

The complaint

Ms W complains that Moneybarn No. 1 Limited has unfairly declined to reimburse the deposit she paid for a car when the conditional sale agreement she'd entered into was cancelled and the car returned due to it not being of satisfactory quality.

What happened

In February 2021 Ms W entered into a five-year conditional sale agreement for a used car. The car was around seven years old and had a mileage of about 101,000. The car cost £8,140 and an advance payment of £800 was made leaving £7,340 to be paid by the credit agreement together with interest on that amount.

Within a short time, Ms W experienced faults with the car and complained to Moneybarn. Moneybarn upheld her complaint and the car was repaired with costs being reimbursed to Ms W. Unfortunately, the car broke down again a short time later. Diagnostics arranged by Ms W revealed further problems with the car.

Ms W made a second complaint about the car to Moneybarn who agreed to have the car independently inspected. In July 2021 the independent engineer, having investigated the car, reported that the faults would have been developing at the point of supply.

Moneybarn upheld Ms W's second complaint and said that due her earlier complaint, the further faults found with the car and the independent engineer's conclusions regarding its quality, she was now entitled to reject the car. Moneybarn said that the agreement would be cancelled and wound back. In addition, Moneybarn paid Ms W £100 as compensation for the distress and inconvenience caused to her by dealing with the faulty car.

Ms W returned the car in August 2021 and the agreement was cancelled. She says that Moneybarn didn't reimburse her £800 deposit because it had said there wasn't an invoice prepared by the dealership regarding the car she'd part exchanged when arranging the agreement for this one. Ms W said that Moneybarn had told her that there wasn't any proof of the £800 advance payment. Ms W says she had been told by the dealer that they would reimburse her, but it then hadn't done so, and she hadn't had any further contact from them.

Our investigator recommended that Ms W's complaint should be upheld and that Moneybarn should reimburse her the £800 advance payment together with interest. Ms W agreed with the investigator's view but Moneybarn hasn't responded. So, as there hasn't been any agreement reached then Ms W's complaint has been passed to me.

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.

It's agreed that the car supplied to Ms W under the conditional sale agreement she entered into with Moneybarn in February 2021 wasn't of satisfactory quality condition. And I've seen that the car had already been repaired once when a further fault with the ABS came to light

and the car broke down. Moneybarn upheld both of Ms W's complaints about the car and in July 2021 agreed that she was entitled to rejected it.

I understand the car was collected from Ms W in August 2021 and I've seen there were various emails to Ms W about what she should be reimbursed which included insurance payments she'd made. However, Ms W says that she wasn't reimbursed her deposit of £800 which had come from the car she'd part exchanged for this one. Moneybarn hasn't told this service why it didn't make that reimbursement though Ms W says she was told it was because of a missing sales invoice in respect of the car she'd part exchanged.

Looking at both the conditional sale agreement and the sales invoice for the rejected car these show that the cost of the car was £8,140. The conditional sale agreement sets out that there was an initial payment of £800 made leaving the amount of credit as £7,340. The sales invoice sets out that £800 was paid towards the car as "*Deposit/PX Allowance*".

Ms W says she part-exchanged a car when taking out this new agreement and I accept what she has said. It appears the £800 was a part exchange allowance rather than £800 paid in cash or via a bank card. Looking at the paperwork, I'm satisfied that Ms W contributed £800 towards the cost of the car she was later entitled to reject. It's therefore unfair that when this agreement was unwound that this contribution wasn't reimbursed to her. The aim of unwinding the agreement was to put Ms W, as close as possible, back in the position she would have been in had she not entered into the agreement. Here that wasn't possible because she couldn't have the car she traded in as part of the deal returned to her, but she could have received the monetary value placed on that exchange.

As the dealership hasn't reimbursed Ms W then I think it's fair that Moneybarn does. As this is a regulated credit agreement, Moneybarn as the credit provider is responsible for the condition of the car and so for resolving Ms W's complaint.

I'm upholding Ms W's complaint

Putting things right

I'm asking Moneybarn to pay Ms W the £800 advance payment together with interest at the yearly rate of 8% simple from the date of payment until the date of settlement.

My final decision

For the reasons set out above I'm upholding Ms W's complaint. I'm asking Moneybarn No 1. Limited to pay Ms W the £800 advance payment together with interest at the yearly rate of 8% simple from the date of payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 2 February 2022.

Jocelyn Griffith
Ombudsman