

complaint

Mrs S complains that a car she acquired via a conditional sale agreement with Moneybarn No. 1 Limited wasn't of satisfactory quality. She also says that it mishandled her complaint and sold the car without investigating the issues.

Mrs S has been represented by Mr S, her husband, who has dealt with this matter on her behalf from the start. For ease of reference I will refer to Mrs S in my decision as it is her complaint.

background

In May 2017 Mrs S entered into a five year conditional sale agreement for a used car. The car was around five and half years old and had a mileage of about 57,500.

Mrs S has already made a complaint about the quality of the car to Moneybarn. That complaint was referred to us – and not upheld. But it does put this complaint in context. In summary, an independent inspection was carried out in December 2017 and there wasn't sufficient evidence to say the faults were present or developing at the time Mrs S got the car. When her complaint was referred to us, we agreed it was unlikely the fault with the car was present or developing at the point of sale. Mrs S didn't respond further and the complaint was closed.

Mrs S says she didn't get the car back from the dealership until January 2018 and that she then arranged and paid for the repairs to the car. Mrs S says the car was then only used for short journeys but the engine completely seized a short time later. She complained again to Moneybarn about the car in March 2018.

Mrs S says she heard nothing from Moneybarn so contacted it again in July 2018 by phone. Mrs S says she was then told that no complaint had been opened but that would be now be done. However, by this time Mrs S's account was in arrears and a default notice had been issued in June 2018. So during this call the agent discussed options for terminating the agreement and it was agreed that these would be sent out in writing and Mrs S would have seven days to decide what she wanted to do.

Mrs S says it was also discussed during that call how her complaint would be handled and that the car would be stored by Moneybarn while it's condition was investigated and a decision would then be made about whether her complaint would be upheld or not. If it was upheld then the agreement would be unwound and any reference to the default wouldn't appear in her credit file.

Mrs S sent an email to Moneybarn saying that she agreed to voluntarily terminate the agreement "provisionally whilst my complaint dispute is ongoing". A couple of days later Mrs S received formal notification that her complaint had been received and was being investigated by Moneybarn.

In August 2018 Moneybarn wrote to Mrs S confirming the agreement had been terminated and a third party company would be in touch to collect the car. The car was duly collected and inspected.

Mrs S says she next received a letter from Moneybarn in September 2018 informing her that the car was going to be sold at auction within the next 10 days. This letter also says that the “*pre-final billing*” amount on the account was £6062 which was the amount that was owed.

The following day she received a letter from Moneybarn saying that it hadn't been able to investigate her complaint within the 56 days and she could take her complaint to this service if she wanted to.

Around three weeks later Moneybarn wrote to Mrs S stating that the car had been inspected and it was estimated that it required around £3,000 worth of repairs. Moneybarn said that it didn't propose to have the car repaired but to sell it auction as this may be a better outcome for Mrs S as it may reduce the amount she owed. Moneybarn set out that it proposed to charge Mrs S either the difference between the reduced price of the car was now expected to fetch due to its condition and the normal market value or the cost of the repairs which ever was the lower amount.

Mrs S asked Moneybarn for a breakdown of the repair costs. Moneybarn replied that Mrs S hadn't been charged for any repair work and that it had applied the “*half rule deduction*”.

Mrs S complained to this service that the car had been sold without her permission and this wasn't in line with what she had been told about the car being stored pending investigation into her complaint. She said she didn't believe her concerns about the quality of the car had been investigated properly.

Shortly after Mrs S brought her complaint to this service Moneybarn issued its final decision on her second complaint. Moneybarn said that it was satisfied that the issues with the car had arisen through wear and tear due to its age and mileage and that they weren't present at the point of sale. It also confirmed that the inspection had revealed that the engine would not turn over, there were crank and camshaft codes stored, the timing belt had come off, the water pump had collapsed and the engine was likely to have internal damage.

Our adjudicator didn't recommend that Mrs S's complaint should be upheld. He said Mrs S had voluntarily terminated the agreement in July and that this couldn't then be rescinded. Moneybarn was within its rights to collect the car and sell it notwithstanding the outstanding complaint.

Our adjudicator said he thought the complaint had been properly investigated as in July 2018 Moneybarn had requested the car's MOT, most recent service record and any diagnostics or invoices relating to the issues raised but Mrs S hadn't responded to this request. Our adjudicator said taking into account the age and mileage of the car it was reasonable for Moneybarn to say the issues with wear and tear were to be expected and there was no evidence to contradict that view.

Mrs S disagreed with our adjudicator's view and the 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.

I've seen that Mrs S stopped making payments for the car when it broke down in or round March 2018. She says she was justified in doing so as the car wasn't of satisfactory condition. This led to the default notice being sent to her in June 2018.

When Mrs S contacted Moneybarn in July 2018 to chase her earlier complaint of March she was told that no new complaint had been opened. I don't know why this complaint wasn't opened in March or why Mrs S waited so long to chase it up but I've seen the complaint was opened during this call. It was also discussed that the account was in arrears and that there were options for Mrs S to now terminate.

