

The complaint

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

What happened

I issued my provisional decision on this complaint in September 2021. An extract from that provisional decision is set out below.

What I've provisionally 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.

I know it will disappoint Moneybarn, but I don't currently agree with the investigator's view of this complaint. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

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.

Ms C 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. The relevant legislation also says that when we consider whether a car is of satisfactory quality we should consider whether it has proven to be durable.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Ms C. The car here was about four years old but had completed less than average mileage. The mileage on the car was about 16,889. I think a reasonable person would expect some wear and tear on a car of that age and mileage, but I don't think they'd expect the car to experience intermittent power loss.

The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply, when Moneybarn were responsible for its quality, unless they can demonstrate otherwise.

Ms C first reported a loss of power with the car on the day she collected it. She explained

that the Engine Management Light (EML) and Electronic Stability Programme (ESP) warnings had illuminated, the car had lost power and gear changes were sluggish. The dealer identified a battery fault and carried out a repair. I think it's likely that fault was present when the car was supplied as Miss C had only just collected it and because neither Moneybarn nor the dealership have disputed that.

When there is a fault with a car that is present at the point of supply and that's reported in the first 30 days, the consumer can reject the car without giving the business an opportunity to fix it. But here Ms C has explained she was happy to have it repaired.

The relevant legislation allows a business one opportunity to repair a fault that is present at the point of supply. If that repair fails they should allow a rejection of the vehicle and if a further fault becomes apparent, that was present or developing when the car was supplied, the business don't need to be given a chance to repair that fault.

When the car broke down again in December 2019, Ms C explained that the EML and ESP lights had again illuminated and the car had again lost power. An injector was replaced but I can't see that Ms C was given the option to reject the car at that point and, as this was a subsequent failure that, given its proximity to the point of supply, was likely to have been present or developing when the car was provided to Ms C, I think the business should have allowed her to reject it.

So, I think Ms C should have been allowed to reject the car in December 2019. In January 2020 there were further problems with the car which were again reported by Ms C. She reported that the ESP and EML lights were on again and the car had gone into limp mode. At this point Ms C also reported problems with the parking sensors.

A report Ms C obtained in January 2020 from a local garage showed there were numerous fault codes. Some of those codes related to the crankshaft position sensor which was a fault code the second independent inspector noted subsequently during his May 2020 inspection. Ms C had only covered about 2,600 miles in the car when the garage provided that report in January 2020, so I think it's likely the fault codes were being generated by a fault that was present at the beginning and that hadn't been diagnosed. The independent inspector noted it four months later and I think that supports the suggestion that Ms C has been experiencing problems, albeit intermittently, from the beginning.

Whilst I understand the fault codes weren't present when the first independent inspection was completed that may well have been because they were cleared by the garage who completed the diagnostic. The fault codes are reported to be "intermittent" fault codes and as such I can understand that they may not have occurred in the 46-mile test drive completed by the first independent inspector.

So, this is another reason why I think repairs have failed and Moneybarn should allow Ms C to reject the car.

When Ms C reported issues to Moneybarn in January 2020 she also mentioned that there was a fault with the parking sensors. The independent inspector also identified a fault with the parking sensors when he examined the car in May 2020. It seems likely this is the same fault, given the fact that Ms C identified it so early on. In isolation I may have considered it disproportionate to reject the car just because the parking sensor wasn't working. But in tandem with the other faults I think it is yet more evidence of the faults this car has had from the beginning.

And, even if I'm wrong about all of those matters, I don't think this car has been suitably durable. It had completed less than 17,000 miles when Ms C took receipt of it and the faults have led Ms C to take it off the road. I don't think a reasonable person would expect a car of

this age and mileage to experience significant issues with the engine and gearbox. I think they'd consider the car not to be suitably durable and that's another reason I believe this car has not been of satisfactory quality.

Putting things right

Moneybarn should collect the car at no cost to Ms C and they should end the finance agreement.

The agreement doesn't list any deposit for Moneybarn to refund.

Moneybarn should refund all the finance instalments paid by Ms C and waive any that were due but haven't been paid up to the point this complaint is settled. But it's only fair that Ms C pays for the use she has had from the car and the relevant legislation allows the business to retain a portion of the money paid by a consumer in respect of that.

