

The complaint

Mr S complains about the amount that he's been charged by Moneybarn No. 1 Limited after he voluntarily terminated the conditional sale agreement under which a car had been supplied to him.

What happened

A used car was supplied to Mr S under a conditional sale agreement with Moneybarn that he electronically signed in October 2020. He voluntarily terminated the agreement in November 2021 and he owed Moneybarn a shortfall of £2,327.03. The car was collected from him by a third party on behalf of Moneybarn and a vehicle collection receipt was completed which identified that the spare key, MOT certificate and service history were missing, all four wheels were damaged and there was an issue with the bumper.

The car was inspected two days later by another third party on behalf of Moneybarn and further damage to the car was identified in a vehicle condition report with an estimated repair cost of £3,172.88. Moneybarn says that it had valued the car at £3,064.25 but it sold at auction for £2,200 – a difference of £864.25 which it charged to Mr S in addition to the £2,327.03 that he owed to it. Mr S complained to it that he'd been told that he'd owe nothing further for the car. He wasn't satisfied with its response so complained to this service.

Our investigator didn't recommend that Mr S's complaint should be upheld. She said that Mr S had accepted the voluntary termination shortfall of £2,327.03, she wasn't persuaded that the damage to the car was fair wear and tear and she thought that Moneybarn had acted fairly in charging him for the difference between the valuation and the sale price at auction. She said that she expected it to act positively and sympathetically towards Mr S's financial situation and allow him to set up a payment plan.

Mr S has asked for his complaint to be considered by an ombudsman. He says that Moneybarn has been allowed to drag this out for several months but he tried to return the car and was told to take a break from payments which caused the arrears. He says that he's not had any repairs made to the car's wing so the damage was from before the car was supplied to him. He also says that the difference between the vehicle collection receipt and the vehicle condition report wouldn't have been missed and the damage happened after the car was collected from him.

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.

Having done so, I agree with the outcome recommended by our investigator for these reasons:

- Mr S has described the events which led to his financial difficulties and his need to return the car – and he has my deepest sympathy for what he's experienced and the situation in which he now finds himself;

- the car had been supplied to him in October 2017 and, although he'd missed some monthly payments, he made most of the monthly payments that were due between then and July 2019 – when the last payment to his account was made – and Moneybarn's account notes show that his account was £63.82 in arrears;
- those account notes show that Mr S explained his situation to Moneybarn in October 2019 and it sent him a letter in November 2019 about his options for ending his agreement – which included a voluntary termination;
- Mr S's right to end the agreement early was set out in the agreement which said that he would be entitled to return the car and to pay half the total amount payable under the agreement (which was specified as being £7,854.67);
- the letter that was sent to him said that he could return the car and needed to pay a residual amount of £2,327.03 as he hadn't paid half the agreement value – it also said the amount that he owed it could be significantly higher if the car wasn't returned in a reasonable condition;
- Moneybarn's account notes show that Mr S gave it notice of termination of the above agreement but said that the car's MOT test certificate had expired and a collection of the car from him was arranged;
- the collection took place later that month and a vehicle collection receipt was prepared which identified that the spare key, MOT certificate and service history were missing, all four wheels were damaged and there was an issue with the bumper and recorded the car's mileage as 135,374 miles;
- the agreement said: *"You must maintain (at your expense) the goods in good order and condition and will be responsible for any loss or damage to the goods, except fair wear and tear"*;
- the car was inspected two days later and further damage to the car was identified – the vehicle condition report that was prepared recorded the car's mileage as 135,374 miles, described significant damage to the car with an estimated repair cost of £3,172.88 (which included damage to the bonnet, bumpers, windscreen, two wings, the tailgate, all four door and wheels, two quarter panels, a seat cover and the carpet) and included photos of that damage;
- I consider it to be clear from the photos and the descriptions of the damage that the car had significant damage when it was returned and I consider that the damage was more than would reasonably be considered to be fair wear and tear – even for a car of this age and mileage – and I consider that it was fair and reasonable for Moneybarn to charge Mr S for some of that damage;
- the car's mileage when it was collected from Mr S was 135,374 miles and it had the same mileage two days later when it was inspected - the car didn't have a valid MOT certificate when it was collected from Mr S so I consider it to be unlikely that the car would have been driven by the third party that collected it or the third party that inspected it;
- I'm not persuaded that it's likely that the damage was present when the car was supplied to Mr S and I consider it to be more likely than not that the damage was present when the car was collected from Mr S;
- Moneybarn says that it had valued the car at £3,064.25 but it was sold at auction for £2,200 (a difference of £864.25) and it charged that amount to Mr S for the loss in value of the car rather than the cost of repairing the damage – I consider that to have been consistent with the conditional sale agreement and the letter that it had sent to Mr S in November 2019 and that it was fair and reasonable for it to charge him that amount;

- that was in addition to the £2,327.03 that Mr S owed it for the shortfall on his voluntary termination of the agreement and I'm not persuaded that it would be fair or reasonable for me to require Moneybarn to reduce or waive those charges in these circumstances;
- there has been a delay in Moneybarn dealing with Mr S's complaint and that has clearly caused him distress and inconvenience – but that delay hasn't increased the amount that Mr S owes to it – which has remained as £3,191.28 and I'm not persuaded that an award of compensation to Mr S is justified in these circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Moneybarn to reduce or waive the charges that it's made to Mr S, to pay him any compensation or to take any other action in response to his complaint.

I suggest that Mr S contacts Moneybarn to try to agree an affordable repayment arrangement for the amount that he owes to it. If he doesn't do so I consider it to be likely that it will take further action against him, to the extent that it's legally entitled to do so, to recover that amount from him – but Moneybarn is required to respond to any financial difficulties that Mr S is experiencing positively and sympathetically.

My final decision

My decision is that I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 April 2022.

Jarrold Hastings

Ombudsman