However, when listening to the calls that have been provided by Moneybarn I've heard the agent tell Mr S, who was ringing on Mrs S's behalf, that the car "would be stored" pending the investigation into the complaint. Mr S asks that another independent engineer is used and says he doesn't want the dealership involved.

I think, after listening to these calls, that Mr S was given the impression the car would be inspected for any faults and then a decision would be made about Mrs S's complaint. The agent said the agreement could be unwound if the car wasn't of satisfactory condition and then the default wouldn't appear on Mrs S's credit file.

This service's remit is to investigate "regulated activities" as set out in the FCA'S Dispute Resolution Complaints Sourcebook (known as the "DISP rules"). The way a business deals with a complaint isn't a "regulated activity" so I can't require a business to pay a consumer compensation for mishandling a complaint but I can look at whether I think the car was or wasn't of satisfactory quality.

Under the Under the Consumer Rights Act 2015 a car must be of "satisfactory quality" at the point of sale. And satisfactory quality is what a reasonable person would expect taking into account all the relevant circumstances such as age, condition and mileage of the car. Here, the car was five and half years old with a mileage of 57,500 so I think a reasonable person would expect maintenance and repair issues to arise after a time.

I've seen Mrs S's first complaint about the car made in October 2017 wasn't upheld as the independent engineer, who had inspected the car, found an issue with misfiring and said that looking at the number of miles driven by Mrs S, this would have arisen through wear and tear. And Mrs S says following this she had repairs to the cam belt and water pump carried out in or around February 2018. She says she didn't use the car very much after that and the engine then seized in March 2018 meaning it couldn't be used. Mrs S hasn't provided the invoice for these repairs.

I've also seen that when the car was inspected, after it had been collected from Mrs S by Moneybarn, faults were discovered again with the cambelt and pump. And so I don't think I can reasonably say that the second set of faults with the car weren't linked to the original ones but this wouldn't mean the car wasn't of a satisfactory quality at the point of sale to Mrs S. This could be due to either the repairs being of a poor standard or because they were only of a temporary nature. Taking into account the report of the independent engineer then I think it's reasonable to conclude that it's likely the issues with the car were due to wear and tear.

I also think that due to the passage of time and repairs being carried out on the car in February or March 2018 would mean that it would be unlikely for another independent

engineer to be able to provide a report on the quality of the car at the point of sale to Mrs S in May 2017.

I've also seen that Mrs S didn't assist Moneybarn in its investigation. I don't know why she didn't provide the information it requested about the car's services, the MOT and the previous repair invoices.

Looking at the evidence that's available about the condition of the car, I think it's more likely than not that Mrs S's complaint wouldn't have been upheld as to the quality of the car at the point of sale and the faults with the engine would have been considered to be due to wear and tear.

Mrs S says that Moneybarn had no right to sell the car and needed her permission to do so. But I've seen that Mrs S emailed Moneybarn on the same day it provided the options open to her in writing as how to end the agreement early. Mrs S said she was voluntarily terminating the agreement though she added a proviso that this is "provisional" while her complaint was open.

There was no further communication between Mrs S and Moneybarn until August 2018 when Moneybarn wrote to Mrs S to inform her that the agreement was terminated and the car would be collected by a third party company. I've seen from the correspondence between Moneybarn and the third party company that Moneybarn had requested that the car be repossessed as Mrs S had failed to complete the voluntary termination process. And according to the notes provided by Moneybarn this was because although it had accepted Mrs S's email to voluntarily terminate, the third-party company that had then been arranged to collect the car hadn't been able to contact Mrs S. This had meant Moneybarn passing the matter to a different company to collect the car.

Voluntary termination means the contract is ended and the car handed back. I think that that is set out clearly in the terms and conditions of the agreement and in the letter sent to Mrs S about voluntary termination in July 2018. The car wasn't owned by Mrs S until she'd made the last payment on the car and it remained the property of Moneybarn. I don't think Moneybarn could accept a "provisional" termination of the agreement or that Mrs S was able to make that stipulation when she handed the car back. However, Moneybarn didn't make that clear to Mrs S.

Looking at the lack of contact and payments I don't think I can reasonably say Moneybarn acted unfairly in taking the car back when it did, ending the agreement and selling it on but it should have been clearer with Mrs S about what would happen.

I appreciate Mrs S had been given an expectation that the car would be inspected and a decision made about her complaint regarding the quality of the car before the contract was ended but in these circumstances I don't think it's likely that Mrs S has been disadvantaged by the lack of a second inspection of the car.

I also don't think I can reasonably require Moneybarn to remove the default notice from Mrs S's credit file. This is because Moneybarn are under a duty to record accurate information about payments under the agreement and Mrs S was under an obligation to make those payments but didn't.

So for the reasons given above I'm not upholding Mrs S's complaint.

my final decision

For the reasons set out above I'm not upholding Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 19 March 2020.

Jocelyn Griffith
ombudsman