Ms C took the car off the road; it was SORN in May 2020. I can see that Ms C was able to use the car up to that point as the mileage Ms C completed was in excess of what would be considered average mileage. So, Moneybarn can retain any instalments paid or due up to May 2020 but should waive or refund any others. They should add 8% interest to any refund from the date of payment to the date of settlement as Ms C has been deprived of that money.

But whilst Ms C was able to drive the car I think the issues she has experienced with it will have impacted on her enjoyment of the vehicle. This car had completed less than 17,000 miles when it was supplied to Ms C and I think a reasonable person would have expected relatively trouble-free driving. There's evidence there have been consistent problems with the car from the start of the agreement in November 2019 and those issues have led Ms C to take the car off the road. I think it's likely Ms C would never have felt comfortable that a journey could be completed without incident. In those circumstances I think Moneybarn should refund, or waive, 10% of the finance instalments I've suggested it's fair for them to charge.

Ms C has been inconvenienced by these issues. She's had to take the car back to the dealership on several occasions and has had to make arrangements to allow a couple of independent inspections to take place. She's broken down on the motorway and also when away on holiday when she had to wait some time for the car to be recovered. And she's also had to escalate her complaint to this service when I think it could have been resolved earlier. In those circumstances I think Moneybarn should pay her £400 in compensation for the distress and inconvenience caused.

Ms C has stopped paying for the car, but it wouldn't be fair for Moneybarn to make adverse reports to her credit file here as I'm persuaded this car wasn't of satisfactory quality.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to tell Moneybarn No. 1 Limited to:

- 1. end the agreement and collect the car at no cost to Ms C;*
- 2. refund all finances instalments paid or waive any that were due but haven't been paid, in respect of loss of use Ms C has experienced. Moneybarn can retain instalments paid or due from the beginning of the agreement to the start of May 2020 when the car was taken off the road. This is to compensate them for the usage Ms C has had from the car. They should add 8% simple interest per year to any refund*

- from the date of payment to the date of settlement;*
3. *refund, or waive, 10% of any money retained (as detailed in 2.) in respect of the loss of enjoyment Ms C has experienced;*
 4. *pay Ms C £400 to compensate her for the distress and inconvenience she's experienced;*
 5. *remove any adverse reports they may have made to Ms C's credit file in relation to this agreement;*
 6. *agree a reasonable repayment plan with Ms C for any payments still outstanding when this redress is completed.*

Ms C said she should be compensated for being without the car since March 2020. She explained this had hindered her and her family's daily life as she relied on the car to transport her children, two of whom were disabled. She said that she'd been unable to have holidays because she didn't have a car that worked.

Moneybarn explained that Ms C hadn't made any payments towards her agreement and provided a calculation of how they thought I was asking them to apply the redress in my provisional decision. They wanted clarification that this was a correct interpretation of that redress.

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.

I'm not persuaded to ask Moneybarn to provide any more compensation than I had suggested in my provisional decision. Whilst I understand these issues were distressing and inconvenient for Ms C I think £400 is sufficient in the circumstances.

I've reviewed Moneybarn's calculations I think they're in line with what I was suggesting in my provisional decision. In particular as I am asking them to "*..retain instalments paid or due from the beginning of the agreement to the start of May 2020...*" if Ms C hasn't paid anything towards her agreement she may still have an amount to pay towards those months of usage although as I've also mentioned, I would ask Moneybarn to establish and affordable for any payments still outstanding.

Putting things right

I've not been provided with any additional information that has led me to change my provisional decision. That provisional decision now becomes my final decision on this complaint.

My final decision

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

1. end the agreement and collect the car at no cost to Ms C;
2. refund all finance instalments paid or waive any that were due but haven't been paid, in respect of the loss of use Ms C has experienced. Moneybarn can retain instalments paid or due from the beginning of the agreement to the start of May 2020 when the car was taken off the road. This is to compensate them for the usage Ms C has had from the car. They should add 8% simple interest per year to any refund from the date of payment to the date of settlement;
3. refund, or waive, 10% of any money retained (as detailed in 2.) in respect of the loss

- of enjoyment Ms C has experienced;
4. pay Ms C £400 to compensate her for the distress and inconvenience she's experienced;
 5. remove any adverse reports they may have made to Ms C's credit file in relation to this agreement;
 6. agree a reasonable repayment plan with Ms C for any payments still outstanding when this redress is completed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 7 January 2022.

Phillip McMahon
Ombudsman