

complaint

Miss B complains about issues she's experienced with a car supplied with finance from Moneybarn No. 1 Limited.

background

In April 2018 Miss B was supplied with a car and entered into a Conditional Sale agreement.

Within the first two weeks, Miss B says she experienced issues whilst driving the car on the motorway. The crash collision lights illuminated and the car lost power. Miss B arranged for a recovery vehicle to tow her home.

Miss B had the car inspected at the supplying dealer but says that no-one was able to tell her what was wrong with the car.

In June 2018 Miss B reported the electrical faults to Moneybarn. She also complained about some other issues including the rear light cluster, which she said had been repaired with second hand parts before the point of supply, and about the nearside front indicator being constantly on.

In its final response, Moneybarn said it had spoken to the supplying dealer who had confirmed that the only issue found with the car on inspection was the pollen filter which required replacement. Moneybarn said this was a wear and tear item. It acknowledged that Miss B had complained about electrical issues but said the dealership had found no issues and asked Miss B to provide evidence of the faults.

Miss B wasn't happy with the response so she complained to this service. Whilst the complaint was being investigated, Moneybarn arranged an independent inspection of the car.

Our investigator upheld the complaint. She said that although the independent inspection didn't find any faults, Miss B had provided video evidence showing multiple warning lights illuminating and unusual humming sounds coming from the car. The investigator said these issues were consistent with the faults reported by Miss B in June 2018 and were likely to have been present at the point of supply.

Moneybarn didn't agree. It said the independent report found no faults and that electrical issues were usually as a result of wear and tear.

my findings

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

Because Moneybarn has supplied the car under a conditional sale agreement there's an implied term that it has to be of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. I would expect a second hand car to have a degree of wear and tear. So in order to uphold this complaint I would need to be satisfied that the car wasn't of satisfactory quality at the point of supply due to an inherent defect rather than general wear and tear.

Miss B and Moneybarn disagree about whether the car had a fault at the point of supply. In order to reach a decision I need to look at all of the available evidence and determine, on the balance of probabilities, whether I think the car was of satisfactory quality at the point of supply.

Miss B says she first experienced electrical issues within two weeks of the point of supply. Although there's no documentary evidence of Miss B's car breaking down and being recovered, I've got no reason to doubt Miss B's testimony about this. The issues she has described with the car in those first two weeks are the same as the issues she described when she complained to Moneybarn in June 2018, two months after the point of supply.

The issues complained about in June 2018 by Miss B included:

- Engine cuts out whilst driving
- Crash collision warning light illuminated whilst driving
- Radio cuts out and speakers emit screeching noise
- Parking sensors and reversing sensors constantly humming through speakers
- Nearside front repeater on constantly

Because these issues were reported to Moneybarn within 6 months of the point of supply, there's a presumption that the faults were present at the point of supply unless shown otherwise.

Moneybarn relied on the investigations carried out by the supplying dealer when it rejected Miss B's complaint. I've reviewed the available information but it's not clear exactly what tests the supplying dealer carried out to establish whether the car had electrical faults. Because the faults were reported within 6 months of the point of supply, and because the nature of the faults were so serious that they affected Miss B's ability to drive the car (i.e. engine cutting out), I think Moneybarn should have done more than simply rely on what the supplying dealer told them. Ideally Moneybarn would have arranged an independent inspection at this stage.

I've considered Moneybarn's final response but it doesn't mention the video evidence that Miss B sent to Moneybarn on 4 September 2018. I'm satisfied that the video shows some of the faults complained of by Miss B. I can't be certain that Moneybarn took this video evidence into account – but I think it should have done. I find this video evidence persuasive as it was taken within the first 6 months of the point of supply and demonstrates some of the electrical faults complained of.

An engineer's report can help in deciding whether or not a fault was present at the point of supply. An independent engineer inspected Miss B's car in March 2019. The engineer was unable to confirm the reported issues and concludes that the faults can't be found.

However, the report notes that the fault is intermittent and that a longer test was required to see whether there were faults or not. The report also says that it would be difficult to prove that the faults were present at the point of supply without some form of documentary evidence that the faults had been reported soon after the point of supply.

I've considered the independent report carefully but I have some concerns about it. Firstly, the car was only driven for 17 miles. I don't think this is a sufficient distance to test for an intermittent fault. The engineer acknowledges that a longer test is required, but this was

never carried out. So I don't think the report is reliable evidence that a test for an intermittent fault has been carried out.

Secondly, the engineer says he would need to see evidence that the faults had been reported soon after the point of supply. I can't be certain of what was provided to the engineer before he carried out his inspection. But I'm satisfied, based on the evidence I've seen, that Miss B reported these faults to Moneybarn in June 2018. I think this is sufficiently close to the point of supply to fairly conclude that the same faults were more likely than not to have been present at the point of supply.

Thirdly, the report refers to a DVD provided by Miss B which evidences the intermittent faults. It's not clear from the report whether the engineer viewed the DVD or not. The engineer specifically observes that the DVD is available for Moneybarn to view, yet makes no comments on it. I see it as a fundamental weakness of the report that it doesn't comment on a timestamped DVD which I'm satisfied shows some of the electrical faults complained of by Miss B.

Because the faults presented themselves with 6 months of the point of supply, it's up to the finance provider to put things right unless it can show that the faults weren't present at the point of sale. On balance, I don't think the report is conclusive that the faults weren't present at the point of sale.

Moreover, I'm satisfied, based on Miss B's testimony and the supporting DVD evidence, that the faults presented between April and June 2018. So I would expect clear and conclusive evidence to rebut the presumption that the faults were present at the point of supply. I don't think the independent report is sufficient in this regard.

Although the independent report found no faults, I'm persuaded by the video evidence that there are intermittent electrical faults which are more likely than not to have been present at the point of supply. Because of this, I don't think the car was of satisfactory quality at the point of supply.

my final decision

My final decision is that Moneybarn No 1 Limited should:

- Cancel the agreement with nothing further to pay
- Arrange for the car to be collected at no cost to Miss B.
- Refund the deposit of £500 and pay 8% simple interest from the date of payment to the date of settlement
- Pay £100 trouble and upset
- Refund the insurance cancellation costs of £382.72
- Remove any adverse information relating to this agreement from Miss B's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 15 June 2019.

Emma Davy
ombudsman