

The complaint

Miss G complains about the quality of a car she acquired under a conditional sale agreement with Moneybarn No. 1 Limited ("Moneybarn").

What happened

Miss G took possession of the car on 15 August 2019. The car was approximately seven years old and had travelled approximately 82,000 miles. Miss G had agreed to acquire the car on 7 August 2019. The price of the car was £5,298. The entire sum of £5,298 was financed by way of a conditional sale agreement with Moneybarn, signed by Miss G on 8 August 2019. The car came with a MOT certificate dated 15 August 2019 (with an expiry date of 14 August 2020). The car had failed an earlier MOT test on 9 August 2019.

Under the agreement, everything else being equal, Miss G undertook to pay 58 monthly payments of £170.09 – total repayable being £9,865.22.

Miss G says that shortly after taking possession of the car she visited a garage complaining of black smoke coming from the exhaust. She says that this garage cleaned the "sensors" and billed the original supplying dealership for doing so.

On 24 July 2020 Miss G paid £210.00 for an oil change, a new oil filter, a levels' check and two new tyres.

On 14 August 2020 Miss G took the car for its MOT test. However, it failed for the following reasons:

- exhaust emissions exceed manufacturer's specified limit
- nearside rear coil spring fractured or broken
- offside rear coil spring fractured or broken

with the following noted as an advisory:

- offside rear tyre slightly damaged/cracking or perishing

On 17 August 2020 Miss G visited a garage. She paid £153.14 to the garage to have both a new nearside and a new offside coil supplied and fitted. However, this garage could find no reason for the exhaust emissions exceeding the manufacturer's specified limit.

On 21 August 2020 Miss G took the car to a second garage for inspection. The garage confirmed that in its opinion the diesel particulate filter ("DPF") had been removed and the car had been remapped from the electronic control unit ("ECU"). It also confirmed that the cost to "correct" was approximately £1,250. The cost of the inspection – paid by Miss G – was £36.

Given what the second garage had concluded Miss G raised a complaint with Moneybarn.

On 1 March 2021 Moneybarn, having had sight of a technical desktop report carried out by a third party dated 20 January 2021, wrote to Miss G to say that it wasn't upholding her complaint. However, it paid Miss G £150 for what it accepted were some delays on its part in investigating her concerns.

On 3 March 2021 the second garage used by Miss G on 21 August 2020 wrote to our service directly to say:

"Vehicle was brought to our workshop after having an MOT at another garage. It failed for excess exhaust emissions. A vehicle of this age should not have any visible smoke from the exhaust. I told [Miss G] that I suspected the DPF had been removed. Her reply was, "what's a DPF". We explained. On inspection of the vehicle, it was evident that the welded seam on the bottom of the DPF wasn't a factory weld, which appeared to have been some time ago. We run a diagnostic scan of the ECU, which brought up only an airmass code. We checked live data of the DPF but there wasn't any. Our conclusion is that the DPF had been removed some time ago, maybe even before the last MOT."

Following receipt of the above the investigator allocated Miss G's complaint spoke with the second garage. It confirmed that it believed the DPF had been removed from the car prior to the 2019 MOT test or removed after the 2019 MOT test but before Miss G took possession. But regardless of which was the most likely, it was satisfied – based on what Miss G had said about not understanding what a DPF was and that she had been putting up with back smoke from the exhaust since taking possession – that the DPF hadn't been removed by Miss G after she took possession.

The investigator shared what the second garage had said with Moneybarn and asked for its comments.

Moneybarn responded to say that it believed that the DPF was, more likely than not, removed whilst the car was in Miss G's possession.

Having considered what both parties had said and submitted the investigator concluded that Miss G's complaint should be upheld and that to fairly compensate her Moneybarn should:

- repair the car at no cost to Miss G
- provide Miss G with a courtesy car whilst repairs to her car are being undertaken
- cover the cost of a new/further MOT test
- not pursue Miss G for any payment until a courtesy car has been provided to her and her own car has been put into a garage for repair
- remove the arrears from Miss G's account from the date in 2020 the car failed its MOT test
- remove any negative markers from Miss G's credit report
- pay Miss G a further £150 for the distress and inconvenience she had been caused

Miss G accepted the investigator's conclusion but Moneybarn didn't. In summary Moneybarn said:

- Given that Miss G didn't complain to it about the quality of the car until August 2020, a year after she first took possession of it, the onus is on her to prove the fault was present or developing at the time she took possession of it and she has failed to do so.

- There is no evidence to confirm that the DPF was removed prior to Miss G taking possession of the car.
- It's not its responsibility to prove the DPF was present at the time of supply but for Miss G to prove that it wasn't.
- It didn't feel it was necessary to have the car physically inspected given what the technical desktop report had concluded.
- Given the car came with a MOT certificate dated 15 August 2019 it follows, on the balance of probability, the DPF was present when Miss G took possession of the car.
- It's inappropriate to suggest that the selling dealership or the MOT technician removed the DPF, or that they were aware or should have been aware that it had been removed.
- It's entirely possible that the DPF was removed by somebody else after Miss G took possession of it, for example by another driver or a servicing garage.

