

The complaint

Mr N complains that a car he acquired via a conditional sale agreement with Moneybarn No.1 Limited wasn't of satisfactory quality. He would like the cost of repairs to be covered by Moneybarn No. 1 Limited.

What happened

In August 2019 Mr N entered into a 59-month conditional sale agreement for a used car. The car was just under six years old and had a mileage of about 56,500. It cost £5,995 and the monthly payments including the applied interest amounted to £198.77.

Within a few days of taking possession of the car Mr N says he noticed the car made a knocking noise and the air conditioning wasn't working. He contacted the supplying dealer and obtained quotes for some of the repairs from a local garage. In September 2019 the car was taken back by the supplying dealer for repairs to the clutch, timing chain and mass flywheel to be carried out.

The car was returned to Mr N about three weeks later, but the supplying dealer said they weren't able to repair the air conditioning which they thought needed to be re-gassed. They told Mr N to arrange to have that repaired locally and they would cover the cost.

Mr N took the car to a local garage but says he was told that there was a problem with the air conditioning compressor or pump and that the repair would be more expensive than previously thought. Mr N contacted the supplying dealer to explain the position. The supplying dealer said it would contact a local manufacturer approved garage.

Around one-week later Mr N chased up the position with the car's air conditioning with the supplying dealer. They asked Mr N to get a quote for the repair. Mr N sent the supplying dealer a text setting out that it would cost around £60 to get a diagnostic undertaken on the car and then around £550 plus labour to fix. However, despite a number of further attempts to contact the supplying dealer about how to proceed Mr N heard nothing back.

Mr N says he tried to contact Moneybarn via email in September 2019 to report the problem with the car's air conditioning and the lack of contact from the supplying dealer. He says he received an automated response.

Unfortunately, Mr N suffered ill health and did not make further contact with Moneybarn until March 2020 when he queried what had happened about his complaint. Mr N says he received another automated response that warned due to covid there would be a delay before it could reply. Mr N chased again in February 2021.

Moneybarn responded that it didn't have a record of earlier attempts to contact it and due to the time that had now passed it asked Mr N to provide a diagnostic for the air conditioning that would show the fault had been present since the point of supply.

Mr N was unhappy at Moneybarn's response and provided it with copies of the texts and emails exchanges he'd had with the supplying dealer. He said these proved the problem with

the air conditioning had been present since he'd first acquired the car.

Mr N complained to this service and our investigator recommended that his complaint should be upheld. She said there was enough evidence provided by Mr N that there had been a problem with the air conditioning since he'd acquired the car. And that she was satisfied that the car wasn't of satisfactory quality.

Our investigator said it would be fair for Moneybarn to now liaise with Mr N as to obtaining a quote to fix the car's air conditioning and if this cost was proportionate to the value of the car to pay for those repairs. However, if the cost is not proportionate then it should take the car back and unwind the agreement.

Our investigator also said that she thought the lack of the air conditioning meant the car wasn't performing as it should have and would have spoiled Mr N's enjoyment and use of it. She said he had been caused frustration, distress and inconvenience having to deal with the faulty car. Our investigator thought that it would be fair for Moneybarn to reimburse 5% of the payments Mr N had made under that agreement from September 2019 to date together with £175 compensation.

Mr N has agreed with our investigator's view but Moneybarn hasn't responded. As the parties were therefore unable to reach an agreement about this complaint it 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.

The conditional sale agreement entered into by Mr N is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price, and all other relevant circumstances.

It also says that the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here, the car wasn't new, being nearly six years old and it had a mileage of around 56,500, so I don't think a reasonable person would expect it to be fault free unlike a new car. But although I think it would be reasonable to expect some wear and tear, I think they would expect things like the air conditioning to work and that repairs wouldn't be required for a reasonable period of time.

Mr N has provided evidence of the contact he had with the supplying dealer within a few days of acquiring the car in August 2019. I think this is sufficient to show there were a number of issues with the car including the air conditioning. I've seen that the faults with the clutch, timing chain and mass flywheel were repaired by the supplying dealer, but they were unable to fix the air conditioning at that time. It appears the supplying dealer thought that the air conditioning needed to be re-gassed at first though this later doesn't appear to have been the case.

