

## **The complaint**

Miss D complains that a car she obtained through a conditional sale agreement with Moneybarn No. 1 Limited ("Moneybarn") was not of satisfactory quality. She wants the car fixed or taken back in return for a different car.

## **What happened**

Miss D obtained a second-hand car in June 2021 through a finance agreement with Moneybarn.

Within a few weeks she reported a problem with the front passenger door not locking and the car over-heating.

The supplying garage agreed to pay for the required repairs.

Miss D took her car to a third-party garage, as agreed, and it fitted a new coolant flange.

Within two months, Miss D reported that the car was over-heating again. The supplying garage advised her to get the fault diagnosed by one of the manufacturer's garages. The garage found a coolant leak from the turbo coolant pipes which it said would cost £460.34 to fix. It also suspected an oil leak which it said required further investigation. Miss D paid £89 for the diagnostic check but couldn't afford the repairs.

The supplying garage said the car was out of warranty and that it wouldn't cover the cost of repair. But it offered her £250 as a gesture of goodwill.

Miss D referred her complaint to Moneybarn as the finance provider. It hadn't completed its investigation of her complaint within eight weeks, so Miss D referred her complaint to this service.

Our investigator didn't recommend that the complaint should be upheld. Miss D didn't agree so the complaint was passed to me to consider.

## ***My provisional decision***

I issued a provisional decision on 17 March 2022 explaining why I was minded to uphold the complaint. 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 six years old when it was supplied in June 2021 and its mileage was around 81,000 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 – a third party garage has investigated and said there is a coolant leak from the turbo coolant pipes and a probable oil leak. I need to decide whether the fault, or faults, is due to a wear and tear issue – which Miss D would be responsible for fixing. Or due to a fault which was present or developing when the car was supplied – which would be the responsibility of Moneybarn.*

*The fault occurred around three months after the car had been supplied. Generally, when a fault occurs within six months, it is the responsibility of the supplier to show that the car was satisfactory when it was supplied. Moneybarn hasn't provided evidence, by way of an independent report, to show that the car was satisfactory when it was supplied or that the fault has been caused by expected wear and tear, accidental damage, or lack of maintenance.*

*I wouldn't have expected the car to fail in the way it has so soon after it had been supplied, even taking into account that it was second-hand with considerable mileage and would likely require some wear and tear repairs. I also think it's more likely than not that the current fault is linked to the initial fault Miss D reported a few weeks after supply. Taking this into account, I find that, on balance, the car wasn't of satisfactory quality when it was supplied."*

And I set out what I thought Moneybarn needed to do to put things right. I said:

*"When Miss D referred her complaint to us, she said she either wanted the car repaired or a replacement car. She now says she would like to reject the car and for the agreement to be cancelled, and I think that's fair. I say this because the car has already been repaired, but I don't think this was successful because the car continued to overheat. I think it's now fair that Moneybarn accepts Miss D's rejection of the car and ends the agreement with nothing further for her to pay.*

*Moneybarn should refund the deposit she paid, plus interest.*

*Miss D has continued to have use of the car, and it's fair that she pays for that use. But she's not been able to drive the car long distances and she's told us she's had to re-fill the coolant on a weekly basis. I think it's fair and reasonable that Moneybarn pays Miss D the equivalent of three months' payments - £671.25 to reflect the impaired use and lack of enjoyment.*

*Miss D paid £89 for a diagnostic check. This should be reimbursed to her, plus interest.*

*Miss D should also be compensated for the trouble and upset caused by being supplied with a car that wasn't of satisfactory quality. I think £150 is fair and reasonable in the circumstances."*

Moneybarn said it didn't have any further information to provide. But it contacted Miss D to tell her it had completed its investigation of her complaint and that it had decided to uphold it, in line with what I'd set out in my provisional decision.

## **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.

Neither party has provided any new evidence or information in response to my provisional decision, so I find no reason to depart from my earlier conclusion. I'm pleased that Moneybarn has already been in contact with Miss D to arrange collection of the car and to pay her the redress.

## **My final decision**

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

1. Cancel the agreement with nothing further for Miss D to pay.
2. Collect the car at no cost to Miss D.
3. Refund the deposit paid, plus interest at 8% simple from the date the deposit was paid to the date of settlement. \*
4. Pay Miss D £671.25, being three months' payments, to reflect her loss of enjoyment of the car.
5. Pay Miss D £89 to reimburse her for the cost of the diagnostic report, plus interest at 8% simple from the date of payment to the date of settlement. \*
6. Pay Miss D £150 for the trouble and upset caused.
7. Mark the agreement as settled on Miss D credit file or remove it altogether.

HM Revenue & Customs requires Moneybarn No. 1 Limited to take off tax from this interest. Moneybarn No. 1 Limited must give Miss D 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 D to accept or reject my decision before 26 April 2022.

Elizabeth Dawes  
**Ombudsman**