

complaint

Mrs H complains that the car she acquired from Moneybarn Limited was faulty.

background

Mrs H says she acquired a used car in early 2016. The finance was arranged by a broker who placed the arrangements with Moneybarn. She collected the car in February 2016 and said it broke down on the day it was collected due to loss of coolant. The dealer repaired the car. She said it broke down again with the same issue. The issue recurred again in July and August. She had further repairs and eventually had to replace the engine. She thought the problem had been present from the outset and the car wasn't fit for purpose. She wanted the car repaired or to be able to return it without further financial penalty or replace it with an equivalent car.

Moneybarn said Mrs H had used the car for more than six months and completed over 4,000 miles. It said the MOT was completed two months before the sale without issues and the car only travelled just under 300 miles further before Mrs H acquired it. A repair was completed and tested by the original dealer in February 2016. It seemed that a further three months passed before the car had a further problem. It said the items replaced were wear and tear items. It was up to Mrs H to show the problem wasn't due to normal wear and tear and existed or were developing at the time of purchase. It thought the issues were most likely wear and tear due to the age and mileage of the car. It also said she should refer back to her own garage if its repairs had failed.

my provisional decision

I issued a provisional decision in this case. In summary I said that legislation says that goods should be of satisfactory quality, durable and free from defects.

I considered whether the car met those requirements at the time of acquisition. I thought there was a fault with the car at the time it was acquired. The issue giving rise to the repair seems to have recurred at acquisition and several times within the six months after the car was acquired. I didn't think the issues were due to wear and tear. I said that because I wouldn't expect them to need recurrent repairs within six months unless there had been very high mileage, which wasn't the case here.

Moneybarn also complain the dealer wasn't given the chance to repair the initial repair it did. But I don't think that matters. Both the repair it completed and those completed by another garage failed to fix the problem and needed repeated repair.

It wasn't fully clear what was causing the problem but Mrs H had incurred the expense of fitting a new engine. Given the circumstances and the checks made it didn't seem to have been a hasty decision and therefore I thought it was reasonable to go ahead.

I proposed to direct that Moneybarn Limited should pay Mrs H:-

1. £250 for distress and inconvenience
2. £2265.02 for the repairs and engine replacement.

Mrs H accepted the proposed decision. Moneybarn didn't accept the decision. It said that three people investigated the issue before it reached this service and the adjudicator from this service had concluded there was no evidence the faults were present or developing at the point of sale. It said that after 6 months from the sale the onus was on Mrs H to show that the issues were not due to normal wear and tear. It didn't think she had proved this and the issues hadn't prevented her from using the car. There hadn't been an independent inspection to support her case and this was no longer possible. The fact the root cause of the problem was unclear supported their case.

It also said Mrs H had over 4,000 miles of use of the car during the first 6 months and felt this was enough for wear and tear to occur. Had the issues been present at sale it felt Mrs H couldn't have completed that level of mileage. It said the car had passed its MOT shortly before it was acquired and had there been issues at the time these would've been noted but weren't.

It said it was up to Mrs H to inspect the car before she acquired it because it didn't do this. If she was concerned she should've made them aware. There was no evidence to support Mrs H's claim there was a notice on the car showing a fault at the time she acquired it and the dealership had denied there was any such sign.

On the issue of recurrent repairs it said its first repair must've been effective as Mrs H was then able to use the car for several months. She then undertook unauthorised repairs. Mrs H's should've been checking coolant levels regularly.

It didn't think the local garage that did the repairs was impartial and would have a vested interest in blaming the supplier for the failed repairs. The fact the local garage had to make repeated repairs put into question the quality of the repairs done. Having opted to use a local garage rather than the supplier Mrs H should be required to refer back to them rather than Moneybarn for the failed repairs. It also objected to being held liable for the cost of a replacement engine when it hadn't been offered the chance of an independent inspection.

Mrs H further commented in reply that:-

- The car broke down on the day of collection.
- The car was sold noting there were coolant issue that would be repaired.
- The broker was made aware of the issue and it wasn't Mrs H's fault if they didn't pass this on to Moneybarn.
- Moneybarn could've done an independent inspection before offering finance for the car or at any time after they were notified of the issues, but didn't.
- Mrs H had taken advice from independent mechanics before proceeding with the replacement engine. She wouldn't have incurred the expense of a replacement engine had there been another option.
- The problem wasn't just a leak of coolant but a much deeper issue that caused problems such as when going at high speed on a motorway, but didn't manifest at lower speeds such as in an urban context.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint but haven't decided to change my proposed decision. I say that because:-

Moneybarn say Mrs H should've drawn its attention to the issues at the time of acquisition. But Mrs H has confirmed that the issues were raised with the broker. I think it was up to the broker to advise Moneybarn of this and I think it was reasonable for Mrs H to assume this would've happened if it needed to.

I note the comments re recurrent repairs but it seems that the problem didn't manifest in normal urban usage and this is why it was possible to use the car between repairs. In any event the same problem did recur. I can't explain why the issue wasn't noted on the MOT but that doesn't mean the problem wasn't present just that it wasn't detected or noted. Moneybarn also challenge my acceptance of evidence from Mrs H that there was a notice on the car at acquisition. But even if there wasn't a notice or a problem at the time of the MOT, this wouldn't prevent me from reaching the same conclusion. I say that because the car broke down on the day of acquisition and the same problem has recurred.

With respect to an independent inspection, it would've been better had it been possible to undertake one. But that isn't possible. Its absence doesn't mean Mrs H should be denied an award if one is appropriate. I need to make a fair and reasonable decision based on the evidence presented. For the reasons given in my first decision I don't think that a problem due to fair wear and tear would recur as in this case. While the root cause remains unclear I think there was a recurrent problem which started at and was therefore present at the time of acquisition.

I accept the local garage may not be seen as independent but Mrs H has indicated she took other views before proceeding. She had no way of knowing that I would make an award in her favour and I think it is unlikely she would've incurred this level of expense without needing to do so. The repeat repairs by the local garage were done under the product warranty but the fact remains that the problem existed before they were involved. The fact an initial repair was completed and tested by the supplier doesn't mean the problem was fixed as I wouldn't have expected it to fail again so quickly after the first repair.

Based on the pattern of events I think the problem was present at the date of acquisition and I think it is fair and reasonable to make an award.

my final decisions

I uphold this complaint.

I direct that that Moneybarn Limited should pay Mrs H:-

1. £250 for distress and inconvenience
2. £2265.02 for the repairs and engine replacement.

Moneybarn Limited must pay the compensation within 28 days of the date on which we tell it Mrs H accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If Moneybarn Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs H how much it's taken off. It should also give Mrs H a tax deduction certificate 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 Mrs H to accept or reject my decision before 7 July 2017.

Colette Bewley
ombudsman