

## The complaint

Mrs C complains about the quality of a car she acquired under a conditional sale agreement with Moneybarn No. 1 limited ("Moneybarn").

## What happened

Mrs C took possession of the car in March 2019. The car was approximately four years old and the sales invoice records the car had travelled 70,000 miles. The price of the car was £12,079. The entire sum of £12,079 was financed by way of a conditional sale agreement with Moneybarn, signed by Mrs C on 23 March 2019. The car came with a MOT certificate dated 13 February 2019 with a recorded mileage of 70,591.

Under the agreement, everything else being equal, Mrs C undertook to pay 59 monthly payments of £376.29 – total repayable being £22,201.11.

In March 2019 Mrs C noticed rust around the windscreen and complained to Moneybarn. Moneybarn didn't uphold Mrs C's complaint on the grounds the issue was cosmetic and commensurate with the car's age and mileage. However, the issue was addressed by the supplying dealership and addressed to Mrs C's satisfaction.

In October 2019, whilst she was on holiday, Mrs C says the engine light illuminated and the car went into limp mode. The car was then inspected and repaired at a cost to her of £251.62.

The invoice in respect of this work, dated 14 October 2019, states:

### Work instructions

*engine warning light was on – low oil pressure*

*[Manufacturer] checked car for customer but requires oil strainer cleaned & oil/filter change*

*Drain and remove sump, clean sump and clean out gauze as best as possible in situ*

*Refit sump, run with fresh oil and flush*

*C/out oil & filter change*

### Report

*If fault not cured, then stripping of engine to replace oil pump pick-up pipe on oil pump/crank balancer assembly – approx. 6.5 hours labour and 30GBP for part*

The recorded mileage on 14 October 2019 was 78,387.

After the above, the repairing garage confirmed to Mrs C (in writing):

*This confirms that when we checked and carried out work on your vehicle...we advised you at that time that, in our opinion, the vehicle may have been using the wrong grade of oil.*

*There is no way of knowing whether it was done at the previous oil change or if the previous owner had topped up with the wrong oil.*

In December 2019 the engine light illuminated, and the car went into limp mode for a second time. The car was then recovered, inspected and repaired at a cost to Mrs C of £218.88 by a second garage.

The invoice dated 13 December 2019 states:

*...carried out diagnostic check, oil pressure to low. Check & reset quality in service, add and run engine with engine flush, change oil & filter*

The recorded mileage on 13 December 2019 was 80,514.

Within an hour of collecting the car the engine light illuminated and the car went into limp mode for a third time. The car was returned to the second garage where it was repaired and returned to Mrs C in early January 2020 (some three weeks or so later). Mrs C has been unable to provide an invoice for this work but says the cost was in the region of £520.

After the above, the repairing garage confirmed to Mrs C (in writing):

*On initial inspection, slight engine noise and low oil pressure. We flushed out engine and changed oil & filter, reset service indicator, all seemed OK.*

*Recovered vehicle again, with the same fault. On advice from [manufacturer dealership] we removed the sump and checked the oil strainer and reassembled.*

*It was obvious that the sump had previously been removed as it had various marks on sump and excessive amount of instant gasket had been used. Again, all seemed ok when finished.*

*Further recent investigations we believe there are issues with oil pumps on these vehicles.*

In January 2020 – after Mrs C had complained – Moneybarn wrote to her to say that it was glad to hear that her car was now working. But having paid £391 for car hire for December 2019/January 2020 and given the repairs undertaken were unauthorised, it wasn't prepared to do anything, or pay anything, further.

In February 2020 the car passed its MOT test. The recorded mileage on the certificate was 82,644.

In March 2020 the car broke down again (same issue). Mrs C says she wasn't prepared, or able, to get it repaired so she bought a second car at a cost of £750.

On 1 May 2020 Mrs C declared the car SORN for one month. During this period, it went into a third garage where further repairs were undertaken at a cost of £776.28.

The invoice dated 29 May 2020 states:

*Oil pressure low. Removed sump to check oil strainer. Found to be clogged.  
Removed injectors and found injector leaking exhaust gases into cam cover.  
Replaced injector washers and refitted.  
Replaced oil strainer and refitted sump.  
Engine flushed. Renewed auxiliary belt.  
Changed oil and filter.*

The recorded mileage on 29 May 2020 was 83,168.

On 4 January 2021 the car broke down again.

On 21 January 2021 Mrs C declared the car SORN indefinitely. The recorded mileage on 21 January 2021 was 87,108.

On 30 January 2021 Mrs C paid £80 to have her cherished plate taken off the car.

In February 2021 Mrs C didn't put the car through a MOT test.

On 1 June 2021 Mrs C renewed her insurance for a further year.

Mrs C's complaint was considered by one of our investigators who came to the view that it shouldn't be upheld.

