

complaint

Miss S complains that a car that was supplied to her under a conditional sale agreement with Moneybarn No. 1 Limited was misrepresented to her. She's being helped with the complaint by a representative.

background

A used car was supplied to Miss S under a conditional sale agreement with Moneybarn that she signed in July 2015. The car was shown on the conditional sale agreement and the pre-contract credit information as being four wheel drive. But when Miss S took the car to have winter tyres fitted she says that she discovered that it was only two wheel drive. So she complained to Moneybarn in November 2017. She wasn't satisfied with its response so complained to this service.

The investigator recommended that this complaint should be upheld. She thought that there had been a misrepresentation and that the description of the car on the finance agreement was incorrect. And she recommended that Moneybarn should allow Miss S to terminate the agreement and return the car. And she recommended that it should also refund the £500 deposit that Miss S had paid for the car (with interest) and 10% of the monthly payments that she'd made under the agreement. She also said that it should remove any adverse information from Miss S's credit file.

Moneybarn has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- it didn't misrepresent the car in any way as Miss S wasn't provided with the finance agreement until after she'd chosen the car and it's seen no evidence to suggest that the car was misrepresented by the dealer;
- Miss S has used the car for over 50,000 miles and over two years - so if it wasn't suitable for her needs it would've become apparent much sooner;
- she didn't fit winter tyres during the first winter; and
- should she wish to exit the agreement, she could voluntarily terminate it.

my findings

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

Miss S says that she told the dealer that she wanted a four wheel drive car because she needed to use it for her work, which involved treacherous conditions, especially in winter months. And she says that the dealer represented the car that was supplied to her as having four wheel drive. She also says that she was given pre-contract credit information to take away and discuss with her partner before signing the credit agreement and it described the car as being "4x4". The credit agreement also shows the car as being "4x4". So Miss S says that she signed the conditional sale agreement on the basis that the car had four wheel drive and that she wouldn't have done so if it hadn't been represented as having four wheel drive. Miss S says that she was sometimes unable to get to work in bad weather because the car couldn't cope with the winter conditions. But she says that she didn't become aware that it wasn't four wheel drive until she went to have winter tyres fitted in late 2017.

The sales invoice doesn't refer to the car being two wheel or four wheel drive – but I consider it to be more likely than not that the car was misrepresented to Miss S by the dealer

as being four wheel drive when it was only two wheel drive. And the car is shown on the pre-contract credit information and the conditional sale agreement as having four wheel drive. Moneybarn is jointly liable with the dealer for any misrepresentation made by the dealer. So I find that it would be fair and reasonable in these circumstances for Miss S to reject the car and cancel her conditional sale agreement. And I find that Moneybarn should refund to Miss S the advance payment of £500 that she made for the car, with interest. Miss S has used the car to drive a considerable mileage but I consider that her use of it has been affected to a limited extent by it being only two wheel drive. So I find that it would be fair and reasonable for Moneybarn to refund to Miss S 10% of the monthly payments that she's made to it under the agreement. And it should remove any adverse information about the agreement that it's recorded on her credit file.

my final decision

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

1. Cancel the conditional sale agreement and arrange for the car to be collected from Miss S – both at no cost to her.
2. Refund to Miss S the £500 deposit that she paid for the car.
3. Pay interest on that amount at an annual rate of 8% simple from the date of payment to the date of settlement.
4. Refund to Miss S 10% of the monthly payments that she's made under the agreement.
5. Ensure that no adverse information about the agreement is recorded on Miss S's credit file.

HM Revenue & Customs requires Moneybarn to deduct tax from the interest payment referred to at 4 above. Moneybarn must give Miss S a certificate showing how much tax it's deducted if she asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 10 August 2018.

Jarrold Hastings
ombudsman