

## **The complaint**

Ms S complains about the quality of a car she has been financing through an agreement with Moneybarn No. 1 Limited ("Moneybarn").

## **What happened**

Ms S entered into an agreement with Moneybarn in December 2019 for a car. The car was around four and half years old and had travelled approximately 52,000 miles. The cash price of the car was £6,100 and this entire sum was financed with Moneybarn.

Ms S says that shortly after she collected the car there were two problems with it, a corroded earth wire after two days and a problem with the battery after two weeks, both which were repaired at no cost to her.

Ms S says the car then broke down in January 2020 and it was due to be inspected by the supplying dealership in February 2020, but it wasn't because she fell seriously ill.

Ms S felt well enough to contact Moneybarn in June 2020 to explain the problems she had experienced with the car and to explain that she would like to reject it. Following contact from Ms S, Moneybarn arranged for an independent inspection of the car to be undertaken. The car was inspected at Ms S' address where the car still remains.

The inspection concluded that as well as successful repairs to the battery being evident, there were other issues with the car which, on balance, would have been developing at the point of sale (emissions and wear to both front suspension arms). The date of this inspection was 27 August 2020 and showed that Ms S had travelled approximately 3,000 miles in the car since acquiring it.

Following receipt of the above inspection report Moneybarn wrote to Ms S to say that it wouldn't accept rejection of the car. But the supplying dealership had agreed to accept liability for the emissions issue, and it (Moneybarn) might be prepared to meet, as a gesture of goodwill, the cost of repairing the suspension issues.

Moneybarn also paid Ms S £150 for what it accepts were delays on its part in investigating her complaint and providing her with a response.

Ms S made the contractual monthly payments required of her for January, February and March 2020 of £197.62. Moneybarn then granted Ms S a payment holiday for five months. This meant that Ms S wasn't required to make, and didn't make, the monthly payments due to be paid by her in April, May, June, July and August 2020.

Moneybarn tried to collect Ms S' monthly payment for September 2020, but this was returned unpaid by Ms S' bank. No further payment attempts were made by Moneybarn after this date meaning Ms S' account started to accrue arrears.

Unhappy with Moneybarn's response to her complaint, Ms S referred it to our service for investigation.

Ms S' complaint was considered by one of our investigators who concluded that it should be upheld and that Moneybarn should:

- end the agreement with nothing further to pay
- collect the car at no cost to Ms S
- refund Ms S' deposit/part exchange contribution if made
- refund Ms S' monthly payments for the period 22 February 2020 to the date of settlement as Ms S had reasonably stopped using the car at this point in time
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement
- pay Ms S a further £200 for the trouble and upset this whole matter had caused her
- remove any adverse information from Ms S' credit file in relation to the agreement

Ms S responded to say that she accepted the investigator's conclusion, however Moneybarn said it didn't.

In summary Moneybarn said that:

- The issue with the battery (which was successfully repaired at no cost to Ms S) is widely accepted to be a wear and tear item and wouldn't render the car unsatisfactory.
- The issues relating to the emissions system (and fuel pressure system) can't realistically be linked to the failure of the battery and therefore the supplying dealership should be given one opportunity to repair these issues.
- The supplying dealership shouldn't be held liable for not identifying and addressing faults that hadn't materialised at the time of sale.
- Its offer was and is fair and reasonable in all the circumstances.
- A view had been reached without the investigator being aware of the car's location, whether any deposit had been paid, or a part exchange allowance given, and what payments (if any) had been made by Ms S against her agreement liability.

Because Moneybarn didn't accept the investigator's view, and because the investigator wasn't persuaded to change his mind, Ms S' complaint was passed to me for review and decision.

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 point out 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 add that where the information I've got is incomplete, unclear or contradictory, as some of it's here, I've to base my decision on the balance of probabilities. Ms S 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.*

*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 Ms S.*

*It doesn't appear to be in dispute that there was an issue with a corroded earth wire and with the battery, shortly after Ms S acquired the car, that were fixed at no cost to her.*

*I note that Moneybarn says these two issues could be viewed as minor. But the fact remains that these two issues occurred very shortly after Ms S had acquired the car and after she had added very few miles to it. And in my view this, together with the fact that both issues required repair and were repaired at no cost to Ms S, meant the car was indeed of unsatisfactory quality when supplied.*

*Ms S says the car broke down in January 2020 and given it was scheduled to be inspected by the supplying dealership in February 2020, I'm satisfied that this was the case.*

*Ms S' car was inspected in late August 2020 where it was identified that there were 'new' issues with it that on balance would have been developing at the point of supply.*

*Now Moneybarn suggests that given the issues identified by the inspection don't flow from previous failed repairs, then Ms S has no right to reject the car. However, I disagree.*

