

The complaint

Ms J complains about the quality of a used car that was supplied to her through a conditional sale agreement with Moneybarn No. 1 Limited (MBL). Ms J also believes the car was mis-sold to her.

What happened

On 27 June 2019 Ms J acquired a used car through a conditional sale agreement with MBL. The car was registered in May 2013, which means it was about six years old and had travelled 86,993 miles at the time of supply. The purchase price of the car was £6,911. The sales invoice and finance agreement show a deposit of £400 was paid, meaning the finance was for £6,511 payable over 60 months.

Ms J says that after acquiring her car and driving back home she found a paddle to be loose. Ms J explained that the car would cut out while going over speed bumps and would come to a halt travelling uphill even with the accelerator fully depressed, which made her concerned for the safety of her family. Ms J says she initially thought it could be related to the car being semi-automatic. She also explained that she'd wanted a fully automatic car and didn't feel confident driving the semi-automatic that they supplied her with.

Ms J provided copies of correspondence she sent to the dealer and to MBL in June and July 2019, explaining that she no longer wanted the car. She said that the dealer asked her to bring the car into them. Ms J said she left the car with the dealer, along with the keys and the car's logbook. She said she told the dealer that she no longer wanted the car. Ms J cancelled her direct debit and explained that MBL said she'd need to do so in order to stop the monthly payments from coming out of her account.

On 13 August 2019 Ms J called MBL to raise a complaint because she'd been advised that a payment had been missed on her agreement. Ms J said she believed the agreement had been cancelled within the cooling off period when the car was returned to the dealer. Ms J was told the dealer wasn't going to unwind the agreement and that she needed to collect the car from them.

In September 2019 MBL sent Ms J their final response. They didn't uphold her complaint. In their response, MBL said that the dealer had carried out an inspection of the car and had found no electrical or mechanical faults, so Ms J would need to prove that a fault exists. They explained that they would expect Ms J to have inspected the car prior to supply so the delivery of the car would have suggested her acceptance of it. They also explained that a semi-automatic car could be driven with an automatic licence.

Unhappy with their final response, Ms J complained to MBL about the way her first complaint was handled. She also added that the dealer advised the car still belonged to her, particularly as they hadn't been able to sell it on. Ms J also advised that she wasn't making any payments towards the agreement and that she'd asked to cancel the agreement within the 14-day cooling off period, but she felt the dealer hadn't followed the correct process to have it cancelled. Ms J also reiterated her dissatisfaction that the car was a semi-automatic.

MBL responded to Ms J's second complaint on 28 October 2019. MBL explained that there was no cooling off period for the purchase of the car, and that an unwind of the agreement couldn't happen unless all parties were in agreement. They explained that the dealership hadn't agreed to the unwind because no faults were found with the car. MBL said that to end the agreement, Ms J would need to withdraw from it by paying back the sale price of the car plus the daily interest for the period she had it.

In January 2020 Ms J received a default notice for £1,278.70 for instalments not received, which was to be paid by 28 January 2020. MBL provided a statement of the account showing that the agreement had been terminated on 29 January 2020.

MBL confirmed that the car was sold at auction in September 2020. The statement shows that £612 was charged for recovery and auction fees, and the proceeds of £2,450 were deducted from the amount payable leaving £13,250 outstanding on the agreement.

In February 2021 Ms J brought her complaint to us here. One of our investigators looked into her concerns and concluded that as the dealer's inspection showed no faults existed with the car, MBL had acted fairly and so didn't uphold the complaint. Ms J disagreed with our investigator's view. Ms J said she believed that she was just returning the car as she hadn't wanted it anymore.

Unhappy with the investigator's view, Ms J asked that her complaint be referred to an ombudsman for a final decision.

I let Ms J and MBL know my initial thoughts about the case in an email from 17 November 2021. This explained that I was initially thinking of coming to a different outcome than our investigator reached, as I wasn't convinced by the findings of the inspection. So, I wanted to give both parties the chance to respond before making my final decision.

I gave Ms J and MBL four weeks to make any final comments or send any evidence. MBL didn't respond. Ms J said she agreed with what I'd said.

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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

Ms J complains about a conditional sale agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Ms J's complaint about MBL.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods would need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

I understand Ms J thought the finance agreement had ended as she believed it was cancelled in the cooling off period.

