was recalled by the manufacturer again and the repairs which had been promised earlier were carried out as planned.

After that, Ms Y tells us the car was very sluggish and seemed to be lacking power. She says she had to check the coolant levels daily and top it up every week.

Ms Y tells us her job requires a reliable car. She made a complaint to Moneybarn in December 2017, saying that the persistent problems with the car meant that it was not fit for purpose.

Moneybarn appointed an independent engineer to inspect the car, on 15 January 2018. Their report said the car was in good working order. So, Moneybarn didn't uphold Ms Y's complaint.

Ms Y tells us the car lost power on the motorway on 8 February 2018 and she had to pull over until the car had cooled down. She hasn't driven the car since then and has had to find alternative means to get to work.

Ms Y paid for her own independent inspection of the vehicle, on 16 February 2018. The engineer's report said there were numerous faults with the car which meant that it was unsafe and unfit for purpose.

Moneybarn contacted the engineer after receiving his report. He told them that, in his view, the faults wouldn't have been developing or apparent at the point of sale given that they'd only begun to affect the car from 15 November 2017 onwards.

As I understand it, the car is currently with the dealership, who are expecting Ms Y to pay for the necessary repairs. Her warranty came to an end on 27 January 2018.

Ms Y was unhappy with the outcome of her complaint to Moneybarn and made a complaint to us. Our investigator looked into it and took the view that Ms Y should be allowed to return the car and cancel the finance agreement. And that Moneybarn should refund Ms Y's monthly payments from January 2018, return her advance payment (with interest), collect the car at no cost to Ms Y and pay her £200 for her trouble and upset.

Moneybarn disagreed with this outcome and have asked for a final decision from an ombudsman.

my findings

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

Ms Y acquired this vehicle through a conditional sale agreement and under present legislation this means Moneybarn are responsible for the satisfactory quality of the item supplied.

Whilst I don't apply the law - directly - I do take it into account. In this case The Consumer Rights Act, 2015 is the relevant legislation. In general terms this says, subject to certain conditions, if an item is not of satisfactory quality at the point of supply a consumer has the right to either reject it or have it repaired.

The evidence in this case suggests the car currently has a number of faults which mean it's not fit for purpose until repairs are carried out – and it's been in that state since at least early February 2018. But what I have to decide is whether the car was of satisfactory quality at the point of sale, in July 2017.

Although the age, mileage and cost of a vehicle have to be taken into account, faults which occur within six months of purchase are usually presumed to be present at the point of sale - unless the contrary is established.

In this case, however, there is compelling evidence – from the expert Ms Y asked to inspect the car - that the faults were not present or developing at the point of sale.

So, I'm satisfied that on balance it's most likely the faults were not present or developing in July 2017 when Ms Y acquired the car.

However, the legislation here doesn't say that the vehicle has to have a fault in order for it to be of unsatisfactory quality. It provides examples of various factors which should be taken into account when deciding if the goods are of satisfactory quality. That includes fitness for purpose, appearance, finish, freedom from minor defects, safety and durability. This isn't an exhaustive list, but I think the real issue in this case is about durability.

I bear in mind that a used car is more likely to encounter problems than a brand new vehicle. But Ms Y paid nearly £7,000 for this car. It was only just over four years old and the mileage, whilst slightly more than average, was not exceptionally high for a car of that age. Ms Y has done just under 6,000 miles in the car in six months. Again, more than average, but not exceptionally so.

When I take these factors into account, I think Ms Y was entitled to expect a reasonable degree of reliability and durability. She might reasonably have expected that the car would not encounter such serious problems within four months of her acquiring it.

Moneybarn have suggested that some of the current issues may be down to Ms Y's poor maintenance of the car. They say the expert report in February referred to low oil levels before their tests were carried out.

I don't think this is a convincing argument. The report says that Ms Y reported low oil and coolant levels to the engineer herself. The fact that she was aware of this issue suggests she was monitoring oil and coolant levels in the car. The report also refers to an oil leak on the rocker cover. I can't see any other evidence at all that Ms Y might have mis-used the car or failed to maintain it.

There have been a number of attempts to repair the car already, but the faults persist. So, I think it's reasonable for Ms Y to be allowed to return the car and cancel the finance agreement.

Given that Ms Y has not been able to use the car at all since early February, I think it's fair that Moneybarn refund all of her monthly payments from February onwards.

I've also taken into account that the car has been unavailable to Ms Y on a number of occasions before February whilst it was repaired. And that she has been unable to fully enjoy the car since November, when the problems first started. But I'm mindful that she has had some use of the car in November, December and January, so I think it's fair that Moneybarn refund a further month's payment. That would effectively mean they refund all of her payments after the end of 2017.

my final decision

My final decision is that I uphold this complaint. Moneybarn No. 1 Limited should:

- Cancel the agreement with nothing further to pay.
- Refund any monthly payments Ms Y has made in 2018.
- Refund the £225 advance payment Ms Y paid, with interest at 8% simple per year from the date of payment to the date of settlement.
- Pay Ms Y the cost of the expert inspection she organised for the vehicle (as soon as Ms Y can provide them with a receipt to show how much she paid).
- Pay Ms Y £200 to reflect any trouble and upset caused by this matter.
- Make sure that no adverse information is recorded on Ms Y's credit file in relation to this agreement.
- If necessary, arrange to collect the car at no further cost to Ms Y.

If Moneybarn No. 1 Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Miss J how much it's taken off. It should also

give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 11 August 2018.

Neil Marshall
ombudsman