

complaint

Mr F complains that the car he bought with a loan from Moneybarn No. 1 Limited broke down shortly after purchase. He also complains that he was not told that a diesel car was not suitable for mainly town driving.

background

Mr F bought the car at the end of May 2015. He says he drove it to the airport the following day and went on holiday for 10 days. The car broke down 23 days after his return and had to be towed to the garage.

I understand the garage initially replaced the diesel particulate filter ("DPF") sensor, but this did not fix the problem. A new DPF unit was then fitted which has repaired the car, but Mr F does not want it back.

When the car was repaired Mr F was told that driving for short and/or slow journeys would cause the filter to clog and not regenerate. Mr F says this wasn't mentioned when he bought the car. Had he known he says he wouldn't have bought a diesel car because he only needed a car for short, local journeys and occasional weekend trips. He told Moneybarn that he wanted to reject the car and did not collect it from the garage.

Moneybarn says that Mr F has been treated fairly as the car has been repaired and is now fit for purpose. However, as Mr F did not collect the car or make payments it has now terminated the agreement.

Our adjudicator did not recommend that Mr F's complaint should be upheld because he considered a repair to be a fair resolution of the complaint. He also found no evidence that Mr F had discussed how he intended to use the car, so he felt that the dealer had not acted unreasonably in not warning him about potential problems with the DPF.

Mr F did not agree with the adjudicator therefore the complaint has been referred to me.

my findings

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

Mr F is entitled to reject the car if it was not of satisfactory quality when he bought it. Moneybarn argues Mr F caused the filter to clog because he did not drive the car in accordance with the manufacturer's guidelines. It does not agree that the car was faulty at the point of sale. Despite this Moneybarn says the garage decided to repair the car as a gesture of goodwill, at no cost to Mr F. Moneybarn says the car had reached the point where the filter couldn't be forced to regenerate. It says the garage still had the option to clean the filter, but chose instead to replace it altogether as this was better for Mr F.

If Moneybarn is right, neither the dealer nor Moneybarn were under any obligation to repair the car at all, let alone opt for the more expensive replacement of the DPF when a cheaper cleaning option was apparently available.

There is a lot of information available about the best way to maintain the effectiveness of DPFs. I accept that a DPF will become clogged and may eventually fail to regenerate

altogether if a diesel car is not driven fast enough and far enough at regular intervals to allow regeneration. However, Mr F only drove the car for 24 days before it broke down.

Moneybarn says the car had passed its MOT 17 days before it was sold to Mr F and no warning lights were illuminated. It says the car was driving as expected otherwise it would not have obtained its certificate. Whilst Moneybarn accepts that the DPF might have been clogging before Mr F bought the car, it says Mr F's use exacerbated the problem. Moneybarn argues it is generally accepted that one month of town driving is sufficient to clog a DPF and it has referred me to the Automobile Association's ("AA") website.

I have taken into account what Moneybarn has said, but I do not think the fact that the car passed its MOT proves that the filter wasn't already badly clogged. I have also looked at the information on the AA's website. It says that mainly town-based driving, comprising frequent short journeys where the engine does not reach normal operating temperatures, creates the risk of incomplete DPF regeneration. I understand that Mr F had covered just over 1,100 miles before his car broke down, which Moneybarn says amounts to 4 regeneration cycles. According to Mr F, this included a trip to and from the airport. However, this was not enough to regenerate the DPF.

On balance, I find the evidence points to the filter already being badly clogged when Mr F took delivery of the car. Its failure shortly thereafter was inevitable if it had reached the point when it could no longer self-clean. I also think that the dealer's decision to replace the filter altogether indicates that any attempt to clean it is unlikely to have worked. Therefore, I find that the car was not of satisfactory quality when Mr F bought it.

Moneybarn also argues that where a problem is relatively easy to resolve the supplier must be given the opportunity to repair it. I do not agree that total breakdown very soon after purchase, caused by failure of the DPF is a minor issue. Although Mr F bought a second hand car, it was not old, had relatively low mileage and the price was over £10,000 excluding interest. In my view, he was entitled to expect that it would not break down so soon.

As I have found that the car was not of satisfactory quality Mr F has the right to reject it. The dealer decided to repair it, but I have not been provided with any evidence that Mr F agreed to this then changed his mind. In fact, Mr F's actions in leaving the car with the dealer indicate that he would have refused the offer of repair had he been given the choice.

Moneybarn has mentioned that Mr F previously asked to give the car back for unrelated reasons. It may be the case that Mr F was unhappy with the car for other reasons, but the breakdown happened independently of these and my decision is based on the cause of the breakdown alone.

Finally, Mr F has said that he wouldn't have bought the car had he been told it wasn't going to be suitable for local driving. I have some sympathy with Mr F's argument, but I do not need to decide this point as I have already found that the car was not of satisfactory quality anyway.

my final decision

My final decision is that I uphold Mr F's complaint against Moneybarn No.1 Limited.

Mr F has already given the car back therefore Moneybarn must refund any payments he has made under the agreement, including his deposit. Moneybarn must add gross interest at 8%

simple per year from the date(s) Mr F made the payment(s) until the date the money is refunded to him. Moneybarn must also cancel the credit agreement from the start date, leaving no liability with Mr F.

In addition, if Moneybarn has recorded any adverse information against Mr F on his credit file, it must ask the credit reference agencies to remove this immediately.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 21 December 2015.

Athena Pavlou
ombudsman