Looking at the contact between Mr N and the supplying dealer I think it's fair to say there was an acceptance by the dealer that they were responsible for covering the cost of the repairs. I don't know why they stopped communicating with Mr N though it appears that happened after the dealer learnt the air conditioning repair was more expensive than previously anticipated.

I appreciate Moneybarn says there isn't a record of Mr N making contact with it until February 2021, but I accept Mr N's first contact with Moneybarn had actually been in September 2019. He has been consistent when setting out the chronology of events and has provided a copy of the automated response he received from Moneybarn when he first made contact.

I've seen that Mr N didn't make further contact with Moneybarn until March 2020 and although this was coming up to six months later, I've seen that Mr N has explained that was due to his poor health. He then received another automated response but this one warned that covid was causing delays in Moneybarn's ability to provide a response. Mr N chased up what was happening in February 2021 and although this was nearly a year later, I think with the pandemic it's understandable that time drifted. In any event just because there was a delay in Mr N chasing up his complaint doesn't mean the fault with the air conditioning wasn't present at the point of supply.

As Mr N provided proof that he'd made his complaint earlier than February 2021 and that the fault had been present since the point of supply I don't think Moneybarn acted reasonably requiring him to provide a diagnostic report. It should have considered the evidence he'd already given.

So, looking at the evidence, I'm satisfied that the car's air conditioning wasn't working at the point of supply and that the car was therefore faulty. I think the car wasn't of satisfactory quality at the point it was supplied to Mr N.

Mr N has been clear that what he wants is for the car's air conditioning to be fixed and under the Consumer Rights Act 2015 the retailer has one opportunity to repair. And although the retailer took the car in for repairs in August 2019, they didn't attempt to repair the air conditioning at that point but later said they were willing to cover this cost. I think it would be fair for Moneybarn to now arrange that repair and cover that cost. However, I acknowledge that due to the age of the car the cost of this repair may be considered uneconomical. If that is the case, then I think it would be fair for Mr N to be able to return the car and to have the agreement ended with nothing further to pay.

I agree with the view of our investigator that the car hasn't performed as Mr N reasonably expected although he has been able to make use of it. I think Mr N is due a reimbursement of part of the payments he's made under the agreement. I think a repayment of 5% of the payments made together from September 2019 to date together with interest would be reasonable to reflect the lack of working air conditioning.

I have also seen that Mr N has been caused unnecessary distress and inconvenience dealing with the faulty car. He has been frustrated trying to get the car fixed, obtaining quotes, and trying to get responses and has found the car uncomfortable to use in the warm weather. I agree that £175 compensation is fair and reasonable in the circumstances.

So, for the reasons set out above I'm upholding Mr N's complaint.

Putting things right

I'm asking Moneybarn No.1 Limited to do the following:

- Liaise with Mr N to arrange for a quotation for the repairs to the car's air conditioning system.
- If the cost is proportional to the value of the car, then it must pay for repairs to be carried out.
- If it doesn't consider the repairs proportional to the value of the car, it must collect the car at no cost to Mr N and end the agreement with nothing further to pay.
- Reimburse 5% of the payments made by Mr N from September 2019 to date to cover the loss of performance. Interest at the yearly rate of 8% simple is to be added to that amount from the date of payment until the date of settlement.
- Pay £175 compensation to Mr N for the distress and inconvenience that's been caused due to the faulty goods.

My final decision

For the reasons set out above I'm upholding Mr N's. I'm asking Moneybarn No. 1 Limited to do the following:

- Liaise with Mr N to arrange for a quotation for the repairs to the car's air conditioning system.
- If the cost is proportional to the value of the car, then it must pay for repairs to be carried out.
- If it doesn't consider the repairs proportional to the value of the car, it must collect the car at no cost to Mr N and end the agreement with nothing further to pay.
- Reimburse 5% of the payments made by Mr N from September 2019 to date to cover the loss of performance. Interest at the yearly rate of 8% simple is to be added to that amount from the date of payment until the date of settlement.
- Pay £175 compensation to Mr N for the distress and inconvenience that's been caused due to the faulty goods

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 17 March 2022.

Jocelyn Griffith
Ombudsman