

complaint

Mr P complains the vehicle he acquired through a conditional sale agreement financed by Moneybarn No.1 Limited was misrepresented. He also complains that his account was defaulted and he wants any adverse information removed from his credit file.

background

Mr P told us he decided to acquire this vehicle having seen an advertisement. He said this had described the vehicle as being supplied with a working satellite navigation system (SNS) and air conditioning system. And it had been priced at £11,990. He said he contacted the dealer, a company I'll call "B", and arranged to pay a deposit to secure the vehicle. The day after he said he was informed by the credit broker, a company I'll refer to a "C" that the price had been wrongly quoted and should've been £12,990. And that in order to maintain the same monthly payments he would need to pay a £2,000 deposit. Mr P says he reluctantly agreed to this. But when he got the vehicle back home he says he found the air conditioning didn't work and there was no SNS installed.

Mr P says he was given the chance to keep the vehicle or reject it and told Moneybarn he wanted to reject it. And that he was then told the agreement would be unwound and the vehicle collected. But he said none of this happened and he was simply told the account had been defaulted and the agreement cancelled.

Moneybarn told us that in its final response letter of 10 July 2018 it had advised Mr P that B was willing to install a SNS at no cost to him. It had also offered to review the air conditioning system and would consider allowing a repair to be done locally to Mr P. Moneybarn has since told us that Mr P hasn't made any payments on the agreement since May 2018. And it has now defaulted his account and terminated the agreement.

I issued a provisional decision on this complaint on 22 November 2019. I said I intended to uphold the complaint as I was satisfied the vehicle was misrepresented as it was not supplied with a SNS as advertised. And I said I thought Moneybarn should've accepted Mr P's rejection of the vehicle.

Neither party has replied to my provisional decision so I see no need to alter my conclusions.

My final decision and reasons are set out below.

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'm sorry that Mr P has experienced the disappointment of finding the vehicle he acquired didn't meet his expectations.

I need to mention part of Mr P's complaint which I'm not able to deal with in this decision. That's the issue regarding the pricing and the deposit. This wasn't part of the original complaint he made to Moneybarn - which simply referred to the issues regarding the SNS and air conditioning. Our adjudicator explained that it was open to Mr P to make a separate complaint and that remains the case.

Mr P's conditional sale agreement is a regulated consumer credit agreement and our service is able to consider complaints relating to it. And whilst I don't apply the law - directly - I do take it into account. Relevant law here includes the Consumer Credit Act of 1974 (CCA). Of particular relevance to the circumstances of this complaint is section 56 CCA. Summarised, this makes the provider of finance equally liable for any misrepresentation made by the dealer, in negotiations prior to supply, in relation to the description of the vehicle.

Mr P is alleging the vehicle was misrepresented as he says it was advertised as being supplied with SNS and working air conditioning. He says this wasn't true. A misrepresentation is a false statement of fact which induces a consumer to enter into an agreement and, as a result of the misrepresentation, to suffer a loss.

There's no doubt the advert stated that the vehicle was being supplied with a SNS. And reference is also made to dual zone climate control (DZCC). I understand that DZCC operates similarly to air conditioning but additionally allows for a desired temperature to be maintained regardless of weather conditions outside the vehicle. Moneybarn hasn't disputed that the SNS wasn't supplied. But I've not seen any independent evidence that the DZCC wasn't working. Although for the purposes of this complaint I don't think that affects my decision.

It's clear from contact notes that Moneybarn has provided that Mr P made his complaint within a couple of days of acquiring the vehicle. It seems he contacted C who passed on the complaint to Moneybarn. It's recorded in these notes that at that time, Mr P indicated to C that he wanted a SNS installed and the air conditioning (DZCC) fixed. Moneybarn wrote to Mr P on 1 May 2018 saying it was looking into the complaint.

On 22 May 2018 there's a contact note which records that Mr P wanted to reject the vehicle. And on 23 May a note refers to Moneybarn's complaint handler leaving a message for Mr P which appears to indicate the "broker" is willing to allow him to return the vehicle or keep it. I'm not sure whether this is an error and is intended to refer to B, the dealer. I'd not expect a credit broker to be involved with decisions about whether items are repaired or rejected.