The investigator considered Moneybarn's response to her view but wasn't persuaded to change her mind. She addressed the points raised by Moneybarn and said that it should also pay Miss G the £36 (together with interest) for the inspection she had paid for in August 2020.

I issued a provisional decision on this case in August 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.

Miss G acquired her 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.

Now I don't underestimate Moneybarn's strength of feeling in this case. But I can confirm that I find Miss G's testimony, and that of the second garage used by Miss G, to be both plausible and persuasive. In my view I think it's unlikely, on the balance of probabilities and despite what the technical desktop report says to the contrary, that the DPF had been removed by Miss G (or another third party with or without her knowledge) after taking possession of the car. Put another way, I'm satisfied that more likely than not the DPF was removed prior to Miss G taking possession of the car and this made it of unsatisfactory quality at the time of supply.

I can't say, as a matter of fact or on the balance of probabilities, when the DPF might have been removed prior to Miss G taking possession of the car. But I don't need to make a finding on this point. I only need to be satisfied that the DPF wasn't removed after Miss G took possession of the car, and I'm satisfied that it wasn't. I also think it's worth pointing out that had Miss G removed the DPF, or it had been removed with her knowledge, I see no good reason why she would have visited a garage so soon after taking possession of the car to complain about black smoke coming from the exhaust or why she would have paid for repairs after the car failed its MOT test in August 2020.

Having concluded that Miss G was supplied with a car that wasn't of unsatisfactory quality, what I now need to decide is what Moneybarn should have to do to reasonably compensate her.

Now I can see that the investigator recommended that Moneybarn should:

- *repair the car at no cost to Miss G*
- *provide Miss G with a courtesy car whilst repairs to her car are being undertaken*
- *cover the cost of a new/further MOT test*
- *not pursue Miss G for any payment until a courtesy car has been provided to her and her own car has been put into a garage for repair*
- *remove the arrears from Miss G's account from the date in 2020 the car failed its MOT test*
- *remove any negative markers from Miss G's credit report*
- *pay Miss G a further £150 for the distress and inconvenience she had been caused*
- *refund to Miss G the £36 (together with interest) she paid for the inspection report in August 2020*

I accept that under normal circumstances it would be fair to give Moneybarn one opportunity to repair the car, as recommended by the investigator. However, given the likely value of the car now, the likely cost of repairs, and given that the car has been on Miss G's drive and hasn't moved since August 2020, possibly resulting in further works being required, I think the fairest outcome is for Miss G to be able to reject the car rather than have it repaired.

It's my understanding that Miss G had use of the car for approximately 12 months up to August 2020, when it failed its MOT test. Therefore, it follows that Miss G should have to pay for that usage, usage that equates to 12 monthly payments.

Now based on records provided by Moneybarn it appears that Miss G has made 9 monthly payments of £170.09, leaving an outstanding balance in Moneybarn's books of £8,334.41. So, it could be argued that Miss G still owes, and should have to pay, Moneybarn three further monthly payments of £170.09 – a total of £510.27.

But equally Miss G has had to pay for an inspection report, a MOT test, post MOT test works plus other costs (such as car tax and insurance) for which she was never going to derive a benefit from, whether in full or in part. It's also the case that this whole matter has caused Miss G a degree of distress and inconvenience for which she should also be fairly compensated for.

Now I could direct Moneybarn to refund to Miss G the above costs (in full or in part) together with interest and direct it to pay something for the distress and inconvenience this whole matter has caused. But in my view, the most appropriate thing to do here is to direct Moneybarn to write off what I've concluded above is still owed by Miss G to it of £510.27.

For the sake of completeness, I also think that it's both fair and reasonable, in the particular circumstances of this case, that Moneybarn should remove any adverse information that it may have recorded with third party credit reference agencies and to mark the agreement as fully settled.

Miss G responded to my provisional decision to say that she accepted it.

Moneybarn didn't respond to my provisional decision by the date I gave for the same.

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 Miss G accepted my provisional decision and given that Moneybarn didn't respond to it by the date I gave, I can confirm I see no good reason to change my provisional findings and I now confirm them as final.

My final decision

My final decision is that I uphold this complaint and that Moneybarn No. 1 Limited must:

- Collect the car from Miss G at no cost to her.
- Remove any adverse information it may have recorded with third party credit reference agencies in respect of Miss G's agreement.
- Mark Miss G's agreement, with third party credit reference agencies, as fully settled.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 4 October 2021.

Peter Cook
Ombudsman