

## The complaint

Miss S complains that a car she was financing through an agreement with Moneybarn No. 1 Limited, was not of satisfactory quality and, when it cancelled the agreement, she wasn't fairly charged for her usage.

## What happened

Miss S entered a conditional sale agreement in February 2021 for the purchase of a used car. The car was nearly four years old and had travelled just over 40,000 miles at the point of supply. The cash price of the car was £13,397, Miss S agreed to repay the loan at 31.9% rate of interest, a total of £22,203.74 over 48 months, with monthly instalments of £472.42.

The events are well known to both parties, so I won't repeat them here in detail. In summary, Miss S experienced several faults within the first six months of being supplied the car. The dealership carried out repairs, but in July 2022 the car broke down with gearbox failure, the dealership had previously repaired the gearbox. The dealership agreed to buy back the car and it was returned to the dealership on 31 August 2022. The dealership paid Miss S £9,207.23 and Moneybarn £2,792.77 to settle the remaining balance on Miss S' account.

Miss S complained to Moneybarn, she didn't think the dealership's offer went far enough. She brought her complaint to our service. In the meantime, Moneybarn cancelled Miss S' agreement and paid her £1,587.26, which included;

- A refund of three-monthly instalments (£1,417.26) to reflect the loss of use and enjoyment of the car.
- A £30 compensation payment to reflect the distress and inconvenience caused.
- A £90 refund for the expense of fitting the dashcam.
- A £50 refund to cover the cost of the insurance cancellation fee.

Miss S remained unhappy; she said she had made 18 monthly instalments and several overpayments, the total repaid to Moneybarn was £14,703.56, but was refunded a total of £10,624.49 (£9,207.23 from the dealership and the three refunded instalments £1,417.26). She doesn't think it is fair for Moneybarn to retain £4,079.07 for her usage for 18 months.

Our investigator looked into the complaint. She didn't think Moneybarn needed to do anything else because Miss S had been provided with a courtesy car on nearly every occasion the car was in the garage and she had managed to cover around 10,000 miles, so thought it was fair that she paid for her usage and didn't recommend Moneybarn refund any further instalments.

Miss S disagreed, she asked for an ombudsman to make a final decision. I told Moneybarn that I thought it needed to pay Miss S a further £120 compensation to reflect the inconvenience caused and add 8% simple interest to the refund payments. Moneybarn didn't respond.

## **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 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, it's not because I've failed to take it on board, but because I don't think I need to comment on it in order to reach the right outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts.

In considering what is fair and reasonable, I've thought about all the evidence and information provided and 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 relevant time.

The agreement in this case is a regulated a conditional sale agreement. As such, this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this agreement and is responsible for a complaint about its quality.

The parties appear to agree that the car wasn't of satisfactory quality when it was supplied to Miss S. So, what is in dispute here is whether Moneybarn has done enough to settle Miss S' complaint fairly or whether it needs to do anything else.

The Consumer Rights Act 2015 says a consumer can reject a car where a repair fails, as seems to be the case here and the consumer is entitled to a refund for what they've paid minus any deduction for any usage had.

Miss S had paid Moneybarn £14,703.56 towards her agreement at the point it was cancelled. She has been refunded a total of £10,624.49 towards her agreement, in effect this means Moneybarn has retained a total of £4,079.07 for Miss S' use of the car over 18 months. Miss S doesn't think this fairly reflects her usage and says Moneybarn has unfairly benefited.

Miss S has referred to another final decision where the ombudsman said they didn't think a payment of over £220 per month was a fair reflection of what usage should be, but this isn't a general cap on usage, it relates solely to the individual facts of that case (where the monthly repayments and the total repayable under the agreement were considerably less than here).

There isn't any set formula for working out what fair usage should be and there isn't any guidance on this in the agreement Miss S signed. So, I've taken into account Miss S' usage, the amount of interest charged on the agreement, and what it's likely to have cost her to stay mobile if she hadn't entered this agreement.

I agree that it wouldn't be fair for Moneybarn to retain Miss S' full monthly instalments over 18 months, as a significant proportion of those repayments went towards repaying the interest. And if Miss S hadn't been provided with a courtesy car, then I wouldn't expect her to have to make monthly payments for the time her own car was not available for use. But in this case, Miss S was provided with a courtesy car for the most part, every time her car went back to the garage, and she still managed to cover 10,000 miles in her car. That being the case, I don't think it's unreasonable for Moneybarn to retain money for her usage. And If Miss S hadn't made payments for this particular car, I think it's likely she'd have been making similar payments to her monthly instalments, for another car to stay mobile.

Following the refund of three-monthly instalments, Moneybarn retained 18 monthly instalments of £226.61 for Miss S use of the car. So, taking everything into consideration, I'm satisfied its reasonable and fair for Moneybarn to retain £4,079.07 to reflect Miss S' usage. So, I don't think Moneybarn has to refund any further instalments.

I've also considered the compensation paid to Miss S. Moneybarn paid her £30 for distress and inconvenience caused. And whilst I can see that she was kept mobile with a courtesy car for the most part. I can see that she returned the car to the garage on several occasions, and I think this would've been frustrating for her, so I think Moneybarn should pay Miss S a further £120 compensation (total £150 compensation) to reflect this.

Moneybarn has also refunded three-monthly instalments to reflect her loss of enjoyment and reimbursed Miss S' out of pocket expenses (dashcam fitting cost and insurance cancellation fee). Which I think is fair, however it doesn't appear that Moneybarn has added any interest to those refunded amounts. And it's our approach that where a consumer is deprived of money -meaning they didn't have it available for use, the business should pay 8 % simple interest on top of the refunded payments. So, if it hasn't already, I think Moneybarn should now do this.

I appreciate this decision will probably come as a disappointment to Miss S, but this is the final stage of our process, and we are unable to comment further. And Miss S is free to reject this decision and pursue this matter by alternative means- should she wish to.

### **My final decision**

For the reasons given above, I think this complaint should be partly upheld and I instruct Moneybarn No. 1 Limited to;

1. pay Miss S an additional £120 compensation for the inconvenience caused
2. pay Miss S 8% simple interest per year from the date of the payment was made until the date of the following refund payments:
  - the £90 refund for the dashcam fitting
  - the £50 refund to cover the cost of the insurance cancellation fee
  - the refund of the June, July and August 2022 monthly instalments

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 27 March 2023.

Karen Dennis  
**Ombudsman**