

The complaint

Miss S complains about a car supplied to her under a conditional sale agreement with Moneybarn No. 1 Limited.

What happened

In July 2019 Miss S took out a conditional sale agreement with Moneybarn to finance the cash price of £4,500 for a used car. The car was six years old and had travelled 36,000 miles. She said the car was delivered to her on 12 July 2019.

She said she drove the car for two weeks and noticed the airbag warning light was on and the brakes weren't working. She said she reported this to the dealer who supplied the car, and to Moneybarn. She said the dealer told her there was nothing wrong with the car. She said Moneybarn told her to take the car to an independent garage for an inspection.

She said the independent garage told her not to drive the car as it was dangerous. It confirmed the airbag warning light issue. It also said the exhaust brackets had snapped, the interior panel was loose, and the brake discs and pads were worn.

She said Moneybarn told her to take the car back to the supplying dealer for an inspection. She said the dealer inspected the car, told her it was fine, and gave it a new 12-month MOT.

She wasn't happy and said she wanted to reject the car because of the faults.

Moneybarn said that the inspection showed the car wasn't faulty. They also said it had passed an MOT. And they said the report she'd provided was from a mechanic who wasn't qualified to comment. They said that there were no faults that supported rejection of the car.

Miss S said that at the end of September 2019 the dealer agreed to repair her car. It fitted new brakes, a new exhaust, and a new air bag switch.

Our investigator thought Miss S's complaint should be upheld. He found no reason to doubt the mechanic who'd produced the independent report. And because of the faults he felt that Miss S should be able to exercise her short-term right to reject the car.

Moneybarn disagreed and asked for an ombudsman's 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.

Moneybarn supplied Miss S with the car under the conditional sale agreement they had with her. 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.

Miss S's car was six years old and had travelled 36,000 miles when she got it. So, a reasonable person might expect to have to repair or replace some parts of the car over time.

So, if I thought the car was faulty when Miss S got it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

Moneybarn said that the airbag warning light fault would have been due to wear and tear and so wouldn't consider this to be a fault. They also said that the dealer who supplied the car didn't accept the other faults. This was because it said the mechanic who supplied the independent report "*was not qualified to determine whether the vehicle was of a satisfactory quality*". It gave no reason why it believed this to be the case, and Moneybarn has provided no evidence to support this claim.

In the absence of any other information I've no reason to doubt the credentials of the independent mechanic. I'm satisfied that the faults identified in the mechanic's report were the same as Miss S reported to the dealer. So I'm satisfied these faults were likely to have been present at the time of sale and I think these faults make the car of an unsatisfactory quality. Even if I accept that the warning light issue was due to wear and tear, a reasonable person wouldn't expect to find the brake and exhaust faults within two weeks of acquiring a car of this mileage for the amount Miss S paid. I'd also be concerned about the safety of a car with faulty brakes, especially when a mechanic has described it as "*dangerous to drive*".

Moneybarn said that the successful MOT in July 2019 tells us that the condition of the car was satisfactory. Our investigator said an MOT pass does not mean the car is of a satisfactory quality. I agree with him – I've explained above what is meant by satisfactory quality. And I've explained why I don't think that faulty brakes and a faulty and loose exhaust on Miss S's car would mean the car was of a satisfactory quality at the point of sale. I'm more concerned that the independent mechanic described the brakes as dangerous and advised Miss S not to drive the car. For that reason, the mechanic's report outweighs the evidence of the MOT pass.

I note that the dealer agreed to repair the faults in September 2019, without admitting the parts needed replacing. I've already explained why I'm satisfied the car was faulty, but I do find it interesting that it's gone to the expense of fixing a car when it's previously insisted there was nothing wrong with it.

Under the Consumer Rights Act 2015 Miss S has 30 days to reject faulty goods. She reported the faults within the first three weeks and, according to the information provided by Moneybarn, she told the dealer she wanted to reject the car.

I note the car has now been repaired by the dealer, and she's been using the car since it was fixed. But Miss S exercised her right to reject the car within 30 days of getting it. She was reluctant to accept the car back from the same dealer who had sold it to her in the faulty condition. But she was told by Moneybarn she had to collect it. As I'm satisfied the car was faulty at the point of sale, I think it's fair and reasonable for Miss S to be able to reject the car.

Whilst she reluctantly collected the car, she has been using it since the repair. I've set out below what Moneybarn needs to do to put things right. I've considered the use of the car Miss S has had since it was repaired in September 2019. Miss S told our investigator she's been using the car to travel to work, but that's reduced because she now lives closer to her workplace. I think ten monthly payments reasonably reflects her use of the car.

Putting things right

To put things right Moneybarn No.1 Limited must:

- collect the car at no cost to Miss S and at a time convenient to her;
- cancel the finance agreement with nothing further to pay;
- remove the agreement and any related adverse information from Miss S's credit file.
- Retain ten monthly payments to reflect the use of the car Miss S has had since collecting it after the repair in September 2019, and refund all the other monthly repayments she's made and pay 8% simple interest from the date of payment until the date of settlement
- Pay Miss S £200 for the trouble and upset caused by having to use a car that she'd been told was dangerous to drive.

My final decision

For the reasons I've explained above, my final decision is that I uphold Miss S'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 Miss S to accept or reject my decision before 16 October 2020.

Gordon Ramsay
Ombudsman