

The complaint

Mr H is complaining that a car Moneybarn No. 1 Limited supplied him under a conditional sale agreement was of unsatisfactory quality and was misrepresented to him.

What happened

In July 2020 Mr H entered into a conditional sale agreement provided by Moneybarn to acquire a car. The car had a cash price of around £12,500, it was around five years old and had travelled around 35,000 miles.

In August 2020 Mr H complained about the following issues with the car:

- Air conditioning wasn't working properly
- Service light was on, suggesting the car hadn't been serviced
- Cigarette lighter fuse had blown
- Windscreen washer was blocked
- The boot didn't close properly
- The tyres on the car weren't approved BMW tyres
- The car was advertised to come with satnav, but it didn't have it

The supplying dealership fixed a number of the faults. It also offered to fit an aftermarket satnav to the car. The dealership provided Mr H with a courtesy car during this time, but Mr H said he had to insure it. The car was later returned to Mr H but he said the issues with the boot and screen washer remained. And he said he wanted to reject the car. Moneybarn and the dealership said these were minor issues so didn't think Mr H was entitled to reject the car.

In July 2021, Mr H's car failed the MOT because of the issue with the windscreen washer. Mr H says he stopped using the car after that because he didn't think it was safe to use. He also stopped paying the monthly payments on the finance agreement.

Our investigator upheld this complaint as he didn't think a reasonable person would expect to see the faults on the car so soon after acquisition. So he thought the car was of unsatisfactory quality. And he thought Moneybarn should do the following to put things right:

- end the agreement with nothing further to pay and remove any adverse information from Mr H's credit file;
- collect the car at no further cost to Mr H;
- refund the £42.61 Mr H paid to insure the courtesy car; and
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay a further amount of £100 for any trouble and upset that's been caused due to the faulty goods.

Moneybarn didn't respond to the investigator's opinion so the complaint's been passed to me to decide.

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've decided to uphold this complaint and I'll now explain why.

Mr H acquired the car under a conditional sale agreement. Legislation – in this case the Consumer Rights Act 2015 (CRA) – implied a term into the agreement that the car must be of satisfactory quality. As the supplier and finance provider, Moneybarn is responsible for the quality of the car it's provided under the agreement. There's no dispute that there are faults with the car, but the issue is whether the faults makes the car of unsatisfactory quality when it was supplied.

In deciding whether this car was of satisfactory quality, I take into account the relevant circumstances, such as the cash price, its mileage and age. In this case, Mr H paid around £12,500 for the car. It was around five years old and had travelled around 35,000 miles at the point of supply.

I think the key issue here is whether those problems were likely to have been present or developing at the time of sale, as opposed to natural and inevitable wear and tear in a used car. I've also considered whether a reasonable person would expect there to be problems such as Mr H has experienced in a car of this price, age and mileage – in short is the car sufficiently durable.

I note Moneybarn thinks the faults are minor and arose due to wear and tear. It does need to be considered that Mr H didn't acquire a new car and, given its age and mileage, he did need to expect *some* wear and tear. But this should also be considered against the fact he paid around £12,500 for the car.

Given how soon Mr H raised these issues after he acquired the car, I think the faults were present – or at least developing – at the point of supply. I don't disagree that some of the faults in isolation wouldn't necessarily render the car of unsatisfactory quality. But it seems to be accepted that the car had at least four faults – the air conditioning, cigarette lighter, screen washer and the boot. I don't think a reasonable person would expect to see all of these faults given the price Mr H paid for the car.

I also think not being able to properly close the boot and being able to clean the windscreen are arguably safety issues with the car and it's important to note the car failed its MOT in July 2021 because of the issues with the screen washer. The CRA sets out that goods won't be of satisfactory quality if they are unsafe when supplied.

Taking everything into consideration, I don't think the car was of satisfactory quality at the point of supply. The issue now for me to think about is whether this means Mr H can reject the car. I note Moneybarn has said the CRA only allows a rejection if the faults prevent the car from doing its job properly. And it's said minor faults that can be easily repaired are not enough to trigger your right to reject the vehicle. But I don't agree.

The CRA doesn't distinguish between minor and major faults in this respect – this is a consideration around whether goods are of satisfactory quality or not. But, in regards to the circumstances of this complaint, Mr H only has remedies available under the CRA where he can show the car was of unsatisfactory quality. I've already set out that I think the car was of unsatisfactory quality. Under the CRA, Mr H had the right to ask Moneybarn to fix the car but if that repair was unsuccessful, he has the right to reject it.

Mr H returned the car to the supplying dealership to carry out repairs, but only some of the repairs were done. So I don't think the car was successfully repaired. I think the CRA sets out that Mr H can now reject the car and I also think that's fair and reasonable in the circumstances of this complaint.

Putting things right

For the reasons I've set out above, Moneybarn should now allow Mr H to reject the car. I think Mr H had full usage of the car up to July 2021 after which I understand he stopped using it. So I think it's fair he pays for the car up to this point. And I think the monthly payments he made during this time is a fair contribution to reflect the usage he had for the car. However, I understand he didn't use the car after this point, which I don't think was unreasonable given the car had failed an MOT. So I don't think he should have to pay anything further towards the finance after this point. However, Mr H also stopped paying the monthly finance at this point. So I think the fair and reasonable thing is that Moneybarn waives any arrears on the finance.

I also think this matter has caused Mr H some distress and inconvenience. He's had to drive a car with continuing issues which I don't doubt would have been very frustrating. He's also had to contact Moneybarn numerous times to try and resolve this complaint without success. I note the investigator awarded £100 in compensation, but I think £200 is a fairer reflection of the distress and inconvenience he's suffered.

Finally, I note Mr H had to pay an additional £42.61 to insure a courtesy car the supplying dealership gave him. I don't think he would have incurred this cost had the car not been of unsatisfactory quality, so I think Moneybarn should refund this cost.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Moneybarn No. 1 Limited to do the following:

1. Allow Mr H to reject the car and arrange to collect it at no cost to him;
2. Cancel the agreement with nothing further to pay and arrange for any adverse markers to be removed from Mr H's credit file;
3. Refund the £42.61 Mr H paid to insure the courtesy car. It should add 8% simple interest per year on this from when Mr H paid them until he gets them back. If Moneybarn thinks that it's required by HM Revenue & Customs to deduct income tax from this interest, it should tell Mr H how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate; and
4. Pay £200 in compensation for the distress and inconvenience this matter has caused Mr H.

Moneybarn should process this within 28 days of Mr H accepting my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 March 2022.

Guy Mitchell
Ombudsman