

complaint

Mr M complains that the vehicle he obtained with an agreement financed by Moneybarn No. 1 Limited (Moneybarn) was mis-sold. He says the mileage was higher than quoted and so he ended up paying more than the vehicle was worth. He now wants to reject the agreement.

background

Mr M tells us that in 2015 he took out a hire purchase agreement on a motor vehicle. He says the mileage stated on the invoice was less than the actual mileage. He also says he wasn't given a copy of the agreement until after the sale - having only been shown the signature page. And the deposit stated on the invoice was greater than he'd actually paid. Mr M's also supplied an advert in which the vehicle is described as having done 32000 miles - not the 22000 miles he says he was told verbally and appears on the invoice

Moneybarn in its final response letter said that Mr M had entered a conditional sale agreement in 2015. Around two months later Mr M had called with various queries. He said he'd not received a copy of the agreement and raised the issue of the mileage. Moneybarn said its call handler had advised this be taken up with the dealer and Mr M had agreed. Following this Moneybarn said it could see Mr M had been in contact over a variety of issues. These had included arrears as well as the provision of Early Settlement Figures. And he'd again raised the issue of mileage in August 2016. The letter also mentioned a situation in which the vehicle had been recovered from Mr M and not returned until arrears had been cleared and evidence of insurance provided. It went on to say that it took Mr M's repossession of the vehicle (after he'd paid the arrears) as confirmation of his acceptance of the vehicle. In relation to the suggestion that Mr M had not been provided with a full copy of the agreement - it pointed out that Mr M had signed a declaration saying the agreement had been fully completed at the time of signing. So it was not upholding his complaint.

Mr M wasn't happy with this and complained to us.

The investigator did not recommend this complaint should be upheld

He found that Mr M had been sold a vehicle with an actual mileage greater than that shown on the invoice. He felt that this was a result of a typing error on the invoice - and that this had not affected Mr M's decision to buy. The investigator made reference to a valuation tool he'd used and an advert supplied by Mr M. He concluded that Mr M had paid a price similar to the retail advertised price (based on the higher mileage). He said that Mr M had first raised the issue over mileage in late 2015 but the next time it was raised was nine months later. Following which this complaint was made in May 2017. Whilst Mr M had told the investigator that he was "fobbed off" by the dealership he (the investigator) thought Mr M could have raised the issue with Moneybarn if he wasn't satisfied with the service received from the dealership. And whilst Mr M had said he didn't know he could - the investigator referred to a term in the agreement where this was clearly set out.

So far as the agreement itself was concerned the investigator indicated that it appeared to have been signed around September- (a few days after the date of invoice). And he felt it reasonable to assume that Mr M would have been told the features of the vehicle - including the mileage. And that he'd be aware of any problem with the mileage at the time he first got into the car. So in conclusion he didn't think that Mr M's decision to buy the vehicle had been affected by the mileage issue - and so he would not be upholding the complaint.

Mr M was not happy with this outcome so complained to us.

my findings

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

Although Mr M has mentioned hire purchase - the agreement signed is a conditional sale agreement. The products are similar and for the purposes of this complaint any difference does not affect the final decision. In terms, the consumer has use of - but does not own - the item until payments are completed. And so if the conditions of the agreement are breached by the consumer - the item (in this case a motor vehicle) can potentially be recovered from them.

I understand the issues Mr M has raised and appreciate his sense of disappointment and frustration at what he views as the unfair way in which both the dealership and Moneybarn have dealt with this matter.

The basis of this complaint goes right back to the start of the process. Underlying Mr M's concerns is the mileage - and when considering the purchase of a vehicle other than a brand new model - it's likely to be one of the uppermost considerations. And so I think it's an inescapable conclusion that - either at the time he first inspected the vehicle or when he later took possession of it - the issue would have been apparent to Mr M. And I don't think it unreasonable to expect that this concern should then have been raised at either of those times. I've taken into account the natural excitement that might be experienced in the purchase of a "new" vehicle - but mileage is such an important feature that it's hard to overlook.

And Mr M's suggestion to the investigator - that he didn't know he could complain to Moneybarn sooner - is not supported by the paperwork. There's a clear term headed "complaints" and highlighted in block letters. And this sets out several options as to how a complaint about the agreement can be made.

Whilst Mr M has also sent an advert in support of his complaint (which indicates the higher mileage) - he accepts it wasn't something he'd seen before obtaining the vehicle. So it can't have affected his decision.

I accept the evidence points to a typing mistake being made - so that there was a discrepancy between the mileage stated on the invoice and the actual mileage. And that's not ideal. But that itself is not sufficient to show mis-selling. Where there's a mistake in relation to the terms of a contract or the description of the item - the usual remedy is to put the consumer back to the position they would have been in without the error. And as the investigator has found - the price Mr M paid was compatible with a higher mileage vehicle. So whilst an error was made - it's not resulted in any financial loss to Mr M.

The other significant factor is that there's been ample time for Mr M to reject the vehicle - if the error did make a significant difference to his decision at the time of the agreement. But whilst he's aired the matter - he's continued to use the vehicle throughout. And even after it had been temporarily taken from him due to breach of the terms of the agreement - he's actually gone out of his way to take back possession by paying arrears and meeting other conditions. That does not appear to be consistent with a claim of mis-selling and a wish to reject. So I agree with the investigator - and for much the same reasons that the complaint should not be upheld.

Whilst I know this will disappoint Mr M it would not be fair and reasonable to say Moneybarn had done anything wrong - and so I shan't be asking it to do anything else in relation to this complaint.

my final decision

For the reasons given above I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 September 2017.

Stephen D Ross
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