There then seems to have been a sequence of emails between, Moneybarn, C and Mr P but I've not been supplied with the details of these contacts. But following this, Moneybarn issued a final response letter (FRL) on 10 July in which it said that B had offered to supply a SNS and review the air conditioning (DZCC) problem. Although it did say the latter might be considered a wear and tear issue. It invited Mr P to contact B to make the necessary arrangements.

By this time Mr P seems to have decided to stop payments and there's reference to a failed direct debit on 3 July. Subsequently, I can see Moneybarn sent notices of payments due and - when these weren't made - notices of arrears. A notice of default was sent in September 2018 and the account was terminated on 25 October. Since then Mr P has complained to this service and our adjudicator has, prior to issuing her view, attempted to assist the parties to resolve the various issues between them.

It's not entirely clear what's become of the vehicle. There's a note from November 2018 indicating that steps towards repossession had been started. And Moneybarn informed us in an email of 5 April 2019 that the vehicle had been repossessed and was with recovery agents. This was confirmed by a telephone conversation between our adjudicator and Moneybarn's complaint handler on 8 April 2019. However, an email from Mr P dated 19 July 2019 puts this in doubt as it describes the vehicle as being parked and not used.

There are quite a lot of gaps in the information I've been given, but I've got to base my decision on that which I do have. I'm satisfied there was a misrepresentation in respect of the SNS as it wasn't fitted in this vehicle. But I've seen no independent confirmation that the DZCC system was faulty.

I previously stated the information suggests that when Mr P became aware of these issues he initially indicated he wanted things to be put right and that Moneybarn agreed to this. But Mr P later changed his mind and asked to reject the vehicle.

There was an offer to supply a SNS but I understand it's not possible to retrofit the system on this vehicle. So if Mr P was offered a portable SNS system I can see why it wouldn't be a satisfactory option. And I doubt if he'd have gone ahead with the deal if he'd known the vehicle didn't come with an integrated SNS.

Where there's been a misrepresentation we'd normally try to put the aggrieved party back to the position they'd have been in but for the misrepresentation. And not the position they'd have been in if the (mis)representation had been true. It's not always possible to exactly replicate that position and here Mr P has had use of the vehicle. So whilst I think that due to the misrepresentation he should be entitled to reject the vehicle, it's fair he should have to pay for the period of use. This should take into account the degree of impairment with the vehicle not being as described. Moneybarn offered £30 per month to reflect this and I think that's fair and reasonable.

Although there was an ongoing complaint this service wouldn't advise a consumer to stop making contractual payments on an agreement. As Mr P has discovered this can lead to the termination of an agreement and adverse entries on a credit file - which can create problems in accessing future credit.

In summary, I'm satisfied the vehicle was misrepresented as it didn't come with the SNS which was stated in the advertisement. Whilst Mr P was initially willing for this to be rectified and a replacement fitted, he quickly notified Moneybarn that he wished to reject the vehicle. As no suitable replacement had been fitted I think Moneybarn should've accepted the vehicle being rejected. I'm therefore intending to uphold the complaint.

my final decision

For the reasons given above my final decision is I'm upholding this complaint.

I now require Moneybarn No. 1 Limited to take the following action in order to fully settle the complaint:

1. Accept Mr P's rejection of the vehicle;
2. If not already repossessed - arrange for the collection of the vehicle at no cost to Mr P;
3. Refund any cash deposit together with simple interest at the rate of 8% per year, to be calculated from the date of payment to the date of settlement;

4. Recalculate any payments due on the agreement so that Mr P incurs no further liability after the date of termination. This should include a reduction of £30 per month for impaired use from the commencement of the agreement to the date of termination (pro-rata for a period of less than one month);
5. Subject to all payments (after recalculation) having been made, arrange for the details of the agreement to be removed from Mr P's credit file.

Before issuing a refund (if any is due) Moneybarn may deduct any sums owed on the agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 9 February 2020.

Stephen D. Ross
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