

complaint

Mr C complains that the car he acquired through a conditional sale agreement with Moneybarn No. 1 Limited was not of satisfactory quality. He would like to reject the car and be reimbursed for the diagnostic test costs he has incurred and for his loss of enjoyment.

background

Mr C entered into a conditional sale agreement with Moneybarn in August 2017 to acquire a car. In December 2017, he says the car went into limp mode and a warning light came on saying the air conditioning had been turned off due to overheating. He says he waited around three and a half hours for the car to cool and checked all the engine levels were within the required limits. When he turned the car on the warning light was still showing. He left the car overnight and had to arrange for the car to be collected the next day.

Mr C contacted Moneybarn on 8 December about the issue and says he explained he needed to be contacted by email as he worked away from home. He says he did not hear anything until he was contacted on 28 January 2018 by letter to say his case was being closed. He contacted Moneybarn and his complaint was reopened.

Mr C says he was asked to provide a diagnostics report alongside the information he had already supplied. He asked if this would be reimbursed and was told it would be if it showed he was experiencing mechanical issues. Mr C paid £45 for a report which showed two fault codes.

An inspection report was arranged and Mr C says the engineer agreed there was an intermittent fault and also noted that the gearbox was stiff. He also noted that the service history of the car was not complete. He says the report then didn't mention the gearbox issue and said there were no faults.

Mr C says he doesn't feel safe driving the car and that he has hardly used it and so any faults would not be down to wear and tear while in his use. He says that the issues are ongoing.

Moneybarn says that Mr C contacted it on 8 December 2017 saying the car was overheating. It says it then tried to contact Mr C but as it couldn't get hold of him the complaint was closed on 29 January 2018. Mr C then contacted it on 13 February and the case was reopened and it says at this time Mr C asked to be contacted by email.

Moneybarn received a diagnostics report from Mr C which confirmed two fault codes. It arranged for an independent inspection to be carried out to establish whether there were faults present from the point of supply. It says the inspection did not find any faults with the car and suggested that the fault codes were historic.

Our investigator did not think that there was enough evidence to say that the car had faults that were present at the point of supply and so she did not think that Moneybarn did anything wrong but not accepting Mr C's request to reject the car. She agreed that the car was sold without a full service history but was not persuaded that Mr C wouldn't have gone ahead with the acquisition had he known this.

Moneybarn offered to cover any reasonable costs of having the historic fault codes removed and to pay Mr C £200 in recognition that the car was advertised as having a full service history and this was not correct. Our investigator thought this was reasonable.

Mr C did not accept our investigator's view. He said that if the car had been correctly advertised (rather than saying it had a full service history) its value would have been more than £200 less than the amount he paid. He said he wanted to reject the car based on it being mis-sold due to the incomplete service history.

Mr C said that if he couldn't reject the car then he needed it repaired saying the fan was on constantly and he doesn't feel safe in the car. He says the car is not performing well as has been suggested and he hadn't had repairs carried out as he believed Moneybarn should cover the cost of these.

my findings

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

Mr C entered into a conditional sale agreement with Moneybarn to acquire a car. Under the regulations Moneybarn is liable if the car was either misrepresented or not of satisfactory quality at the point of supply. Satisfactory quality takes into account the age and mileage of the car. At the time of acquisition the car was around six years old and based on the sales invoice it had been driven over 38,000 miles.

Mr C has raised two issues. The first relates to the quality of the car at the point of supply. The second relates to the car being misrepresented due to it not having a complete service history.

For me to uphold Mr C's complaint that the car was not of satisfactory quality I have to be satisfied that there were faults that were present or developing at the point of supply and that these are ongoing.

Mr C experienced an issue with the car in December 2017, which was within six months of his acquisition of the car. He contacted Moneybarn about this. Mr C says that he explained at that time that correspondence should be by email but Moneybarn says this was mentioned at a later date. There was a delay as Moneybarn was not able to contact Mr C for a period of time however this was resolved and the case reopened and investigated in February 2018.

Mr C had a diagnostics test carried out on 23 February which reported two fault codes. Given this information and given when Mr C raised his complaint I find it reasonable that Moneybarn arranged for an independent inspection of the car.

I have looked through the inspection report which took place in March 2018. This noted that a light was illuminated in relation to the coolant. Its diagnostics tests then showed two fault codes which were both coolant regulated codes. The coolant levels were checked and found to be correct. The report says that there was no evidence of contamination to the oil or coolant and no evidence of external leaks. It says that once the engine started the warning light went out and the engine ran to the correct temperature. It says there were no issues in the road test.

The inspection engineer concluded that no faults were evident during the inspection or road test and said the car could be returned to service. It suggested the fault codes should be cleared and if further faults developed these should be investigated. It further suggested that the fault codes could be historic.

Based on the inspection report, I do not find I can safely conclude that there were faults that were present or developing at the point of supply. I note the codes that were reported and that the warning light still comes on. However as the fault codes could be historic and based on the inspection there were no faults reported, I cannot say that there is an ongoing issue. As suggested, I find it reasonable that fault codes are removed and then, in the event of a reoccurrence of the issue, this should be investigated further.

Mr C has also raised an issue with the service history. The car was advertised as having a complete service history up to a certain point. However there was a service missing. I appreciate that Mr C was upset to realise that there was a year without a service.

To say that a misrepresentation has taken place I need to find that a false statement was made and that this induced Mr C to enter into the agreement. In this case I accept that Mr C would have taken comfort in there being a full service history. However, the service history was available to Mr C and had this been important to him I would have expected him to check it when taking delivery of the car. It was not until the issue was raised with him a few months later that Mr C became aware of the missing service.

Based on what I have seen I don't find I can say Mr C would not have entered into the agreement had he been aware of the missing service. I do accept that this has caused Mr C upset and that he should be compensated for this.

Mr C says that £200 compensation for the missing service is not enough. I note the comments he has made. But having looked through the service history and considered Moneybarn's comments about the impact on the car's value I find that the £200 that Moneybarn has agreed to pay is reasonable.

my final decision

My final decision is that Moneybarn No. 1 Limited should, as it has agreed:

- to cover any reasonable cost of having the historic fault codes cleared from the car's system; and
- pay Mr C £200 in recognition of the car being advertised with a full service history when this was not the case

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 March 2019.

Jane Archer
ombudsman