*Although Ms S lost her rights to reject the car following the corroded earth wire and the battery issue being repaired, she had a final right to reject to the car when further issues with the car, which Moneybarn's own appointed inspection identified as being – on balance – developing at the point of supply, occurred.*

*The relevant law sets out that Ms S can exercise her final right of rejection if there has already been one repair carried out and the car continues to be of unsatisfactory quality. For clarity, the relevant law doesn't say that any further issues are required to be linked in any way to a previous repair, or how minor those previous repairs might be viewed to be.*

*So, given what I say above, I find that Ms S is able to reject the car.*

*As well as being able to reject the car, I've gone on to consider what else, if anything, Moneybarn should have to do to fairly compensate Ms S.*

*Given that I've found that Ms S should be able to reject the car, it follows that Moneybarn should have to collect it from Ms S at no cost to her.*

*Despite finding that the car was of unsatisfactory quality when supplied, and that Ms S should be able to reject it, I think that it's only fair that she should pay for the use she has had of the car.*

*Now given the agreement started on 4 December 2019, Ms S says the car broke down in January 2020 and was scheduled to be inspected and/or repaired by the supplying dealership in February 2020 and that Ms S had added approximately 3,000 miles to it whilst in her possession, I think that Ms S should be held liable for two monthly payments – in essence covering the period December 2019 and January 2020.*

*Now given that Ms S has made three monthly payments against her agreement, I find that Moneybarn should refund the payment made by Ms S in March 2020 together with interest.*

*Whilst the car has been kept at her home address, Ms S, as I would expect her to, has been insuring it. Now in my view Ms S shouldn't have to bear this cost, or at least not all of it.*

*Ms S has provided evidence of the cost of insuring the car for the period 1 July 2020 to 30 June 2021 and 1 July 2021 to 30 June 2021 [sic]. Now based on these submitted costs, and given that Ms S in essence has been insuring the car whilst having no use of it for 19 months since February 2020 and for 12 months since it was inspected in August 2020 (and will have to continue insuring it up to the point in time it's collected from her), I find that Moneybarn should have to pay her £400.*

*I'm unaware of what adverse information, if any, has been recorded by Moneybarn against Ms S' name with credit reference agencies. But in my view if any adverse information has been recorded this should be removed.*

*Finally, I would add that I agree with the investigator that this whole matter has caused Ms S a degree of distress and inconvenience for which she should be fairly compensated. And taking everything into account I agree that payment of £200 represents an appropriate sum in this respect.*

Moneybarn didn't respond to my provisional decision by the date given.

Ms S responded to say that she accepted my provisional decision but:

- There appeared to be a typographical error in my provisional decision. I made reference to her having paid for insurance for the period 1 July 2021 to 30 June 2021 rather than 1 July 2021 to 30 June 2022.
- I appear to have made no award for insurance costs incurred by her for the period December 2019 to June 2020 inclusive, or for her MOT test and certificate dated December 2020.

### **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 Ms S accepted my provisional decision and given that Moneybarn didn't respond to it, I see no reason to depart from my provisional findings and I now confirm them as final.

However, for the sake of completeness and clarity, I would make the following comments:

I accept there is a typographical error in my provisional decision and I should have made reference to insurance paid for the period 1 July 2021 to 30 June 2022, rather than 1 July 2021 to 30 June 2021. However, this typographical error has no bearing on my findings.

I awarded Ms S £400 for insurance costs having taken a holistic approach to the issue and having regard to the fact that although Ms S may have had no use of the car since February 2020, and possibly only had impaired use of it before this date, she didn't – for reasons I fully understand – refer the matter to Moneybarn until June 2020 and the car wasn't inspected until August 2020.

I appreciate that Ms S paid for an MOT test and certificate in December 2020. But given the cost of this was only £20, and given my decision to award £400 for insurance costs and £200 for distress and inconvenience, I felt it was entirely fair and reasonable to not make a specific award for this cost.

### **My final decision**

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

- end the agreement with nothing further to pay
- collect the car at no cost to Ms S
- refund to Ms S the monthly payment she made in March 2020 of £197.62
- pay 8% simple yearly interest on the above sum of £197.62 from the date of payment until the date of settlement\*
- pay Ms S £400 in respect of insurance costs
- pay Ms S £200 for the trouble and upset this whole matter had caused her
- remove any adverse information from Ms S' credit file in relation to the agreement

\*HM Revenue & Customs requires Moneybarn No. 1 Limited to take tax off this interest. Moneybarn No. 1 Limited must give Ms S a certificate showing how much tax it's taken off, if Ms S asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 26 October 2021.

Peter Cook  
**Ombudsman**