

The complaint

Mr W complains that a used car he acquired under a conditional sale agreement from Moneybarn No1 Limited ("Moneybarn") wasn't of satisfactory quality, contrary to the requirements of the Consumer Rights Act 2015 ("CRA").

What happened

In January 2019, Mr W entered into a conditional sale agreement for a used car with Moneybarn. The car was then nearly six years old with a recorded mileage of 48,515 miles. The cash price of the car was £14,999. Mr W paid a deposit of £4,000, and agreed to pay the balance, plus finance charges, by instalments of £360.59 each month over five years.

Shortly after he acquired the car, Mr W noticed a number of faults. He complained about these to the supplying dealer ("SD"), which arranged for the car to be inspected by a main dealer for this make of car. The car was inspected in May 2019 when the recorded mileage of the car was 56,237 miles. The main dealer issued a report which identified the following problems:

- two worn tyres
- worn windscreen wipers
- worn brake pads and discs
- wheels out of alignment
- unsatisfactory dual battery fuse box and link lead
- steering needing adjusting
- suspect roof antenna/pod
- water leak into boot requiring vents and boot to be stripped for investigation.

SD is situated in the North of England, while Mr W lives in the West of Scotland. SD agreed it would take the car in to look at the issues and would deliver a courtesy car to Mr W's house for him to use in the meantime. Mr W says he was promised a car that was similar to or better than his own.

Mr W says the courtesy car that arrived was much inferior to his own and was in a poor state, with a dirty interior and covered in muddy paw prints and dog hair. So he refused to accept it and hand over his car. SD was unhappy at having driven the courtesy car a long way on a fruitless journey. So the relationship between Mr W and SD broke down.

Mr W complained to Moneybarn. In June 2019, Moneybarn responded to say that some of the items Mr W complained about, such as tyres, brake pads and discs, were wear and tear items, and at the date of inspection the car had covered some 7,500 miles since delivery. In

addition, the car had passed an MOT just four days before delivery, with no advisories. So Moneybarn didn't accept these items were faulty at delivery.

Moneybarn said SD was willing to review the car in its workshop with a view to resolving the non wear and tear items in the report. However the car would have to be delivered to it, and it wouldn't provide a courtesy car while this was done. However, Moneybarn said it was willing to provide a contribution of £150 towards the cost of a hire car.

Mr W was unhappy with this proposal and complained to us.

Our investigator's view

Our investigator recommended that this complaint should be upheld. She accepted that some of the items in the report – such as tyres, brake pads, and discs - were wear and tear items for which at the date of the report Moneybarn couldn't be said to be responsible. But she didn't think the car was of satisfactory quality at delivery due to the other faults.

In the circumstances which had occurred, she didn't think Moneybarn had been given the opportunity to repair these faults. So Mr W wasn't entitled at this stage to reject the car under the CRA.

In November 2019 she recommended that Moneybarn:

- allow Mr W to get the faults repaired at a local approved garage and cover the repair costs;
- provide a courtesy car whilst the repairs were completed; and
- pay Mr W compensation of £150 for the distress and inconvenience it had caused him.

Mr W said he was willing for the repairs to be carried out by SD provided this was done without inconvenience to him, that is by SD collecting his car from him and returning it, and leaving him with a courtesy car in the meantime.

Moneybarn was concerned that since SD offered to repair the car in June 2019 the car had continued to be driven and might have suffered further deterioration in the meantime. The investigator acknowledged that the responsibility of Moneybarn under this complaint was limited to repairing the faults identified in the May 2019 report.

Moneybarn said it wanted to know the current mileage of the car, and to discuss the situation with SD. Mr W confirmed that as at the beginning of March 2020 the car mileage reading was 67,072.

Moneybarn said it didn't feel it appropriate for SD to be held to an offer it had made some nine months previously. So it asked that this complaint be referred to an ombudsman for review. It asked, in particular, that the ombudsman consider the responsibilities of the parties after this lapse of time.

My provisional findings

I issued my provisional view to Mr W and to Moneybarn on 4 June 2020. In it I said that I agreed with the investigator that:

- the report of the main dealer who inspected the car in May 2019 confirmed that the car as supplied by Moneybarn to Mr W in January 2019 was faulty in a number of respects, and so was of unsatisfactory quality under the CRA;
- although Moneybarn had sought to involve SD in the process of rectifying the faults, under the CRA it was Moneybarn's primary responsibility, as the supplier under the conditional sale agreement, to rectify the faults; but
- the wear to the tyres, brake pads and discs, and wipers, mentioned in the main dealer's report after the car had covered some 6,000 miles were wear and tear matters. They weren't mentioned in the MOT carried out at the time the car was supplied, and so I couldn't reasonably hold Moneybarn responsible for rectifying them.

