

The complaint

Mr K complains about the quality of a car he has been financing through an agreement with Moneybarn No. 1 Limited ("Moneybarn").

What happened

I issued my provisional decision on this complaint in March 2021. An extract from that provisional decision is set out below.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my decision.

What I've provisionally 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 know it will disappoint Moneybarn, but I agree with the investigator's opinion. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr K acquired his car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then Moneybarn, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would likely include things like the age and mileage at the time the car was supplied to Mr K. The car here was around seven years old and had completed about 84,506 miles. So, I think a reasonable person would expect quite a bit of some wear and tear to be present.

But I don't think a reasonable person would expect a car, even of this age and mileage, to have a persistent smell of diesel. I think that would be intolerable and worrying.

Job sheets show that the garage attempted a repair to the turbo when Mr K reported a strong smell of diesel to them in early January 2020, only about a month after he'd taken receipt of the car.

The relevant legislation explains that if a fault occurs within the first six months it is to be assumed to have been present at the point of supply, when Moneybarn were responsible for the car's quality, unless the business can demonstrate otherwise.

I think it's reasonable to suggest that the dealership accepted the diesel smell was not normal wear and tear, for a car of this age and mileage, as they completed a repair to the turbo free of charge. I think they were right to do so.

The relevant legislation only gives the business one opportunity to fix a fault that is present at the point of supply. If that repair fails then they should allow the consumer to reject the vehicle.

Here, whilst an independent assessment of the fault didn't happen, I am persuaded that Mr K has provided sufficient evidence to suggest the repair did fail. Moneybarn's contact notes from February 2020, after the turbo had been fixed, explain "customer also mentioned a strong smell of diesel...the problem is still there and every time it goes in to the garage they say it is something different customer now wants to reject the vehicle". I've also seen a job card from the manufacturer's dealership who were asked to "investigate strong smell of diesel still occurring" in April 2020. The independent inspector didn't refer to a smell of diesel but did have to curtail his test drive because of carbon monoxide fumes. I think these may have been the fumes Mr K was concerned about but, regardless, I think it was Moneybarn's responsibility to demonstrate the repair that had been completed had been completed successfully and I don't think the inspector's report does that.

So, I'm persuaded the repair hadn't been successful.

Whilst the inspector identified issues with the car, he didn't suggest there was evidence of problems when the car was supplied. I don't think the inspector has considered the job sheets provided and noted the limited mileage Mr K had completed since the last repair. Having done so myself I think there is evidence of a failed repair and that Moneybarn should therefore allow Mr K to reject the vehicle as it was not of satisfactory quality.

Whilst I agree that Moneybarn should end the finance agreement and collect the car at no cost to Mr K, there were some areas of redress I don't think the investigator considered.

Mr K appears to have paid a £400 deposit. Moneybarn should refund that deposit and add 8% simple interest to that refund as Mr K has been deprived of the money.

Moneybarn should refund all the finance instalments that Mr K has made to them under the agreement.

But it's only fair that Mr K pays for the use he's had from the car and I don't think the investigator's view took this into account as she suggested the agreement should be ended with nothing to further to pay.

Mr K has explained he's not been driving the car. The mileage should therefore be the same as it was when the independent inspection took place in October 2020. The car has therefore completed 4,337 miles since inception of the finance agreement. The average mileage for a diesel car is about 9,400 a year (783 per month) so I think a reasonable assessment would be that Mr K has had about five and a half months use of the car. Moneybarn should therefore retain five and half monthly instalments from any refund they

provide and if Mr K hasn't paid all of these instalments they can make a charge for the outstanding ones.

Mr K has clearly been inconvenienced by these issues. He's been waiting some time for a resolution to his complaint when I think it could have been resolved earlier, and he's had to take his car to be repaired on several occasions. Our investigator didn't suggest any compensation should be paid in respect of the distress and inconvenience and the lack of enjoyment Mr K has experienced with his car, but in the circumstances, I think Moneybarn should pay Mr K £250.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to tell Moneybarn No. 1 Limited to:

- *end the finance agreement;*
- *collect the car at no cost to Mr K;*
- *refund any deposit Mr K has paid and add 8% simple interest per year from the date of payment to the date of settlement;*
- *refund all monthly finance instalments paid but retain five and a half of them in respect of the use Mr K has had from the car. Add 8% simple interest per year to the refund from the date of payment to the date of settlement;*
- *pay Mr K £250 to compensate him for the distress and inconvenience he's experienced and his loss of enjoyment;*
- *remove any adverse reports they may have made to his credit file in relation to these issues.*

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.

Mr K accepted my provisional decision and so did Moneybarn. But they asked me to think about what the situation would be if the car was returned to them with a higher mileage than the 88,843 that was noted at the time of the independent inspection, after which Mr K has explained he hasn't used the car.

I've no reason to believe the mileage will be any higher than that. But, if it is, I think it would be reasonable for Moneybarn to make a deduction for the additional use Mr K has had from the car. They can withhold an additional monthly instalment for every 783 miles completed and, if Mr K, hasn't paid enough instalments they can make a charge for the outstanding ones.

Putting things right

So, having considered the additional information my provisional decision remains unchanged except for the additional charge that I accept it is for Moneybarn to make if the car is returned with additional mileage.

My final decision

For the reasons I uphold this complaint and to tell Moneybarn No. 1 Limited to:

- end the finance agreement;
- collect the car at no cost to Mr K;
- refund any deposit Mr K has paid and add 8% simple interest per year from the date of payment to the date of settlement;
- refund all monthly finance instalments paid but retain five and a half of them in respect of the use Mr K has had from the car. Add 8% simple interest per year to the refund from the date of payment to the date of settlement*;
- pay Mr K £250 to compensate him for the distress and inconvenience he's experienced and his loss of enjoyment;
- remove any adverse reports they may have made to his credit file in relation to these issues.

** If the car is returned with more than 88,843 miles on the clock Moneybarn can withhold an additional monthly instalment for every 783 miles completed. If Mr K, hasn't paid enough instalments they can make a charge for the outstanding ones.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 25 June 2021.

Phillip McMahon
Ombudsman