

The complaint

Miss S complains that a car she obtained through a conditional sale agreement with Moneybarn No. 1 Limited (“Moneybarn”) was not of satisfactory quality. She wants a replacement car and compensation for the costs she’s incurred since the car has been off the road.

What happened

Miss S obtained a second-hand car in February 2020, financed through a conditional sale agreement with Moneybarn.

Miss S said she experienced several problems with the car and, when it broke down in April 2020, a third-party garage told her it was due to a modification that had been made to the car. It advised her not to drive the car and it’s been off the road since.

She complained to Moneybarn in August 2020 after she couldn’t get a satisfactory response from the supplying garage. Moneybarn said the issues appeared to be due to wear and tear and would not have been present at the point of sale, otherwise they would have failed much sooner than they did. But Moneybarn also arranged for an independent inspection of the car. The engineer concluded the issues weren’t the responsibility of the supplying garage. As such, Moneybarn said it couldn’t help Miss S further.

Miss S stopped making the monthly payments in November 2020, following a payment holiday. After she referred the complaint to us, Moneybarn told us it had terminated the agreement and took possession of the car.

Our investigator didn’t recommend that the complaint should be upheld. She was satisfied there was a fault with the car but didn’t think this was present or developing when the car was supplied.

Miss S didn’t agree so the complaint was passed to me.

My provisional decision

I was minded to uphold the complaint and I explained why. I said:

In considering what is fair and reasonable, I need to have regard to 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 time.

The relevant law says that under a contract to supply goods, there is an implied term that “the quality of goods is satisfactory”. As such, in order to uphold this complaint, I would have to be persuaded that the car wasn’t of satisfactory quality and so a breach of contract has taken place.

In deciding whether a car is of satisfactory quality, some of the factors to consider are its age when it was supplied, how much mileage the car covered since it was supplied and how long after supply the fault materialised.

The car was around nine years old when it was supplied in February 2020 and its mileage was around 105,000 miles. I would expect a car of this age and mileage to have more wear and tear issues than a newer vehicle.

I'm satisfied that the car has a fault – it broke down within a couple of months and a third-party garage advised Miss S not to drive it. I need to decide whether the fault, or faults, is due to a wear and tear issue – which Miss S would be responsible for fixing. Or due to a fault which was present when the car was supplied – which would be the responsibility of Moneybarn.

In considering this, I have placed reliance on the report supplied by Moneybarn, because it was completed by an independent expert. I appreciate Miss S has some concerns that the inspection wasn't thorough enough, but I'm satisfied the report provides me with enough information to make a decision here. I'm also mindful that the inspection took place around eight months after the car broke down. But I don't think this makes its findings unreliable because the car had been off the road all this time.

The inspector's conclusion was that:

*"Due to the time and mileage elapsed since the date of vehicle sale we would not consider the faults to have been developing at the point of purchase unless the customer does have sufficient documentation and/or evidence to suggest these faults were happening at an earlier date and/or mileage.
The defect/s reported are considered a maintenance repair on a vehicle."*

I accept Miss S drove around 9,300 miles before the car broke down. And that this is a considerable number of miles in a relatively short space of time. But I don't agree with the conclusion of the report. I say this because:

The inspector confirmed what Miss S was told by the third-party garage about a modification to the car. The report says:

"We did notice an aftermarket induction kit has been fitted to the vehicle. We did also notice what we believe to be a vac pipe is not connected. This should on factory fitment be connected to the vehicle's airbox."

And it recommends that, to fix the fault:

"We would highly suggest the intake system does revert back to factory fitment."

I note the report also concludes that "We do not consider any fault to be wear and tear and/or maintenance related".

So, the report is clear that the fault was most likely caused due to the modification that was made to the car. It follows that, if this modification was made before the car was supplied to Miss S, then the car was not of satisfactory quality when it was supplied.

I haven't seen evidence to show when the modification was carried out. But I think it was more likely than not carried out before the car was supplied to Miss S. I say this

because she's been consistent in her testimony that she was unaware of the modification until it was pointed out to her when the car broke down. And it doesn't seem plausible that she would make a modification to the car, knowing it could affect the validity of her insurance policy.

I find that, on balance, the car wasn't of satisfactory quality when it was supplied. It follows that Moneybarn is responsible for putting this right.

Moneybarn told us the agreement had been terminated. But Miss S is unaware of this. We asked Moneybarn to provide evidence of the termination and tell us the current position before I made a decision. But it hasn't replied. I would ask it to do so in response to this provisional decision.

And I explained what I thought Moneybarn needed to do to put things right. I said I was minded to order Moneybarn to:

- 1. Terminate the agreement, if it hasn't ended already, and collect the car.*
- 2. Refund all monthly payments Miss S made, except for two monthly payments to reflect her use of the car. It should add interest at 8% simple from the date the payments were made to the date of settlement.*
- 3. Refund any deposit Miss S paid. It should add interest at 8% simple from the date the deposit was made to the date of settlement.*
- 4. Remove any adverse information recorded on Miss S's credit file or remove the agreement altogether.*
- 5. I've found Miss S was supplied with a car that was not of satisfactory quality. This has naturally been upsetting for her and has caused her inconvenience for which she should be compensated. I consider £250 to be fair and reasonable.*

I also said that if Miss S could supply further evidence, I would consider the following:

- 1. Miss S says she's incurred taxi costs. If she can provide evidence of any costs she's incurred whilst the car was off the road, I will consider whether Moneybarn should reimburse her.*
- 2. Miss S says her insurance was voided because of the modification. If Miss S can provide evidence, I will consider whether she made any loss because of the cancellation of her policy, and whether this should be reimbursed. I will also consider whether the voiding of the policy is likely to impact her ability to take out insurance in the future and what Moneybarn needs to do to put this right.*

Neither party responded to my provisional decision, despite reminders and an extended timescale.

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.

As neither party responded to my provisional decision, I find no reason to depart from my earlier conclusions. Unfortunately, I can't consider reimbursement of any additional costs Miss S has incurred, or any loss due to her insurance policy being cancelled, because I

haven't seen any evidence of these costs and losses.

My final decision

My final decision is that I uphold this complaint. Moneybarn No. 1 Limited should:

1. Terminate the agreement, if it hasn't ended already, and collect the car.
2. Refund all monthly payments Miss S made, except for two monthly payments to reflect her use of the car. It should add interest at 8% simple from the date the payments were made to the date of settlement. *
3. Refund any deposit Miss S paid. It should add interest at 8% simple from the date the deposit was made to the date of settlement. *
4. Remove any adverse information recorded on Miss S's credit file or remove the agreement altogether.
5. I've found Miss S was supplied with a car that was not of satisfactory quality. This has naturally been upsetting for her and has caused her inconvenience for which she should be compensated. I consider £250 to be fair and reasonable.

* HM Revenue & Customs requires Moneybarn No. 1 Limited to take off tax from this interest. Moneybarn No. 1 Limited must give Miss S a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 26 April 2022.

Elizabeth Dawes
Ombudsman