

The complaint

Mrs E complains that a car supplied to her by Moneybarn No. 1 Limited under a conditional sale agreement was not of satisfactory quality.

What happened

In June 2020 Mrs E entered into a five-year conditional sale agreement with Moneybarn for a used car. At the time, the car was around six years old and had covered just over 78,000 miles. Its cash price was £5,995, and Mrs E was to pay just over £200 a month.

Within a few weeks Mrs E reported problems with the car. She said that she thought there were issues with the gearbox, the suspension and the brakes. The driver's seat was not fixed properly and the heating system did not function correctly. She thought one of the wheels was buckled.

The dealership which had supplied the car carried out some repairs, but they did not resolve the problems. Mrs E said that she wanted to keep the car, but she did not think she should have to pay for repairs. She complained to Moneybarn, which arranged for an independent inspection.

The inspection took place on 25 August 2020. So far as they are relevant to this complaint, the inspection's findings were, in summary:

- There was a substantial transmission fluid leak. There was no evidence that any repairs had been undertaken.
- There was no evidence of any suspension fault.
- There was no evidence of a buckled wheel.
- A road test was not possible because of the oil leak.

The inspection report did not comment on the car's brakes. It concluded that the faults identified would have been present at delivery and that the selling agent was liable for them.

There followed further exchanges between Moneybarn and Mrs E about how matters should be resolved. At the end of November 2020 Mrs E arranged for a further inspection by a manufacturer's agent, for which she paid £150. That inspection included estimates of repair costs. It identified the following issues that needed attention:

- Wiper blades – £25.01;
- Air conditioning compressor – £1,134.07;
- Brake pads and discs – £190.58 and 171.54;
- Driveshaft leak – £238.32;
- Spare tyre – £48.00.

The report separated inspection items into four categories: those that needed urgent attention; advisory matters; items that were visually satisfactory; and items which had not been checked. All of those listed above were under the “Advisory” category.

Moneybarn agreed to pay for the repair to driveshaft leak, and I understand that a repair was later completed.

Mrs E did not believe however that Moneybarn had done enough to resolve matters. She referred the matter to this service, where one of our investigators considered what had happened. In summary, the investigator recommended that Moneybarn pay Mrs E £300 in recognition of the inconvenience to which she had been put and that it refund a proportion of the monthly repayments due between June and December 2020. Mrs E did not consider however that those recommendations resolved matters and so the case was passed to me for review.

I considered the case and issued a provisional decision. In that provisional decision, I said:

Under the Consumer Rights Act 2015 Mrs E’s contract with Moneybarn was to be read as including a term that the car would be of satisfactory quality. That means the quality a reasonable person would expect in all the circumstances, including the car’s age, price and mileage. Mrs E’s car was six years old, had a relatively high mileage and was significantly cheaper than a newer car of the same model would have been. I would not expect it to be perfect. Indeed, it is reasonable to expect it to need some repairs over the five-year term of The issue I must consider therefore is what, if anything, Moneybarn should do in addition the contract.

However, even taking these matters into account, I think Mrs E was entitled to expect a rather higher quality of car than that which was supplied. It should not have needed significant repairs after only a few weeks and around 1,200 miles. The independent report made in August 2020 appeared to agree that the car was not of satisfactory quality and that Moneybarn was liable to put things right. To the repairs it has already funded.

By November 2020, when the manufacturer’s agent inspected the car and provided repair estimates, the car had a recorded mileage of just over 80,000 – just 2,000 miles more than at delivery. It is therefore reasonable to assume that its condition then was not significantly different from what it had been at delivery.

I have therefore considered the extent to which the matters identified in that report meant that the car was not of satisfactory quality. Moneybarn accepts that the oil leak fell under that category, and it has paid for the repair. In my view, the issues with the wiper blades, air conditioning and spare tyre are all issues of wear and tear – that is, they are to be expected in a car of this age and mileage.

The brake pads and discs were reported to be 60% worn. Mrs E had reported noises from the car’s brakes in June 2020. The engineer who inspected it in November 2020 said that there was a slight vibration from the discs and pads. Brake discs and pads are items that will need replacing from time to time; they do not generally last for the lifetime of a car. However, I think that Mrs E could reasonably expect that, at delivery, they would not be worn to the extent that they would cause vibration. For that reason, I think that Moneybarn should compensate Mrs E for the cost of replacements.

I note that Moneybarn has pointed out that these were advisory matters only. But that means only that they did not require urgent attention. Whilst not an urgent matter, I think the condition of the brakes did mean that the car was not of satisfactory quality.

Whilst Mrs E did have a courtesy car for some of the time her car was off the road, she says that for most of that time she has had to use hire cars or public transport. In the circumstances, I think it would be fair for her to have a partial refund of monthly payments due between June and December 2020.

Moneybarn had nothing to add in response to my provisional decision. Mrs E said she was happy with the outcome but that there were still issues with the car and explained that she had agreed a payment plan with Moneybarn to cover the arrears. She asked whether Moneybarn could keep the money used to pay off arrears.

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.

Whilst I have noted Mrs E's further comments, I do not believe there is any reason to reach a different conclusion from that set out in my provisional decision. I will make a formal award, so that Mrs E can enforce it should she need to do so.

My final decision

For these reasons, my final decision is that, to resolve Mrs E complaint in full, Moneybarn No.1 Limited should pay her:

- £150.00 in respect of the November 2020 inspection;
- £362.12 in respect of replacement brake pads and discs;
- £600.00 by way of partial refund of monthly payments due under the conditional sale contract; and
- £300.00 in recognition of the inconvenience to which she has been put.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 9 August 2022.

Mike Ingram

Ombudsman