

## The complaint

Mr W complains that a car supplied through a finance agreement with Moneybarn No.1 Limited ("Moneybarn") was not of satisfactory quality. He says Moneybarn failed to support him with hiring a replacement car and didn't adequately compensate him.

## What happened

I issued my provisional decision on this complaint in May 2022. An extract from that decision is set out below:

*"In September 2020 Mr W entered a conditional sale agreement with Moneybarn for a used car. The cash price of the car was £5,980, it was seven years old at the time and had a recorded mileage of 69,385 miles. Mr W part-exchanged his existing car for £500.*

*On 12 October 2020 Mr W reported several issues to the dealership, including a sticky automatic gearbox, service and airbag warning lights being displayed, the car pulling to one side and a coolant leak. Mr W was provided with a courtesy car whilst the dealership carried out investigations and repairs between 18 November 2020 and 27 November 2020.*

*On 12 November 2020 Mr W contacted Moneybarn to report he was unhappy with the car. Mr W said the courtesy car provided was unsuitable, he explained he had vulnerabilities and needed a car to transport his family to hospital appointments. Mr W asked Moneybarn to cover the cost of hiring a car. Moneybarn did not accept the quotes Mr W provided for car hire.*

*Mr W advised Moneybarn on 23 November 2020 that he no longer wanted the car repaired and wanted to reject it. Moneybarn said it couldn't consider the rejection as Mr W had already accepted a repair. Shortly after the car was returned to Mr W, he complained that he was still experiencing the same issues. Moneybarn arranged for an independent inspection of the car. The inspection report dated 24 December 2020 confirmed several faults and concluded they would have been present when the car was supplied to Mr W. In light of this Moneybarn offered Mr W the option of having the car repaired or cancelling the agreement. Mr W opted to reject the car and the agreement was cancelled on 15 February 2021.*

*Mr W complained to Moneybarn that he was unhappy with the delay in cancelling his agreement, the lack of contact from Moneybarn, not getting support with hiring a car, the failure to refund him his out of pocket expenses and pay him compensation.*

*Moneybarn said it did agree to refund any out of cost expenses evidenced to relate to the car under the finance agreement. It also said it offered to pay the cost of hiring a car that was similar to Mr W's car, but he only provided hire quotes for more luxury cars. It agreed it could have done more to keep him updated. Moneybarn paid Mr W £227 compensation for the distress caused and refunded half a monthly instalment for November 2020, to reflect not having use of the car. The dealership also refunded Mr W one instalment for December 2020 as a goodwill gesture.*

*Unable to resolve his complaint with Moneybarn Mr W brought his complaint to our service.*

*Our investigator looked into Mr W's concerns. He didn't feel the car was of satisfactory quality when it was supplied to Mr W. The investigator said Moneybarn could have done more to assist Mr W with hiring a car and thought it could have updated Mr W sooner about the cancellation of the agreement. The investigator recommended Moneybarn pay Mr W £1,000 compensation to reflect the stress and inconvenience caused, pay him £183.76 to reflect the impaired use of the car and refund any monthly instalments made, with interest. He also said Moneybarn should remove any adverse information recorded on Mr W's credit file.*

*Mr W remained unhappy; he did not think the compensation recommended was enough. Throughout his communications with Moneybarn and this service, he has requested several different sums of compensation, ranging from £35,000 upwards.*

*What I've provisionally 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 read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point raised by Mr W or Moneybarn, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it, in order to reach what I think is the right outcome.*

*Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – that is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.*

*Because Moneybarn supplied the car under a conditional sale agreement, there's an implied term that the car is of satisfactory quality. The Consumer Rights Act 2015 (CRA) says the quality of goods includes their general state, condition, and other things like their fitness for purpose, their appearance and finish, freedom from minor defects, safety, and durability. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, considering factors such as the age, the mileage of the car and the price paid.*

*Before I can consider whether Moneybarn has adequately compensated Mr W, I need to be satisfied the car was of unsatisfactory quality when it was supplied. The independent report found the faults were not a result of wear and tear, but would have been present when the car was supplied to Mr W. The report also said it was likely that the car had previously been in an accident. Moneybarn seems to accept the car was of unsatisfactory quality when it was first supplied. And having considered the inspection report and Mr W's testimony about the problems he experienced so soon after getting the car, I'm satisfied the car was of unsatisfactory quality when it was supplied to him.*

*Mr W is unhappy Moneybarn did not accept his initial request to reject the car on 23 November 2020. The CRA sets out that if a car is of unsatisfactory quality at the point of supply, a consumer can reject the car within 30 days of getting it, without affording the business an opportunity to repair it. As Mr W requested the rejection outside 30 days, I don't think it was unreasonable for Moneybarn to refuse the initial request and allow the dealership the opportunity to repair the car. So, I don't uphold this aspect of Mr W's complaint.*

*Mr W complains Moneybarn failed to support him with hiring a car, despite him telling it that the courtesy car provided by the dealership was unsuitable. I can see Mr W let Moneybarn*

know on 12 November 2020 how essential a car was for his family due to his disability and the need to get his family to hospital appointments. On 19 November 2020 Moneybarn let Mr W know it would assist him with car hire and asked him to provide a reasonable quote for its consideration for 10 days hire. It did not set out what it would consider to be a reasonable quote or outline that it would only consider quotes for cars like Mr W's at this stage.

