

## **The complaint**

Mr W complains about a car supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited.

## **What happened**

In February 2019 Mr W took out a conditional sale agreement with Moneybarn to cover the cost of a used car. The car was nearly five years old and had travelled 67,000 miles. The agreement was arranged through a third party broker.

Within the first three weeks Mr W said he noticed the car was pulling to the left. He said another garage told him there was a problem with the car's tracking. The dealer that supplied the car fixed the tracking and replaced the worn tyre.

Mr W said that in May 2019 he noticed the fault had returned. He reported this to the dealer and another repair was done.

In September 2019 the fault returned again, and Mr W reported this problem, and others, to Moneybarn and the finance broker. The broker arranged for an inspection of Mr W's car. The report said that the car did pull severely to the left. It also said that because of the time that had passed and the mileage he'd travelled, it didn't think it likely that the fault would have been present at the time of sale.

Moneybarn told him they were not upholding his complaint as there was no evidence the fault was present at the time of sale, and due to mileage done since he got the car.

Our investigator thought Mr W's complaint should be upheld. He felt that there was sufficient evidence to show that the problem had been developing at the point of sale and had been getting progressively worse.

Moneybarn disagreed and asked for an ombudsman decision.

## **What I've decided – and why**

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

Moneybarn supplied Mr W with the car under the conditional sale agreement they had with him. There's a term implied in the agreement that the car would be of satisfactory quality. What is satisfactory is determined by what a reasonable person would consider satisfactory given the price, description and other relevant circumstances. In this case this would include things such as the age and mileage of the car.

Mr W's car was five years old and had 67,000 miles on the clock when he got it. So, a reasonable person might expect to have to repair or replace some parts of the car over time.

Moneybarn said there was no evidence that the fault was present at the time of sale. They said that the car had passed an MOT in January 2019, and this confirmed the car was roadworthy at the time. They said Mr W had done more than 11,000 miles before he reported the fault to them, and it was likely that the problems he had were due to wear and tear.

I disagree. The engineer's report obtained by the finance broker and completed in November 2019 confirms there was a problem with the tracking. I see that the engineer says he didn't think the problem would have been present or developing at the time of the sale.

And Moneybarn has relied on this point when dismissing the complaint. The engineer also explains he's reached this conclusion based on the time and mileage covered since the car was supplied to Mr W. Importantly, he also says he believed this to be the case *"unless documented evidence can be provided to confirm these have been ongoing issues since the point of sale"*.

Mr W first complained about the car pulling to the left just three weeks after he got the car. He also says he raised it with the dealer at the time of the sale. There's evidence that the car has been repaired by the supplying dealer, and Mr W says it's been repaired twice. And still it hasn't been fully fixed.

So I'm satisfied the fault identified in the engineer's report was likely to have been the same issue Mr W reported to the dealer, and the one it attempted to fix. So I'm persuaded that a fault was likely to have been present at the time of the sale and I think the fault makes the car of unsatisfactory quality. A reasonable person wouldn't expect this type of fault within three weeks of acquiring a car of this mileage for the amount Mr W paid.

I've thought about Moneybarn's comment that the car passed an MOT before the sale, without this fault being noted. I make no comment on the quality or the reliability of the MOT inspection. But it appears that every mechanic who has since inspected Mr W's car has identified the same fault. And it seems that it's this recurring issue that hasn't been resolved. And I'm more persuaded by this than the MOT that Moneybarn's relied on.

The Consumer Rights Act 2015 says that goods can be rejected when after one attempt at repair the goods still do not conform to the contract. There's been more than one attempted repair here. And the goods still don't conform to contract, for the reasons I've explained above. I'm aware that Moneybarn hasn't had an opportunity to repair the fault because Mr W took his complaint to the broker – but it's likely this is what Moneybarn would have recommended. So having regard to all the circumstances, and the relevant law, I think it's fair and reasonable for Mr W to be able to reject the car.

### **Putting things right**

Whilst I've reached the same outcome as our investigator, I'm proposing significantly different redress. I invited both parties to comment on what I'm proposing to help me decide what's appropriate. Mr W replied saying he was happy with my proposal. Moneybarn acknowledged receipt of my proposal but didn't add any comments. For that reason, I'm going ahead with what I set out to both parties.

To put things right Moneybarn No.1 Limited must:

- collect the car at no cost to Mr W and at a time convenient to him;
- cancel the finance agreement with nothing further to pay;

- remove the agreement from Mr W's credit file, along with any adverse information recorded on the file.

I also consider that Mr W has had impaired use of the car. He should have been able to enjoy trouble free use of the car. It would have been inconvenient and worrying for him to drive the car with it pulling in the way he's described. He's also had to return the car various times for inspections and diagnostics. I think it fair that a payment is made in recognition of this. I consider an award of £500 to be fair and reasonable in all the circumstances. As Mr W had been able to drive the car for more than 11,000 miles in the first nine months he had it, I'm not proposing any of his monthly payments are refunded.

### **My final decision**

For the reasons I've explained above, my final decision is that I uphold Mr W's complaint. Moneybarn No. 1 Limited must put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 September 2020.

Gordon Ramsay  
**Ombudsman**