

complaint

Mr W acquired a used car in December 2015, by means of a conditional sale agreement with Moneybarn No. 1 Limited. He complains that the car was not fit for purpose at the point of sale. He says the car broke down three months after delivery, and requires a repair to its timing chain. The manufacturer has offered to pay for the replacement parts, and Mr W wants Moneybarn to pay the remaining costs.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 28 September 2016 – a copy of which is attached and forms part of this final decision. In my provisional decision, I explained why I felt that Mr W's complaint should not be upheld.

Mr W disagreed with my provisional decision, saying that Moneybarn had deliberately 'muddied the waters' by not bothering to arrange for his car to be independently inspected. Moneybarn did not respond.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

In my provisional decision, I said it is unfortunate that neither Mr W nor Moneybarn chose to have the car inspected by an independent accredited organisation. This might have helped to clarify whether the car was fit for purpose at the point of sale. Mr W could have chosen to do so, as well as Moneybarn.

In the absence of such an inspection, I must again form a view on the balance of probabilities, based on the available evidence. And, in the absence of further arguments, I see no reason to change my provisional decision.

my final decision

For the reasons explained above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 December 2016.

Roy Mawford
ombudsman

copy of provisional decision

complaint

Mr W acquired a used car in December 2015, by means of a conditional sale agreement with Moneybarn No. 1 Limited. He complains that the car was not fit for purpose at the point of sale. He says the car broke down three months after delivery, and requires a repair to its timing chain. The manufacturer has offered to pay for the replacement parts, and Mr W wants Moneybarn to pay the remaining costs.

background

Mr W's car was 61 months old and had travelled a little over 94,000 miles at the point of sale. When it broke down three months later, it had travelled just over 9,000 further miles.

Mr W said:

- His car was taken to a manufacturer approved dealership for diagnosis, the cost of which was just over £850
- The timing chain was designed to last a vehicle's lifetime, and his car's problem was a manufacturing fault
- He asked the manufacturer to meet all his costs – but it only offered (as a goodwill gesture) to pay for the replacement parts, and not for the labour costs of around £2,000
- He understood that the manufacturer had recalled vehicles with the same type of engine, and he indicated that he would take legal action against the manufacturer to recover his costs
- He tried to contact the supplying dealership, but found that it was no longer trading
- He later became aware that he could complain to Moneybarn, and he did so in early July 2016
- His car remained at the approved dealer's premises and, from April 2016 onwards, he stopped making the monthly payments required under his agreement

Moneybarn responded in mid July 2016, saying:

- It had asked the manufacturer about the expected life of his car's timing chain – the manufacturer was unable to give a precise response, and suggested the life could depend on several factors including how the car was driven, how it was maintained and the mileage it had travelled
- It had also clarified that, although the manufacturer had recalled some cars because of timing chain problems, these did not include Mr W's model
- Because of the age of his agreement, the onus was on Mr W to demonstrate that his car's problems were inherent or developing at the point of sale
- Given Mr W's car's age and mileage travelled, it was satisfied that the problem experienced was more likely than not to have been caused by normal wear and tear – and so it was unable to uphold his complaint
- It drew Mr W's attention to a Notice of Default sent in mid June 2016 asking him to pay arrears, which at that time were a little under £800 – as he had not done so, it told him that his agreement would be terminated

Mr W referred his complaint to us in late July 2016. Moneybarn told us that it had paid for the diagnostic work on Mr W's car, and had added this cost to his account (in line with the terms and conditions of his agreement). It had then repossessed Mr W's car, which it had placed in storage pending the outcome of his complaint.

Our adjudicator thought the complaint should be upheld. He pointed out that many consumers did not know their rights or who they could approach when such problems arose. He also pointed out that, although Mr W did not contact Moneybarn until more than six months after delivery of his car, the timing chain problem arose after only three months. He felt that Moneybarn should deal with this complaint on the basis of when the problem arose, rather than when it was contacted.

Our adjudicator said information from on-line forums and websites indicated that the manufacturer had problems with the type of engine in Mr W's car, arising from premature failure of its timing chain. Although not 100% reliable, he was persuaded by this information. He added that, in his view, the manufacturer would not have offered to pay some of the repair costs, unless it felt there was some liability.

Our adjudicator believed the car's problem was more likely than not to have been inherent or developing at the point of sale, rather than to have been caused by normal wear and tear. He recommended that Moneybarn should not terminate Mr W's agreement, and that it should pay all the costs of repairing his car not covered by the manufacturer.

Moneybarn disagreed with our adjudicator's recommendations. It asked for this complaint to be reviewed by an ombudsman, saying:

- The online information cited by our adjudicator was conjecture and speculation
- Also, each case is individual and Mr W's specific circumstances should be properly considered
- In particular, the fact that Mr W's car travelled more than 9,000 miles in three months – after the point of sale and before the timing chain problem occurred – should be noted
- In addition, it did not believe the manufacturer's offer should be interpreted in the way our adjudicator suggested – rather it should be viewed as a straightforward goodwill gesture

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

Moneybarn has a responsibility to ensure that goods of satisfactory quality, and corresponding to their description, have been supplied. This means that a reasonable person would have regarded the goods as satisfactory, taking into account all relevant circumstances, which for cars include age and mileage travelled. But there are limits to Moneybarn's responsibilities. In particular, faults must be present at the point of sale.

It is unfortunate that neither Mr W nor Moneybarn chose to have the car inspected by an independent accredited organisation. This might have helped to clarify whether the car was fit for purpose at the point of sale. In the absence of such an inspection, I must form a view on the balance of probabilities, based on the available evidence.

Mr W says he was not initially aware that he could complain about his car's problem to Moneybarn – although he should have been aware that he had a contractual obligation to continue making monthly payments. But I have seen no evidence to show that he contacted Moneybarn in April 2016, which I think he should have done, to explain why he had stopped making payments and to discuss possible ways forward.

If Mr W had made contact then, I feel Moneybarn would have found it much harder to assert later the onus was on him to demonstrate that his car's problems were inherent or developing at the point of sale. Assuming Mr W did not make contact, and in the circumstances of this case, I think that the issue of with which party the 'burden of proof' lies is a 'grey area' – and neither party can assert that the onus is on the other party.

Our adjudicator noted the on-line information that influenced his recommendations was not totally reliable. But I go further and agree with Moneybarn that, however interesting this information may be as background material, it is still conjecture and speculation. I also agree with Moneybarn that, in the absence of reliable evidence to the contrary, goodwill gestures should not be interpreted as an acknowledgment of (even limited) liability.

This brings me to the question of whether the car's problem was present at the point of sale, or arose subsequently and/or can be viewed as wear and tear. In the absence of other evidence, key factors for me are:

- The car's age and mileage at the point of sale
- The mileage travelled after the point of sale, before the problem occurred
- The car's service history

I note Mr W's comments that his model of car was intended for high mileage driving. He also provided evidence indicating that it had been regularly and properly serviced. But it is still the case that Mr W's car was over five years old, and had travelled well over average monthly mileage, at the point of sale. It then travelled at nearly twice its previous average mileage for three months before its break down.

In these circumstances, I am unable (on balance) to find that the car was not fit for purpose at the point of sale. My conclusion is that (more likely than not) its problem arose subsequently and/or was caused by wear and tear. This means that Moneybarn is not responsible for the car's problem, or for any costs relating to its repair.

my provisional decision

For the reasons explained above, but subject to any further comments or evidence I receive from Mr W or Moneybarn No. 1 Limited by 28 October 2016, my provisional decision is that I do not uphold this complaint.

Roy Mawford
ombudsman