Mr W went on to provide several hire quotes for around £120 per day. I think it would have been helpful if Moneybarn had explained from the outset what it considered to be a reasonable quote, but this doesn't appear to have happened until 24 December 2020 when Moneybarn explained it would only consider covering car hire costs for a similar car, costing around £170 per week. And whilst I agree it was reasonable for Moneybarn to reject the more expensive quotes for luxury car hire provided by Mr W, I do think it could have done more to support Mr W with obtaining a reasonable quote, so he could hire a car, given his circumstances. So, I uphold this part of the complaint.

Mr W has raised concerns about the dealership selling a potentially dangerous car and the way it handled his concerns. He also says the dealership failed to complete the required paperwork in respect of the car he part-exchanged, as a result he has been charged £80 for road tax in respect of his previous car. However, I'm unable to consider the dealership's actions against Moneybarn. If he hasn't already Mr W should raise these issues with the dealership.

Mr W says Moneybarn should compensate him for failing to carry out checks on the car and for potentially putting his family in danger by supplying an unsafe car. Moneybarn were under no obligation to carry out checks on the car. And whilst I accept it would have been distressing for Mr W to learn the car may have previously been in an accident, I can't award compensation for what might have happened.

Mr W is unhappy with the delay in cancelling his agreement and the lack of communication from Moneybarn. I appreciate Mr W's frustration with raising issues so soon after supply, then waiting over two months before Moneybarn accepted the car was of unsatisfactory quality, after getting an independent report. However, I can see the initial delay in getting the car booked in for repair was due to Mr W being unwell. The car was booked into the garage for repairs between 18 November 2020 and 27 November 2020.

On 13 December 2020 Mr W emailed Moneybarn screenshots of the dashboard warning lights and advised the car still had issues. Moneybarn arranged for an independent inspection to take place on 23 December 2020. Mr W is unhappy Moneybarn would not just accept the car had issues and insisted on getting an independent inspection, which caused further delay. And whilst I accept this would have been frustrating for Mr W, I think it was reasonable for Moneybarn to have the car inspected to confirm the ongoing issues as the dealership had advised it had repaired the two faults found with the coolant and seatbelt mechanism, but said it was unable to duplicate any other faults reported by Mr W.

Moneybarn received a copy of the independent report on 24 December 2020 and wrote to Mr W on the same day to offer the option to cancel the agreement or to return the car back to the dealership for further repair. I can see Mr W responded on the same day, but he didn't say whether he wanted to cancel the agreement or go with the repair. Moneybarn emailed Mr W the options again on 30 December 2020. Mr W responded on the same day mentioning he wanted costs reimbursed but did not confirm whether he wanted to cancel his agreement or not. I can see Moneybarn issued a final response on 31 December 2020 again asking Mr W to confirm whether he wanted to cancel the agreement. Mr W subsequently responded that he wanted to cancel his agreement.

On 4 January 2021 Moneybarn confirmed it would be cancelling the agreement and would

arrange for the collection of the car. Despite Mr W chasing an update from Moneybarn he did not get a response until 4 February 2021. The agreement was then cancelled on 15 February 2021. I can see Mr W chased Moneybarn on several occasions to find out what was happening with the cancellation of his agreement. Whilst there was an initial delay in Mr W letting Moneybarn know he wanted to go ahead with cancelling the agreement, I do not think it was reasonable for Moneybarn to not respond or update Mr W about his agreement for a month.

Mr W chased Moneybarn on several occasions to get an update, and he has told us how stressful this was, particularly as he was no longer using the car that was back in his possession and did not have a hired car. So, I have set out below what I think Moneybarn should do to put this right.

Mr W is unhappy Moneybarn has not refunded him the £500 for part-exchanging his previous car. Moneybarn says the invoice makes no mention of any part-exchange, so it didn't agree to refund Mr W £500. Having seen the invoice provided by Mr W, I'm satisfied he part-exchanged his previous car for the value of £500.

Mr W is unhappy Moneybarn did not refund his insurance costs. Having seen Mr W's insurance statements, I can only see payments relating to his previous car, I can't see any cleared payments in respect of the car taken under the agreement from September 2020. Moneybarn has agreed to refund any out of pocket expenses that relate to the car under the agreement, if Mr W provides evidence of them; And I think this is reasonable in the circumstances.

#### *Putting things right*

Mr W has referred to Moneybarn cases covered in the media. And I think it might help if I clarify that we are an informal resolution service our role is not to punish or penalise the business for their performance or behaviour, so I won't be requiring Moneybarn to make any payment to Mr W to punish it for the issues he experienced.

Mr W has requested different sums of compensation, some of which have exceeded our £355,000 limit to how much we can tell the business to pay. And whilst we can recommend a business pay more than the limit; I don't think this is appropriate here. I accept the issues with the car, the lack of communication and not getting the support with hiring a car meant this was a very stressful time for Mr W, particularly as he was dealing with a child's ill health and his own vulnerabilities. For this reason, I think Moneybarn should pay Mr W £1,000 to reflect the stress, inconvenience, and his loss of enjoyment, in addition to the £227 payment it made.

