

## **The complaint**

Miss S complains that Moneybarn No. 1 Limited refused to let her reject a faulty car.

## **What happened**

In February 2019, Miss S bought a second-hand car from a dealer I will call C. It was funded in part by a conditional sale agreement for £15,500. The car was some seven years old and had covered around 89,000 miles.

In March 2019, she complained to Moneybarn about some issues she was having with the car. She said there were issues with:

- The handbrake failing and the throttle jamming
- Issues with the suspension
- MOT failing
- Damage to the rear seat
- Issues with the gearbox

Miss S said she wanted to reject the car. She said she had taken the car to a main dealer and this had identified a number of faults. Moneybarn sought to have the car subjected to an independent inspection. However, it proved difficult to make contact with Miss S. In turn Miss S said she wanted the inspection to take place at the main dealers and for someone from Trading Standards to be present. The business had no issue with a representative from Trading Standards being present, but it didn't wish to pay for use of the dealer's premises.

Moneybarn issued its final response on 11 June 2019. It didn't uphold the complaint as it considered the problems with the handbrake, throttle and suspension were a result of general wear and tear.

Miss S brought her complaint to this service where it was considered by one of our investigators who recommended it be upheld. Miss S had only paid £500 towards the agreement and the car was repossessed by Moneybarn. It seems that she had been living in the car and her possessions had been taken when the car was collected.

Having reviewed the evidence our investigator concluded that the car had faults. I won't repeat his findings in detail which have been set out in his opinion issued in March 2021. In summary he accepted some of the issues arose due to wear and tear, but he was concerned that the MOT undertaken just before the sale had shown faults which apparently had been repaired so that it passed later the same day. However, these faults were identified a couple of months later by the main dealer after Miss S had covered 2,343 miles.

Our investigator concluded that the car had been faulty at the point of sale and suggested that Moneybarn pay for the necessary repairs and cover the cost of repairs already carried

out. He also considered Miss S's complaint about Moneybarn's handling of her account. He noted that it appeared Moneybarn had advised her to cancel her direct debit on 28 March 2019 to minimise any additional costs. However, the business had asked her to make contact by 11 April 2019 and then 23 April 2019 to allow her the opportunity to obtain a report about the faults with her car. He thought it reasonable for Moneybarn to seek payment regardless of the issues Miss S had with the car.

Moneybarn didn't agree but offered an alternative solution. It said that Miss S had arrears of £4306.96 as of August 2019 and had covered some 9,000 miles in the car. It said the car was in such a poor condition due to having been lived in that it was beyond economical repair.

It offered to write off the full £29,981.44 remaining balance and sell the vehicle in order to try and recover some of the £15,500.00 paid for it. It also offered to absorb the costs associated with the recovery (£950.00) and preparation for sale of the vehicle, along with the Court fees it had already incurred (£308.00). It said it would remove any record of the agreement from Miss S's credit file. It said that on health and safety grounds it was unable to retain Miss S's possessions once the car was sold. It felt that the use she had made of the car should be offset against any repair costs Miss S had incurred and the loss of any possessions.

Miss S was unhappy with this proposal and wanted her possessions back. She also said that she had part exchanged a car worth £4,500 and she wanted redress for the loss of that. Our investigator pointed out the part exchange value shown on the documentation was £500.

Our investigator considered Moneybarn's offer to be fair, but he felt that the issue of the lost personal possessions needed to be addressed separately. He noted Miss S was difficult to contact, but he listed the times he had asked Moneybarn to seek to make contact with her about the possessions. He accepted that she hadn't been in contact with Moneybarn from 20 March 2020 until 21 March 2021, but he felt that the business should have done more to ensure Miss S's possessions were returned.

### **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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor

defects, safety, and durability can be aspects of the quality of the goods.

I have sympathy with both parties and I have given a great deal of thought as to what is fair and reasonable. While Moneybarn has not agreed the car was faulty at the point of sale it has taken a commercial, but sympathetic approach to the situation.

I agree with our investigator that the car was most likely faulty at the point of sale. I have some concerns that it failed the MOT shortly before sale and later that day it passed after repairs had been effected.

The same issues arose some two months later and I suspect the repair work wasn't sufficiently durable. Durability is one of the issues this service considers as being part of a car being of a satisfactory standard and given this lasted some two months before failing is of concern.

I believe it is reasonable to conclude that the car was inherently faulty and so Miss S is entitled to restitution. The proposal put forward by our investigator was fair, but Moneybarn's counter offer is also fair and I accept it will bear a loss due, in part, to the state of the car after it was repossessed. This proposal reflects the situation in which Miss S currently finds herself and I suspect her ability to afford the monthly payments would have been challenging. As such I am in agreement with the offer Moneybarn has made.

I consider the matter of Miss S's personal possessions is a separate matter. I have noted she has made use of the car covering some 9,000 miles as well as living in it. She has also part exchanged her previous car for £500 and paid for some repairs to the car. I consider that offsets the fair usage which Moneybarn has raised.

I acknowledge that Miss S has been difficult to contact, but this service has been able to maintain contact albeit of a limited nature throughout our investigation. We have also regularly prompted Moneybarn to address the matter of returning Miss S's possessions but received little in the way of a constructive response until November 2020. I gather the items were disposed of in February 2021.

Moneybarn was aware Miss S was living in the car and so it would have been apparent that the possessions would be of importance to her even if others may have thought differently. I am satisfied that as well as the items listed by our investigator which would have been of monetary value there were items of sentimental value.

I can understand the desire to dispose of the car and realise some value for it and the health and safety concern of storing the items, but these were Miss S's possessions and I believe greater effort should have been made to ensure they were returned to her. I would add that Miss S could also have made a greater effort to help Moneybarn return the items.

I have read Miss S's recent emails on the matter of the lost items and I have endeavoured to reach what I consider to be a fair solution. It is difficult to put a value on some possessions and I have no desire to underestimate the sentimental value of some items. That said I have concluded that the figures of £1,250 to cover the costs of replacing those items which can be replaced and £1,500 for the distress and inconvenience of losing everything is fair and reasonable. I am aware that Miss S has faced a number of challenges in the last few years, but those have not been due to Moneybarn and my award of compensation is related solely to the distress and inconvenience arising from the loss of her possessions some of which have sentimental value.

**Putting things right**

Moneybarn should compensate Miss S as set out below.

**My final decision**

My final decision is that I uphold this complaint and I direct Moneybarn No. 1 Limited to

- End the agreement and write off Miss S's total debt.
- Absorb the costs of recovery, sale preparation and court fees.
- Pay her £1,250 for the lost personal possessions.
- Pay her £1,500 for distress and inconvenience.
- Remove any adverse entries it has placed on her credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 8 November 2021.

Ivor Graham  
**Ombudsman**