MBL advised in their final response that there was no cooling off period in the agreement. within the conditional sale agreement under the section '*right of withdrawal*' it says:

- *You have the right to withdraw from this agreement without giving any reason before the end of 14 days beginning with the day after you are informed by us in writing that this agreement has been signed by us.*

However, it goes on to say:

- *If you withdraw from this agreement you must repay to us the amount of credit and any accrued interest on that amount without delay and in any event within 30 days after giving notice of withdrawal.*

So, in considering the above I'm satisfied that there was no cooling off period but rather a withdrawal period as explained by MBL which involves repaying the total amount lent. But, I'm also satisfied Ms J didn't repay the credit and interest.

However, Ms J provided us with a copy of an email she sent to MBL dated 8 July 2019 informing MBL of the issues with the car and that she wanted to withdraw from the agreement, she also advised that she was going to return the car the following day.

Section 19 of the CRA says the short term right to reject is a remedy available to consumers for goods that are not of satisfactory quality at the point of supply. Section 22 of the CRA says that the time limit for exercising the short term right to reject is 30 days from supply of the goods.

Effectively, I consider that Ms J was exercising her short term right to reject as per the CRA when she was in touch with MBL here. Ms J says that when she returned the car to the dealer, she gave them the keys and logbook and asked if there was anything else they needed her to do. I find her actions to be consistent with someone who wants to reject a car. Given the circumstances I'm satisfied that Ms J wanted to reject the car.

Given that Ms J asked to reject her car within the first 30 days after supply, I've considered whether the car was of satisfactory quality when it was supplied to her.

Satisfactory quality

My starting point is that MBL supplied Ms J with a second-hand car that had travelled 86,993 miles. With this in mind, I think it's reasonable to expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage.

Ms J has shared emails with us that she sent to the dealer and to MBL in June and July 2019, explaining the issues she was experiencing with the car. Those included a loose paddle, the accelerator dropping to the floor while driving and the car cutting out while going uphill and over speed bumps. MBL has shared an inspection report that was completed in August 2019, which advised that no faults were found with a car, however this inspection report had the incorrect licence plate recorded.

Having contacted MBL for clarification they were unable to confirm or provide any proof to our investigator that Ms J's car had been inspected. On a call with the garage the inspection was from, it told us it didn't believe it had seen Ms J's car. So, in the circumstances I've not considered the conclusions of their inspection report as part of my decision.

Having said that, even if I had taken the report into consideration, I wouldn't be upholding the complaint based on this. I say this because the report MBL sent was only five lines in length. The information was very limited with little to no detail about what had taken place, other than its conclusions. It was also missing some key information I would expect to have seen on an independent report, such as the car's make, model, mileage and colour. I also note that the report does not have an author's name nor is it signed by anyone.

So, in the circumstances, I only have what Ms J has said in relation to the quality of the car. She's been consistent with what she told the dealer, MBL and ourselves about what happened; and, I find her actions to be plausible and consistent with what I'd reasonably expect from someone who has identified issues with a car they've just acquired. So, from the limited information provided I'm satisfied that the car wasn't of satisfactory quality when it was supplied to Ms J.

Given that I think the car wasn't of satisfactory quality when supplied, I think MBL should allow Ms J to reject the car. However, as the car is now sold and no longer in Ms J's ownership, I'll be instructing MBL to cancel the agreement, and clear the outstanding balance remaining. MBL will also have to ensure that the agreement is removed from Ms J's credit file and that no adverse information is noted on it in relation to the agreement.

The agreement and sales invoice show a deposit of £400 was paid towards the cash price of the car. Ms J has confirmed to us that she didn't pay a deposit on the car, and that she specifically searched for a deal on a car where a deposit wasn't needed. So, I find it plausible that Ms J hadn't paid the deposit. In the circumstances I won't be instructing MBL to refund the deposit to Ms J.

Ms J has said that the whole situation has caused her stress and inconvenience. I recognise this must have been a difficult situation for her, for example knowing that she owed a significant debt with no car to show for it; and for the negative impact this would likely have on her credit file. So, in the circumstances I'll be instructing MBL to pay Ms J £350 in compensation to reflect the stress and inconvenience caused to her.

Finally, Ms J also raised concerns about the car having a semi-automatic gearbox. There's limited evidence to consider what she said here, for example what had been agreed prior to supply. However, as I've asked MBL to allow Ms J to reject the car I don't think I need to consider this further.

My final decision

Having thought about everything above, along with what is fair and reasonable in the circumstances, my final decision is that I uphold Ms J's complaint about Money Barn No. 1 Limited and instruct them to:

- Clear the outstanding balance on the agreement
- End the agreement with nothing further to pay
- Pay Ms J £350 compensation for the stress and inconvenience caused
- Remove the agreement from Ms J's credit file along with any adverse information in relation to it

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 22 February 2022.

Benjamin John
Ombudsman