Mrs C didn't agree and provided the investigator with confirmation from the first repairing garage which said:

*We wish to confirm that prior to any repair being carried out on this vehicle that the sump pan had previously been removed with the possibility of an earlier repair.  
(scratches on sump and excess sealer)*

And confirmation from the second repairing garage which said:

*I can confirm that before any work was carried out on the above vehicle, that on inspection the sump pan had previously been removed multiple times – various marks on sump and excessive gasket sealer.*

The investigator considered Mrs C's response to his initial view and concluded that her complaint should be upheld rather than not. In summary he said he was satisfied that Mrs C was provided with a car that wasn't of satisfactory quality in March 2019 and that Moneybarn should:

- end the agreement with nothing further to pay
- collect the car at no cost to Mrs C
- refund the SORN cost together with interest
- refund the monthly payments made by Mrs C from May 2020 to present together with interest
- refund the cost of repairs undertaken together with interest

After some correspondence was exchanged, Mrs C confirmed that she accepted the investigator's second view.

After some time Moneybarn, having received further comments and evidence from the investigator, confirmed it didn't accept the investigators view. In summary it said:

- it didn't believe the recorded mileage of 70,000 on the sales invoice was materially incorrect
- in any event the mileage has been noted on the sales invoice as being unconfirmed
- it didn't believe the car was supplied with a service having recently been carried out by the supplying dealership
- an oil change was likely required at 75,000 miles rather than at 83,000

The investigator considered Moneybarn's response to his view but wasn't persuaded to change his mind. Therefore, the complaint was passed to me for review and decision.

I issued a provisional decision on this case in July 2021. In summary I said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*First, I would like to say that 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.*

*Secondly, I would also like to point out that where the evidence is incomplete, inconclusive or contradictory, I make my decision on the balance of probabilities - that is, what I consider is most likely to have happened given the evidence that is available and the wider surrounding circumstances.*

*Mrs C acquired the car under a Conditional Sale Agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Moneybarn is the supplier of the goods under this type of agreement and is responsible for dealing with complaints about their quality. The Consumer Rights Act 2015 ("CRA") covers agreements such as the one Mrs C entered into.*

*Under the agreement there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered to be of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid and other relevant circumstances.*

*I think in this case those relevant circumstances include, but aren't limited to, the age and mileage of the car and the cash price. The CRA says 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.*

*In Mrs C's case the car was used, with a cash price of £12,079. It had covered around 70,000 miles and was approximately four years old when she acquired it. I would have different expectations of it compared to a brand-new car. But given the age, mileage and price paid, I think it's fair to say that a reasonable person would have reasonably high expectations of it and would expect the quality of it to be of a higher standard than a car which was older or had a lower price. Also, I think a reasonable person would expect it to be free from defects (other than say minor ones) for a considerable period of time.*

Considering:

- the price paid for the car, its age and mileage
- that there has been four unsuccessful attempts to repair what seems to be the same and a reoccurring issue (after approximately 7, 9 and 14 months)
- the information provided by two of the garages involved in attempting to repair the car

*I'm satisfied that the car wasn't of satisfactory quality when supplied to Mrs C.*

*Before I go on to outline what I think Moneybarn should do to fairly and reasonably compensate Mrs C for the car being of unsatisfactory quality when supplied to her, I want to address a number of issues raised by both the parties to this complaint.*

*Mrs C submits that the mileage of 70,000 recorded on the sales invoice is incorrect and therefore she had not travelled 8,387 miles before the car first broke down in October 2019.*

*Now I accept that 70,000 miles is unlikely to be correct, especially given that the MOT certificate dated 13 February 2019 records the mileage as 70,591. But in my view given how soon after this MOT test Mrs C acquired the car (about six weeks later), the miles travelled by the previous owner and that the car was likely to have been on the supplying dealership's forecourt without moving for at least some of this six week period, I think the mileage at the time of supply was no more than 70,999 and it was simply rounded down. I would also add that if the mileage recorded on the invoice was 'wrong' by more than 999 miles I might have expected Mrs C to have questioned this before taking delivery of the car.*

*Moneybarn says there is insufficient evidence to suggest that the car was serviced immediately prior to it being supplied to Mrs C. Therefore, it follows that the car would have required a service (including an oil change) at 75,000 miles. And if Mrs C got this done this might be the reason for the fault manifesting itself in October 2019 and if she didn't, this failure could be the reason for the fault manifesting itself in October 2019.*

*Mrs C has provided our service with the car's service history which shows that the car had its 5 year/62,500 mile service on 7 December 2018 when the mileage was 68,003. So, in my view, the car didn't need a service until December 2019 or until 80,503 miles, this being after the fault first manifested itself in October 2019 and at 78,387 miles. I'm also satisfied that Mrs C didn't get the car serviced before the fault first manifested itself in October 2019.*

*I accept that Mrs C got the car repaired – albeit unsuccessfully – in October 2019 without Moneybarn's permission. But given that Mrs C was on holiday at the time I don't think this decision was unreasonable. I'm also not persuaded that Mrs C not contacting Moneybarn prejudiced it in anyway. I say this because in my view had Mrs C contacted Moneybarn it would have either declined the repair, leaving Mrs C in a precarious position away from home, or authorised it.*

*I also accept that Mrs C got the car repaired for a second and third time in December 2019/January 2020 without Moneybarn's express permission. But I can see that Mrs C was at least in contact with Moneybarn during this time. And in my view given the stance Moneybarn was taking in December 2019/January 2020 and Mrs C's personal circumstances (not in dispute) her actions in this respect were again not unreasonable.*

