

complaint

Mrs M says the car she acquired under a conditional sale agreement with Moneybarn No.1 Limited wasn't of satisfactory quality and she wants to reject it.

background

In November 2015 Mrs M acquired a used car under a conditional sale agreement with Moneybarn. The agreement was for Mrs M to pay monthly instalments over a five year period.

In May 2016 the car's brakes failed and Mrs M took it back to the dealer who bled the brakes. Mrs M continued to drive the car, but in June the brakes failed again. The dealer undertook further repairs and returned the car to her. But in July the brakes failed a third time and the dealer had to replace further parts of the braking system. It took a month to carry out these repairs and Mrs M told both the dealer and Moneybarn she didn't want the car any longer as she felt unsafe driving it.

The car was returned to Mrs M in August although she'd said she didn't want it back. She was very unhappy about driving it and complained to Moneybarn. The dealer had said they would replace the car if Moneybarn agreed. But Moneybarn said it didn't agree the car wasn't of a satisfactory quality at the point of sale. And as the conditional sale agreement was specific to that car it couldn't agree to exchanging the car for another. But Moneybarn said as a gesture of goodwill it would agree to the agreement being "wound back" if the dealer repaid the cash price that had been advanced.

Mrs M complained to this service. Our adjudicator investigated her complaint and he recommended it should be upheld. The adjudicator said looking at the history of the repairs he thought it was likely that the brakes had been faulty at the point of sale. So, the car hadn't been of a satisfactory condition when Mrs M acquired it.

The adjudicator recommended that Mrs M's agreement be cancelled and that Moneybarn pay the following:

- 20% of her monthly instalments from May 2016 to July 2016
- 100% of her August instalment
- 60% of the monthly instalments paid since September 2016.

Moneybarn disagreed with our adjudicator's opinion and Mrs M's complaint has been passed 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.

Moneybarn says that the repairs to the brakes were the result of 'wear and tear' and as Mrs M had driven for 3000 miles before the first problem arose the car was of satisfactory quality for its age and mileage at the point of sale.

Moneybarn also says that as Mrs M had owned the car for nine months before making her complaint that it's for Mrs M to prove that the fault existed when she acquired it rather than developing over time.

Mrs M has sent in a repair invoice for the car dated November 2012 that was for a brake cylinder leak. But Moneybarn says the car passed four MOTs after that repair and none of them have raised any issues with the brakes. And the brakes and braking fluid would all have been checked as part of those MOTs.

The car acquired by Mrs M was four and half years old with a mileage of approximately 29000. The brakes first failed in May 2016 when she'd had the car just short of six months. The dealer bled the brakes on that occasion and Mrs M was able to continue to driving. But only a few weeks later the brakes failed again and this time the dealer replaced the brake master cylinder. Mrs M was assured the problem was fixed.

When the brakes failed for a third time just a short time later Mrs M understandably lost all trust in the car. Each time the brakes had failed without warning and placed her and others at risk. This time the dealer had to replace the ABS pump. It's agreed that these repairs have all been carried out. And I think it's more likely than not that each of the brake failures was connected and so the linked problems arose within six months of Mrs M having the car.

If the repairs had been for worn brake pads, or to change the braking fluid, then I would agree with Moneybarn that it would be likely that those arose from wear and tear. But these repairs were replacing substantial parts of the braking system and I don't think most people would expect these parts to fail in a car of this age and mileage.

I appreciate the MOTs didn't pick up problems with the brakes, but the problems occurred intermittently so I don't think they are evidence that the car was of satisfactory condition at the point of sale. I also don't think the mileage Mrs M had done before the brakes failed for the first and second time was excessive.

Looking at the evidence I don't think the car was of a satisfactory quality at the time Mrs M acquired the car. I'm upholding Mrs M's complaint.

Moneybarn says that it can't replace the car for Mrs M under the conditional sale agreement so I think it's fair and reasonable for her to be able to cancel the agreement. Mrs M was without the car in August 2016 as it was in for repairs and she has tried to avoid driving it since it was returned to her. I appreciate her reluctance to drive the car in the circumstances. I think Mrs M has been heavily inconvenienced by the situation with the car as well as suffering the upset and stress of having the brakes fail when she was driving on three occasions. I think the solution set out by the adjudicator is fair and reasonable.

my final decision

I'm upholding Mrs M's complaint. I require Moneybarn No 1 Limited to pay Mrs M the following:

- 20% of her monthly instalments from May to July 2016
- 100% of her August 2016 payment
- 60% of the monthly payments paid since September (including that month)

Moneybarn No 1 Limited must also pay interest on these amounts at the simple rate of 8% per year from either the date of Mrs M's complaint or the date the payment was paid as applicable to the date Moneybarn No1 Limited makes the payment.

If Moneybarn No 1 Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs M how much it's taken off. It should

also give Mrs M 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 M to accept or reject my decision before 16 February 2017.

Jocelyn Griffith
ombudsman