

complaint

Ms J complains that a car she acquired with the assistance of finance from Moneybarn No. 1 Limited is not of satisfactory quality and Moneybarn has not assisted her to reject the vehicle.

background

Ms J acquired the car in February 2014. In April 2014 she reported a number of faults with the car to the supplying dealership. It was agreed that the dealership would look at the car but it was returned with no repairs as the dealership had been unable to replicate the faults. Ms J complained to Moneybarn and an independent inspection was arranged which highlighted some issues that required further investigation and/or repair. The car was again sent to the dealership to further investigate and some minor repairs were carried out. Ms J was unhappy and asked an independent garage to look at the car. It was highlighted that the suspension may potentially have a problem and that the non standard brake pads and discs should be replaced with those approved by the manufacturer. Ms J stopped making payments and Moneybarn has taken steps to recover the car.

Our adjudicator did not recommend that the complaint should be upheld. He considered that the faults reported were minor and to be expected with a car of this age and mileage. He considered that the fault with the suspension likely arose after the car was sold and so he could not say that the car was not of satisfactory quality. He considered that Moneybarn had not made any error. Ms J did not agree and responded to say in summary that the adjudicator had misunderstood her complaint and failed to take into account that the car did not have an MOT at the time it was sold.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is more likely to have happened in the light of the evidence.

MOT issues

It seems that the MOT was due to expire shortly before Ms J acquired the car. The dealership arranged for the car to have an MOT prior to delivery. From the information I have seen, the car had a valid MOT when it was delivered. This would suggest that there was not an inherent fault with the car that would be picked up on an MOT inspection.

suspension issues

The independent garage noted that the nearside front spring/shocker had dropped and Ms J was advised to replace the pair. This item is marked as “recommended” and not “essential”. Ms J had driven over 8000 miles by the time this inspection was carried out and there was no complaint to the dealership regarding the suspension. In the circumstances I can’t say that this was an inherent fault when the car was sold. It is more likely to be as a result of wear and tear with a car of this age and mileage. I can’t fairly ask for Moneybarn to pay the cost of repair.

brakes and tyres

Ms J complained that the car pulled to the left on braking. The independent report carried out by the dealership found the brakes to be serviceable for the car's age and recorded mileage but did note that the problem required further investigation. It was suggested that the wheels may need balancing and/or braking efficiency checked. This dealership tested the car on the road and could not replicate the fault. The independent report obtained by Ms J noted that the brakes passed the visual inspection. Ms J arranged to replace the non manufacturer brake pads and discs but I have seen nothing to suggest that there was an inherent problem with the braking that was present at the time of sale. I also think that it is reasonable to expect wear and tear in respect of tyres so I can't fairly say that Moneybarn should be responsible for the cost of replacing tyres.

breach of terms and conditions

During Ms J's complaint it came to light that her partner was using the car as a taxi in breach of the terms and conditions of the agreement. Ms J said that she told the dealership about this. I can't be sure what was discussed but I can see that the finance agreement signed by Ms J is clear that the car must not be used as a taxi. Moneybarn required that the car was no longer used as a taxi and I consider that this is fair and reasonable given the terms of the agreement signed by Ms J. Because Ms J stopped paying the instalments Moneybarn has issued a default notice and begun proceedings to recover the car. Although Ms J has wanted to reject the car and has complained that it is not of satisfactory quality, she still has a responsibility under the agreement to keep up the payments. I can't say that Moneybarn has acted unfairly in taking action to recover the debt in these circumstances

my final decision

For the reasons I have set out above I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Ms J to accept or reject my decision before 20 April 2015.

Emma Boothroyd
ombudsman