

## **The complaint**

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

## **What happened**

The details of this complaint are well known to both parties, so I won’t repeat them again here. Instead I’ll focus on giving my reasons for my decision.

## **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 know it will disappoint Moneybarn, but I agree with the investigator’s opinion. 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.

Miss 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.

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 Miss C. The car here was about seven years old and had already completed over 100,000 miles so I don’t think a reasonable person would expect it to be fault free, as they would for a new vehicle. I think a reasonable person would expect a car of that age and mileage to be showing some signs of wear and tear but I don’t think they’d expect to experience the problems Miss C has had with, for instance, a broken rear differential or a need to replace an axle.

I’m persuaded by the independent expert’s report that there are faults with this car and that they were most likely present when the car was supplied to Miss C; the point at which Moneybarn were responsible for its quality. The inspector noted a badly worn rear differential and the need to replace the rear axle. He also identified that the rear doors wouldn’t lock, and the front brake discs were badly lipped and needed replacement. It was his view that

since the car had only been in Miss C's possession for a short time the faults would have been present or developing at the point of supply.

So, I think this car was of unsatisfactory quality.

The relevant legislation gives a consumer 30 days to reject a car that's of unsatisfactory quality without giving the business an opportunity to repair the faults.

Miss C says she asked to reject the car within 30 days. I'm not sure that was the case. The business' notes suggest Miss C took receipt of the car on 16 November 2020 and the 30-day clock runs from the day after delivery. 30 days would therefore expire on 16 December 2020, but I can't see that Miss C asked to reject the car until 17 December, a day later.

However, I can see that whilst Miss C seemed initially prepared to accept repairs she decided to reject the car when it emerged that the dealership wouldn't be repairing all the issues she'd identified and would only be looking at the differential. So, I think it's fair to suggest the 30-day period should be considered to have paused when a repair was offered and restarted again when the limited and inadequate scope of that repair was revealed. I'm persuaded that it would therefore have been fair to allow Miss C to reject the car when she asked to do so on 17 December 2020.

And, even if I'm wrong about the 30-day short term right to reject the car not having expired I still think the fairest resolution here would be to allow Miss C to reject the car and not repair it. I say that because Miss C had barely driven the car when she made the request and the faults with the vehicle were severe and extensive. I don't think a reasonable person would think a repair was a reasonable resolution as I think there would be a reasonable expectation that the faults identified may only be the tip of the iceberg.

Moneybarn refused to allow Miss C to reject the car because they said she'd completed unauthorised repairs on it. Miss C had the front tyres and brake pads replaced only three weeks after delivery. They are consumable items and Miss C was always responsible for replacing them as they wouldn't have been covered by any warranty. It was Miss C's choice where she had that work completed and I've not seen any evidence that would lead me to believe those repairs could have impacted on the differential failure or the problems Miss C had locking the car doors.

I don't therefore think Moneybarn were reasonable when they refused to allow Miss C to reject the car.

### **Putting things right**

Moneybarn will need to end the finance agreement and they should arrange to take the car back.

Miss C had to replace the front tyres as they weren't the same as the rear tyres and she says this is necessary on a four-wheel drive car. I think it's reasonable to say that it is standard advice to do that on a four-wheel drive vehicle and in those circumstances I think Moneybarn should refund the expense Miss C incurred if she can let them have a copy of the receipt.

Miss C also had the front brake pads replaced after only three weeks. I understand that those items are wear and tear components, but I don't think a reasonable person would expect to replace them only a few weeks and a few hundred miles later. I think it's likely that at the point of supply these components had worn excessively and I think it would therefore be fair for Moneybarn to refund the cost of replacement if Miss C can provide the receipt.

Miss C also says she incurred costs to have the faults on the car diagnosed. They are costs she wouldn't have incurred if the car was of satisfactory quality and it's only fair therefore to tell Moneybarn to refund them with interest.

Miss C hasn't been able to drive the car since it broke down in December 2020. She had very little use of it before then and what use she did have was hampered by faults with the tyres, brakes, door locking, differential noise and key fob. It's not fair for her to have to pay monthly instalments for a car she couldn't drive and given the constant problems I don't think it would be fair to ask her to pay any monthly instalments towards her agreement. If Miss C has made any payments they should be refunded to her along with 8% simple interest as Miss C will have been deprived of that money.

Miss C has been inconvenienced by these matters. She's had to have the faults diagnosed and to escalate her complaint to this service when I think it could have been resolved earlier. In those circumstances I would agree that Moneybarn should pay her £100 to compensate her for the distress and inconvenience caused.

### **My final decision**

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

- End the agreement and collect the car at no cost to Miss C.
- Refund the costs incurred by Miss C to replace the front tyres and brakes and to have the faults diagnosed, on provision of receipts. Add 8% simple interest to that refund from the date of payment to the date of settlement.
- Refund any finance instalments paid by Miss C in respect of the lack of use she has had from the car. Add 8% simple interest to that refund from the date of payment to the date of settlement.
- Pay Miss C £100 to compensate her for the distress and inconvenience she's experienced.
- Remove any adverse reports they may have made to Miss C's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 5 January 2022.

Phillip McMahon  
**Ombudsman**