

The complaint

Mr B is complaining that a car Moneybarn No. 1 Limited supplied him under a conditional sale agreement was misrepresented to him.

What happened

In March 2020 Mr B took out a conditional sale agreement through Moneybarn to acquire a car. The car had a cash price of around £11,500, it was around six years old and had travelled around 41,400 miles at the point of supply. Mr B complained to Moneybarn about the following:

- He says the car was advertised to come with a sat nav system, but it didn't have one.
- He says the car had a puncture when he drove it home. He says the car was advertised to come with roadside assistance. He called the company he understood provided the cover, but it didn't have a contract with him. He took the car to a local garage to change the tyre. But he says that garage couldn't get the locking wheel nuts off because they were too tight. He said it took around two weeks to resolve this, but he says the alloy wheel got damage taking the nuts off.
- The car was advertised to have a full-service history and MOT, but it was due a service and MOT.
- There were issues with the paintwork where it hadn't been buffed properly.
- A humming noise appeared in the suspension shortly after acquisition. He paid to replace one of the shock absorber bushes.
- The dealership promised to collect him from the station when he came to buy the car, but it didn't do so.

He says he explained to Moneybarn and the supplying dealership that he wanted to reject the car, but he wasn't allowed to do so. So he complained to Moneybarn. Moneybarn didn't uphold his complaint for the following reasons:

- Mr B had acquired a six-year-old car that had travelled around 41,400 miles at the point of supply. So it said it's not unusual for the issues Mr B reported to occur from time to time, considering the age and mileage of this car.
- Concerns related to the locking wheel nuts being too tight would not be considered a satisfactory quality issue with the car. And it said any concerns about further damage being caused to the alloy wheel by a third-party garage would need to be raised with that garage.
- Mr B needed to inspect the car before he collected it and raise any cosmetic concerns at that time. It said it can't rectify issues that he subsequently raises if they weren't raised at the time.
- It said it had seen the online advert for the car, but the car wasn't advertised to come with a sat nav system. However, it said it understood this issue has been resolved by the supplying dealership.
- It also said it understood the supplying dealership had resolved the issue with the service history and MOT.
- It said it had asked Mr B to provide a report into the issues with the suspension and a

quote for repair. But Mr B authorised the repair without providing a report. So it said it was unable to take this matter further. But, irrespective of this, it said that the suspension system is considered a wear and tear item that is not designed to last the lifetime of the car.

Our investigator didn't uphold the complaint. Mr B didn't accept the investigator's opinion for the following reasons:

- He maintains the car wasn't supplied as advertised.
- The supplying dealership acknowledged there were issues with the car before he acquired it.
- He reiterated the supplying dealership said it would pay for his travel and a day's insurance.
- He said he still didn't have any roadside assistance insurance.
- He was unable to inspect the car when he collected it because it was night-time.

As Mr B didn't agree with the investigator, 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 not uphold this complaint and I'll now explain why.

Section 56 of the Consumer Credit Act 1974 has the effect of making the supplying dealership the agent of Moneybarn during the "antecedent negotiations" leading up to Mr B entering into the loan agreement, starting from when he was first approached by the supplying dealership. But essentially, this means Moneybarn is responsible for the acts or omissions of the supplying dealership in relation to the sale of the loan to Mr B. In other words, Moneybarn has to stand behind the things the supplying dealership said, did, didn't say, or didn't do during the sales process.

I think the key part of this is that this relates to discussions during the sales process. I don't think this extends to Mr B's comments that the supplying dealership said it would pick him up from the train station. So I don't think Moneybarn is liable for this. I've considered what Mr B has told us and what the online advert said. I've seen the car's online advert and I think the key things here is that it says the car had the following (amongst others):

- Service History
- 12 Months Free Breakdown Cover
- All cars go through an AA 128 point check

The online advert makes no reference to the car coming with Sat Nav. I note Mr B says he was told it did, but I'm not persuaded I've seen enough to show it did come with Sat Nav. So I don't think Moneybarn needed to do anything to put things right. That said, I understand this has since been fitted.

Further to this, the car wasn't sold with a full-service history – merely that it had a service history. However, I also understand the car has been serviced since Mr B acquired it free of charge. So I'm satisfied that any concerns Mr B had in this respect have been resolved.

Finally I've thought about Mr B's complaint that he doesn't think the car came with a 12-month breakdown recovery policy as, when he called the breakdown recovery agent he thought was providing the cover, he was told he wasn't covered. But I haven't seen anything

to show he was told this recovery agent provided this cover. I understand the breakdown cover is provided by the supplying dealership. And I haven't seen anything to show that isn't the case. So I'm not persuaded he hasn't received the cover he was told he'd receive.

Ultimately, I'm not persuaded that Moneybarn is required to put anything right owing to any liabilities under S56. I've now moved on to think about whether Moneybarn has any liabilities under the terms of the contract.

Mr B acquired the car under a conditional sale agreement. Legislation – in this case the Consumer Rights Act 2015 – 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.

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 B paid around £11,500 for the car. The car was around six years old and had travelled 41,400 miles at the point of supply.

Mr B didn't buy a new car, so he needed to expect a degree of wear and tear and some faults to arise – i.e. just because some faults arose, it doesn't automatically follow that Moneybarn is required to fix them. The key question is whether a reasonable person would expect to see the issues such as Mr B's car has suffered.

In this case, it seems to me that there were three issues – suspension issue, puncture on the tyre and stiff locking wheel nuts. I'm not persuaded these faults would make the car of unsatisfactory quality.

Mr B says the car had a puncture on the journey home which caused further damage to the tyre so he had to replace it. But I'm also conscious Mr B hasn't said the tyre pressure warning light appeared when he drove the car away – it seems to have arisen after he drove away. So it's equally likely that Mr B picked up the puncture while driving home. I'm not persuaded I've seen enough to say this puncture was present when he acquired the car.

I note Mr B is unhappy that the locking wheel nuts were too stiff which caused further damage to his car. I also note that he's had to replace a shock absorber bush. But I think these are minor issues and commensurate with the age and mileage of the car. So I don't think these issues make the car of unsatisfactory quality. It follows, therefore, that I don't think Moneybarn needs to do anything to put things right.

I recognise Mr B feels strongly about what's happened and that he thinks he should have been allowed to reject the car. I also acknowledge he's out of pocket because of what's happened. But, for the reasons I've set out above, I don't think Moneybarn needs to do anything to put things right.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 April 2022.

Guy Mitchell
Ombudsman