

complaint

Mrs S acquired a second-hand car from a garage in August 2016 but it soon became faulty. Mrs S would like Moneybarn No.1 Limited to take the car back and correct any adverse information held on her credit file in relation to missed payments.

background

Mrs S bought a car under a conditional sale agreement with Moneybarn in August 2016. The car began to show faults within 3 weeks when the malfunction light showed on the dashboard. The Diesel Particulate Filter ('DPF') was blocked and there was another problem. On 15 September 2016 Mrs S took the car to the same garage that had carried out the repair and it diagnosed that the problems appeared to relate to the DPF. The problem came back again in August 2017 when the DPF appeared blocked again.

Mrs S complained to the credit intermediary in September 2016 and January 2017 saying that she didn't think that the car was fit for purpose. Mrs S was advised to complain to Moneybarn. She did so in September 2017.

Moneybarn told this service that the damage was due to wear and tear, bearing in mind the car's age and the added mileage – 7,000 miles since purchase.

Mrs S was worried that she might lose her job as she couldn't rely on the car, had to use public transport and had to take time off work.

When one of our investigators looked into this she relied on various documents produced by Mrs S. An email response in September 2016 she received from the garage she bought it from said, in part, that, '*a DPF can be a complicated fault and the vehicle will need to be brought back down to us to rectify*'. Mrs S didn't do that. She took it to a third party specialist garage for diagnosis and repair. Despite further work done on the vehicle it was still faulty in August 2017. Mrs S took it back to the third party specialist garage and it recorded that there was an underlying fault. It noted that the fault had been reported in September 2016 and:

'We suspect the vehicle had the underlying fault at this time so has been Running with this fault for over a year'

Based on that and other documents she'd seen the investigator said that the agreement should be cancelled and recommended other remedies. Mrs S agreed but Moneybarn didn't. It said, among other things, that the problem was related to wear and tear, that the garage Mrs S had taken the car to only expressed its '*suspicion*' as to a fault and that it was:

'Mrs S responsibility to have the engine stripped and tested and evidence supplied that substantiates the claim that this was an inherent issue in line with the suggestion on the report she has supplied'

But, of course, Mrs S had had some reports and diagnostics carried out when she was asked to do so by the credit intermediary, as Moneybarn knew.

Also, Moneybarn said that, '*vehicles driven exclusively at low speeds in urban traffic can require periodic trips at higher speed to clean out the DPF*'.

Because Moneybarn didn't agree with the investigator the case was referred to an ombudsman to make a decision.

my findings

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

The first thing to say is that this is not a court of law and the same restrictions do not apply. Some evidence has to be supplied to support a claim and it's for the ombudsman to come to a conclusion based on what is fair and reasonable. I can see that Moneybarn said that Mrs S hadn't had the car serviced since its purchase and, at any rate, not within the recommended period of time for it or when the mileage was high enough. And it's true that parts on vehicles wear out after time, depending on a variety of factors. But Mrs S acquired her car using a conditional sale agreement. The law says that Moneybarn is responsible if the car is faulty. It would be fair and reasonable, in my view, to ask Moneybarn to put things right if I found that the car was not of satisfactory quality when supplied.

On the other hand Mrs S has not been shown to be just an urban driver and there is no indication from any garage that she ever said she was. It is well-known that cars with a DPF have to be driven occasionally at higher speeds for a consistent period in order to burn off the residue left behind in daily use. It seems reasonable to assume that the garage staff talked about this with her, dismissed the thought that there was any problem in the way the car was used by her and reported its view accordingly i.e. that there was a long-standing fault with the car. 7,000 miles is not a great distance in a year and would be considered below the average that many car insurance companies rely on when quoting the cost of a policy.

The word 'suspicion' would not have become less convincing than 'believe' if that had been used by the garage. What the garage was trying to convey was that it thought that there was a long-standing fault with the car. The garage said that the DPF was a symptom of an, *'underlying fault with the injectors misfueling and producing excessive levels of soot.'* Moneybarn isn't prepared to accept that and thinks that it's for Mrs S to prove that the car was faulty. That might be true in a court of law but this isn't a court. Anyway, as the investigator said the Consumer Rights Act 2015 entitles a customer to say that a fault discovered – as I think it has been here – within 6 months of the date of delivery is taken to have been there at the start unless the contrary is proved. That, of course, puts the responsibility on Moneybarn to prove that the car was not faulty.

I think that Moneybarn should do several things to fix this problem, as I have laid out below.

my final decision

For the reasons given above I uphold the complaint against Moneybarn No.1 Limited and order it to:

- Cancel the agreement with nothing further owed by Mrs S and take back the car with no cost to Mrs S.
- Refund any payments made under the agreement since 18 August 2017 plus 8% simple interest from the date of each of the payments until the date of settlement.
- Refund the cost of garage repairs relating to the DPF and the costs of

the reports/diagnostics requested by the credit intermediary plus 8% simple interest from the date of each of the payments until the date of settlement.

- Remove any adverse information relating to missed payments on the credit file.
- Pay £150 for the distress and inconvenience caused.
- Pay for any costs for using public transport before 18 August 2017 for the days when the car was in the garage, and refund the repayments, pro rata, for those days, too, provided Mrs S was making her repayments at the time.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 16 February 2018.

Jeremy Lindsay
ombudsman