*Mrs C also got the car repaired for a fourth time in May 2020 without Moneybarn's permission. Now I do have some concerns about Mrs C's decision in this respect. But I've to balance this against Mrs C's personal circumstances and that Moneybarn had concluded in January 2020, and that was it wasn't prepared to do anything, or pay anything, further.*

*As I say above, I'm satisfied that Mrs C was supplied with a car that was of unsatisfactory quality. So, what I now need to decide is what constitutes fair and reasonable compensation is this case.*

*In my view Mrs C should be able to reject the car. I accept that Moneybarn hasn't had the opportunity to have the car repaired itself. But as I say above, I don't think this has, in itself, prejudiced it. I also think that a further repair is unlikely to fix the problem so doesn't offer an appropriate remedy.*

*The car should be collected from Mrs C at no cost to her and the agreement should be ended. And any adverse information recorded with credit reference agencies in respect of the issue subject to this complaint should be removed.*

*For the reasons I've given, I think Mrs C should have the repair costs she has been able to evidence refunded together with interest. As I understand it these evidenced costs are:*

- 14 October 2019        £251.62*
- 13 December 2019    £218.88*
- 29 May 2020            £776.28*

*Because I've found the car was of unsatisfactory quality when supplied I think it's only fair that Moneybarn refund the cost incurred by Mrs C in having her cherished plate removed from the car and put on retention. Mrs C has provided evidence that she incurred £80 in this respect on 30 January 2021.*

*I thinks it's fair that Mrs C should have refunded any monthly payments she made against her agreement when she was unable to use the car and where she had no access to a courtesy or hire car. However, equally, I think it's only fair that Moneybarn should be able to retain the payments made by Mrs C for the months she had use of the car or access to a courtesy or hire car. It should also be remembered that Mrs C was able to travel in the region of 16,000 miles in the car before it broke down for the final time.*

*My understanding, based on what the parties have said and submitted, is that Mrs C had access to the car, or a courtesy or hire car, for about 18 months but not for the following times:*

- March to May 2020 inclusive*
- January 2021 to date of settlement.*

*And it's only fair that these monthly payments should be refunded together with interest.*

*I would add that despite more than one request being made by our service, Moneybarn hasn't provided us with an up to date statement of account so I've taken Mrs C's submission that she hasn't missed a single payment to be accurate.*

*I've considered whether Mrs C should also be compensated for other costs she might have incurred.*

*First, given that I've awarded Mrs C a refund of a number of monthly payments, I don't think it would be fair to direct Moneybarn to refund the costs Mrs C might have incurred in buying a second (or even a third) car. But I can see that she might have incurred other costs that should be fairly refunded, such as – but not restricted to – car tax and insurance. But having considered these costs I don't think it would be fair to direct Moneybarn to refund them.*

*I say this because it's possible that Mrs C might have been able to secure part refunds in respect of these costs from other parties or might be able to do so in the future. I've also taken into account that although Mrs C might have incurred some other costs, she has also saved some, including – but not restricted to – a February 2021 MOT test and a December 2019 or 80,503 mile service.*

*Finally, I think that Mrs C should also be compensated for the distress and inconvenience this whole matter has caused her. I've given this some careful thought and given Mrs C's personal circumstances and how long this matter has been going on for, I think £500 represents an appropriate sum in this respect.*

I then went on to detail precisely what Moneybarn should do to fairly and reasonably compensate Mrs C.

Mrs C responded to say that she accepted my provisional decision but asked if I would consider awarding her the £520 or so she paid for repair works in January 2020 on submission of the relevant invoice.

Moneybarn didn't respond to my provisional decision by the date given of 21 August 2021.

### **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.

Given that Mrs C accepted my provisional decision (and didn't submit any further invoices for my consideration) and given that Moneybarn didn't respond to my provisional decision by the date I gave I see no reason to depart from my provisional findings and I now confirm them as final.

### **My final decision**

For the reasons I've given above I uphold this complaint and Moneybarn No. 1 Limited must:

- allow Mrs C to reject the car and end the finance agreement;
- collect the car at no cost to Mrs C;
- refund the payments made by Mrs C for March, April and May 2020 and from January 2021 to the date of settlement together with 8% simple interest per year on each payment made from the date of payment to the date of settlement\*;
- refund the repair costs incurred by Mrs C of £251.62, £218.88 and £776.28 together with 8% simple interest per year on each payment made from the date of payment to the date of settlement\*;

- refund the cost incurred by Mrs C of £80 in removing her cherished number plate from the car together with 8% simple interest per year on the payment from the date of payment to the date of settlement\*;
- pay Mrs C £500 for the distress and inconvenience she has experienced;
- remove any adverse information it may have made against Mrs C's credit file in relation to the issue subject to this complaint.

\*HM Revenue & Customs requires Moneybarn No. 1 Limited to take tax off this interest. Moneybarn No. 1 Limited must give Mrs C a certificate showing how much tax its taken off, if Mrs C asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 21 September 2021.

Peter Cook  
**Ombudsman**