Mr W had paid to have the wheel alignment carried out recently when he put new tyres on the car and replaced a wheel. In the circumstances I wasn't proposing that Moneybarn should reimburse that cost.

Moneybarn had expressed concern that in the time that had elapsed since SD proposed to take the car into its workshop and deal with the non wear and tear faults, the existing faults might have worsened, and further faults developed. So I had asked Mr W to describe the present state of the faults as listed in the main dealer's report:

Dual battery fuse box u/s, also requires link lead

Mr W said this remained as described and seemed to be causing electrical faults.

Suspect roof pod/antenna u/s

He said this remained unsatisfactory. He thought there was water ingress from this under the roofline down to the battery modules inside the boot.

Instrument dials not illuminating

He said these still didn't always light up, and flickered sometimes. This might require the dashboard to be removed and new parts fitted.

Water leak into boot, require vents and boot strip to investigate

This still needed to be investigated and rectified.

DAB not working

Although not commented on in the main dealer's report, this was mentioned in Mr W's initial complaint to Moneybarn, and acknowledged in its letter to him of 23 May 2019. It started as an intermittent fault, and had since stopped working completely.

I said that these faults were all apparent at the time of Mr W's original complaint. They needed to be investigated now, and repairs carried out appropriate to the present age and mileage of the car. By this I meant that it might be appropriate in some cases to fit reconditioned or compatible replacement parts rather than genuine manufacturer replacement parts.

I said I'd seen nothing to suggest that the faults had significantly worsened because of any delay in dealing with them. Even if this were the case, I couldn't say Mr W was wholly responsible for this delay.

Mr W said he was promised a like for like or better courtesy car by SD, which wasn't provided. I hadn't seen any evidence to support this. But Mr W had supplied photos showing the messy interior of the courtesy car which was supplied, and which he declined.

The relationship between Mr W and SD broke down after that, and I held both responsible for that. I also thought Moneybarn could have done more to bring matters to a satisfactory outcome earlier, rather than saying it was all up to SD.

I concluded, therefore, that Moneybarn was responsible under the CRA for repairing the above faults, and should:

1. arrange for the car to be taken, at its option and expense, either to SD or to a repairer local to Mr W and approved by him, for the above faults to be investigated and appropriate repairs carried out;
2. arrange for a reasonable courtesy car to be provided to Mr W at its expense while this was done. This car should be reasonably suitable for Mr W's requirements, but needn't necessarily be of the same or similar make to Mr W's car; and
3. pay Mr W £150 as compensation for the distress and inconvenience the handling of his complaint had caused Mr W.

Responses to my provisional decision

Moneybarn didn't respond to my provisional decision.

Mr W accepted my provisional decision but said that, as an alternative, he would accept returning the car in exchange for Moneybarn ending the agreement and refunding all monies he had paid, including his £4,000 deposit.

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.

As neither Mr W nor Moneybarn has provided any fresh information or evidence in response to my provisional decision, I find no reason to depart from my earlier conclusions.

I make no comment on the alternative resolution that Mr W has suggested. I don't think it's appropriate for me to include this as part of my decision without Moneybarn having had an opportunity to comment on it.

However if, after my decision is issued, Mr W and Moneybarn wish to mutually agree an alternative arrangement of any kind in place of my decision, that is entirely a matter for them.

Putting things right

I think Moneybarn should take the steps, and pay the money, as set out in my final decision below.

My final decision

My decision is that I uphold this complaint, and order Moneybarn No1 Limited to:

1. arrange for the car to be taken, at its option and expense, either to SD or to a repairer local to Mr W and approved by him, for the above faults to be investigated and appropriate repairs carried out;
2. arrange for a reasonable courtesy car to be provided to Mr W at its expense while this is done. This car should be reasonably suitable for Mr W's requirements, but needn't necessarily be of the same or similar make to Mr W's car; and
3. pay Mr W £150 as compensation for the distress and inconvenience the handling of his complaint has caused Mr W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 August 2020.

Lennox Towers
Ombudsman