

complaint

Mr W complains that Moneybarn No.1 Limited, trading as Moneybarn, won't allow him to reject a vehicle despite it being faulty at the point of supply.

background

Mr W took receipt of a used vehicle in February 2017. He financed the deal through a conditional sale agreement with Moneybarn. The car had completed 120,000 miles at the point of supply and was seven years old.

In January 2018 Mr W was involved in a minor collision and took his car to be repaired. But when the dealership removed the bumper bar it discovered additional damage that it said was obviously not caused by the recent collision. It suggested that the additional damage must have been there at the time Mr W took receipt of the car.

So Mr W contacted Moneybarn and they suggested he commission an independent report to establish the cause.

The independent engineer who subsequently inspected the damage noted that *"the rear crash bar displayed clear evidence of significant impact damage"* and the bumper mountings had been slightly displaced. He said *"there was extensive corrosion established at the point of impact"* and he suggested the corrosion was at least three months old. He also noted that the bonnet was misaligned; the A posts had been repainted and there was evidence of impact damage to the front grill.

When our investigator contacted the engineer he admitted that the crash bar was in a *"crumpled state"* and would *"not be as resilient as an intact crash bar"* he said this would have an effect on the vehicle's safety and he thought the crash damage would have a significant impact on the resale value.

Moneybarn said that there was no proof the vehicle had been damaged at the point of supply. They highlighted the fact that the engineer had said the corrosion had happened more than three months ago and explained that this still left nine months in which Mr W could have had an accident in the car.

But our investigator disagreed with Moneybarn. He didn't think Mr W would have taken his car to a garage, or paid, to get a minor problem fixed, if he'd known there was significant additional damage to the car. And he didn't think Mr W would have bothered to pay for an independent inspection if he'd known the car had been damaged previously. So he was persuaded that it was most likely the car was damaged at the point of supply and, considering the impact the damage was having on the vehicle's safety and its resale value, he thought it wasn't of satisfactory quality when supplied. He suggested that Moneybarn should repair the vehicle or allow Mr W to reject it.

But Moneybarn disagreed and they asked for a final decision by 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.

I agree with the investigator's view and for similar reasons. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr W acquired his car under a conditional sale agreement. The relevant law says that the car should have been of satisfactory quality when supplied. If it wasn't then Moneybarn is responsible. I take account of relevant law when deciding what is fair and reasonable. On this basis if I thought the car was faulty when supplied, I'd think it fair and reasonable to ask Moneybarn to put this right.

But Moneybarn's responsibility for the car is not unlimited. Whilst they are responsible for its condition at the point of supply they are not responsible for faults that develop afterwards.

I'm persuaded that the additional impact damage, the independent engineer reported, was there at the point of supply. I say this because:

- the independent engineer thinks it's most likely. He said in his report *that "we do believe that the damage to the rural vehicle was present at the point of sale"*
- I don't think Mr W would have commissioned an independent report if he knew about the damage and
- I don't think Mr W would have had the minor work looked at, or repaired, if he knew about the damage that was present from the previous collision

The damage is significant. The engineer has explained that it impacts on both the safety and resale value of the vehicle. The damage also extends to the front of the vehicle and the A pillars – it's extensive. So I don't think a reasonable person would think a car with this amount of damage was of satisfactory quality even if, as is the case here, the car was seven years old and had completed 120,000 miles.

So I think the damage to the car was most likely to have been present when it was supplied and I think it's clear that the damage meant the car wasn't of satisfactory quality at that point.

The relevant law says that in that case Moneybarn should be given one opportunity to affect a repair so that's what I'm suggesting should happen here.

But if the cost of the repair is prohibitive and Moneybarn prefer to allow Mr W to reject the car I think that's also reasonable. If that's the case they would need to:

- cancel the finance agreement with nothing more to pay
- arrange for the car to be returned at their expense
- refund any deposit that was paid and add 8% simple interest per annum from the date it was paid until the date of settlement
- remove any adverse credit markers that have been reported to Mr W's credit file in relation to this issue

my final decision

For the reasons I've given above I am telling Moneybarn No. 1 Limited to:

- repair the issues identified in the independent engineer's report findings under points 2 to 8.
- remove any adverse credit markers made to Mr W's credit file as a result of this issue

Should the cost of these repairs prove prohibitive, Moneybarn No. 1 Limited may agree to reject the vehicle instead. If that's the case they should follow the actions detailed in my findings above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 December 2018.

Phil McMahon
ombudsman