I appreciate Mr W will be disappointed with my award as he was hoping for a higher amount of compensation. But In the circumstances, I'm satisfied this is reasonable, taking into account his individual circumstances and our approach to compensation awards.

Mr W reported problems within weeks of having the car, travelling less than 300 miles. Although Mr W was provided with a courtesy car whilst his car was being repaired, he did raise issues with the courtesy car. In the circumstances I think it is fair for Moneybarn to refund Mr W's monthly instalments. I can see Moneybarn has already refunded half a monthly instalment for November 2020 and the dealership refunded a monthly instalment for December 2020. To reflect Mr W's impaired use Moneybarn should also refund Mr W's October 2020 payment, the remaining half of the November 2020 instalment and any other payments he may have made towards his agreement after December 2020, adding 8% simple interest to the payments from the date the payment was made until the date of the refund. Moneybarn should also ensure it removes the agreement from Mr W's credit file.

*To put Mr W back in the position he would have been in, Moneybarn should also refund the £500 part-exchange value given for his previous car, adding 8% simple interest per annum. If Mr W provides proof of payment by him of any insurance and road tax costs relating to the car under the agreement, Moneybarn should also refund those payments.*

#### *My provisional decision*

*For the reasons I've explained above I partly uphold the complaint and direct Moneybarn No 1 Limited to:*

- pay Mr W £1,000 compensation for the distress, inconvenience, and the loss of enjoyment caused;*
- refund Mr W's October 2020 monthly payment and the remaining half of November 2020's payment. Also refund any monthly payments made by Mr W towards his agreement after December 2020, adding 8% simple interest a year from the date of the payment until the date of settlement;*
- remove the agreement from Mr W's credit file;*
- refund Mr W the £500 part-exchange value towards the agreement for his previous car, adding 8% simple interest a year from the date of the part-exchange until the date of settlement;*
- If Mr W provides proof of payment of motor insurance costs and road tax from September 2020 in respect of the car under the agreement, refund these payments, with 8% simple interest a year from the date of the payment until the date of settlement."*

#### **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.

Both parties were given the opportunity to respond to my provisional decision. Moneybarn said it had nothing further to add. Mr W said the dealership had significantly undervalued his part exchange car; and he should have got more for it. He wants Moneybarn to refund his travel costs and says the £1,000 compensation award was enough.

We've not been able to confirm with the dealership when it sold Mr W's part exchange car, but given it was traded in nearly two years ago, I'm satisfied it would have been sold, so I can't ask Moneybarn to get this back. And I don't think it would be reasonable for Moneybarn to source and supply Mr W with a car similar to the one he part exchanged. The relationship between the parties has broken down and I think the best way forward is for Moneybarn to refund the part exchange value.

Mr W says the car he traded in was worth a lot more than £500, he thinks Moneybarn should refund what the car was worth. I don't doubt Mr W would have received a higher price if he had sold his car privately. However, he chose to part-exchange his old car through the dealership and accepted the £500 value clearly set in the sales invoice he provided. So, I won't be asking Moneybarn to pay him anymore than this.

Mr W says he wants Moneybarn to also pay for his taxi fares. However, my role is to put him back in the position he would have been in, so if the car he got was of satisfactory quality he would have been required to make the monthly repayments towards his agreement. I have

already asked the business to refund his monthly payments from October 2020, so I won't be asking it to also refund Mr W's travel costs.

I completely sympathise with Mr W's position. He wanted a reliable car that would accommodate his family needs. It must be very frustrating to find out the car was not of satisfactory quality and he is now left without a car. However, as I've outlined in my provisional decision, I think £1,000 compensation is fair given our level of awards and considering Mr W's individual circumstances. And I've not seen anything to persuade me Moneybarn should pay more than this.

Mr W says he would be awarded more compensation by the courts. It may assist if I explain that we are an informal resolution service. Mr W does not have to accept my decision and may pursue his complaint via the court, should he wish to. I'm satisfied that this decision ends what we in trying to sort out this complaint, can informally do.

### **Putting things right**

I find that it would be fair and reasonable for Moneybarn to take the actions described in my provisional decision and as set out below.

### **My final decision**

My final decision is that I partly uphold the complaint and direct Moneybarn No. 1 Limited to;

- pay Mr W £1,000 compensation for the distress, inconvenience, and the loss of enjoyment caused;
- refund Mr W's October 2020 monthly payment and the remaining half of November 2020's payment. Also refund any monthly payments made by Mr W towards his agreement after December 2020, adding 8% simple interest a year from the date of the payment until the date of settlement;
- remove the agreement from Mr W's credit file;
- refund Mr W the £500 part-exchange value towards the agreement for his previous car, adding 8% simple interest a year from the date of the part-exchange until the date of settlement;
- If Mr W provides proof of payment of motor insurance costs and road tax from September 2020 in respect of the car under the agreement, refund these payments, with 8% simple interest a year from the date of the payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 July 2022.

Karen Dennis-Barry  
**Ombudsman**