

## **The complaint**

Mr W complains that Moneybarn No. 1 Limited (Moneybarn) provided him with a car which he doesn't believe was of satisfactory quality.

## **What happened**

The full details of this complaint are well known to both parties, so I won't repeat them here. Instead, I'll recap the key points below;

- Mr W entered a 60-month conditional sale agreement with Moneybarn for a used car in May 2021. The car's cash price was £9,7975, it was approximately six years old and had covered 44,486 miles when it was supplied. Mr W was required to pay monthly instalments of £270.73.
- The car needed some repairs and wasn't delivered to Mr W until June 2021, whilst he was away. On his return he contacted the dealership to report that in addition to several faults, the V5 document and service history were missing. Mr W paid for some initial repairs.
- Mr W got in touch with Moneybarn, it arranged an independent report in July 2021. The report concluded the car was faulty at the point of sale and Moneybarn were responsible for the repairs.
- In August 2021 further diagnostics confirmed the car needed a total engine replacement. The manufacturer agreed to contribute 50% towards this cost. Mr W had the work completed in October 2021 and Moneybarn arranged a further inspection, which confirmed the repair was satisfactory.
- Mr W complained to Moneybarn about the time taken to sort things out. In its final response dated January 2022 Moneybarn upheld Mr W's complaint and agreed to;
  - refund Mr W £750.95 for the cost of the initial repairs and the diagnostic report
  - reimburse the remaining £2,346.60 cost to replace the engine
  - refund Mr W £812.19 (five monthly payments) to reflect the loss of enjoyment and loss of use of the car
  - pay Mr W £13 interest
  - pay Mr W a further £175 (it had already paid him £75), so a total of £250 compensation for the delay in handling his complaint and lack of updates
  - apply £300 to Mr W's account to reflect the loss of value due to the missing service history; and
  - pay Mr W £25 for the cost to arrange for a duplicate V5 document.
- Mr W didn't think a £300 payment fairly reflected the loss of value. He said missing service history can devalue a car by 10% to 40%. And as his car is rare, he thought the impact would be more significant. He asked Moneybarn to pay him 15% of the price of the car to reflect the loss of the value.

- The parties couldn't agree on the loss in value, Mr W brought his complaint to this service. One of our investigator's looked into the complaint. He thought Moneybarn's offer to pay for the repairs and its compensation payment was fair. He recommended that Moneybarn should reduce Mr W's account balance by 15% of the cash price paid, to reflect the impact of the car having no service history.
- Mr W and Moneybarn initially agreed with this, but Mr W was unhappy with the delay in Moneybarn paying the settlement. He then wanted to reject the car on the basis the car was misrepresented to him.
- Mr W confirmed the mileage was 49,430, so in nearly 20 months he'd travelled less than 5000 miles. More recently Mr W advised that he now wants to settle the agreement and trade the car in. He told us how stressful this has all been and said this nearly cost him his job. He wants Moneybarn to pay him more compensation.
- In addition, Mr W says although the engine was replaced in October 2021, the car was not back on the road until March 2022, as there were additional faults found with auxiliary parts (turbo, throttle body and fuel pump), the garage covered the cost of parts and labour (as the manufacturer, said the faults should have been diagnosed when the car was inspected by the garage). There was a delay sourcing the parts, due to Mr W's car being so rare. He wants Moneybarn to refund him his monthly instalments, to reflect the time he was without the car.

Mr W asked for an ombudsman to review his complaint. In January 2023 I issued my provisional decision I said:

#### *car's quality*

*The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when it was supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability.*

*Moneybarn doesn't dispute the car wasn't of satisfactory quality when it was supplied to Mr W. And as I now understand it, Moneybarn has refunded Mr W for the cost of the initial repairs and the replacement of the engine. It doesn't appear that Moneybarn has paid Mr W 8% simple interest per year from the date he made the repair costs until the date that the settlement was paid, to reflect him being deprived of that money, and if it hasn't already, I think it should.*

*Moneybarn also returned a total of five monthly instalments, along with interest to reflect the time Mr W was without the car. And I think this is fair. Mr W says this doesn't go far enough as although the engine was replaced in October 2021, there were faults with auxiliary parts and the car wasn't back on the road until March 2022, hence why he has covered less than 5,000 miles.*

*In order for me to ask Moneybarn to refund a further five monthly instalments to reflect that Mr W was without the car until March 2022, I would need to be satisfied the auxiliary part faults were present or developing at the point of supply. I note that neither the initial inspection in July 2021 nor the second inspection in November 2021 identified any issues with the auxiliary parts. And Mr W hasn't provided any evidence to suggest these faults were*

present at the point of supply. So, whilst I can see Mr W has only managed to travel around 5,000 miles with the car, I'm unable to ask Moneybarn to compensate him for the time he was without the car, in respect of the more recent faults, after the engine was replaced.

Mr W says he had to take taxis to work on some occasions, as he was without the car, however he hasn't retained any receipts, without any evidence of his loss, I'm unable to ask Moneybarn to refund these costs.

Mr W also complained that the vehicle logbook (V5) was missing. I can see that Moneybarn advised Mr W to get a duplicate V5 and in its final response agreed to pay him £25 to cover the cost to do this, I think this was fair, in the circumstances.

### *Misrepresentation*

In order for me to find that there has been a misrepresentation, I would need to be satisfied that an untrue statement of fact was made which induced Mr W to enter into the agreement. Mr W says the dealership told him the car came with full-service history and he has provided a copy of the advert which states the car has superb service history. As it turned out Mr W wasn't provided with any repair or maintenance documentation and the manufacturer has confirmed it doesn't hold any service history for the car. So, I'm satisfied there was a false statement in the advert, that was to the effect that the car would be supplied with a full-service history.

Mr W has told us he wouldn't have bought the car if he had been made aware that it didn't come with full-service history. I can see that Mr W was chasing the dealership for the service history and was initially told it was in the post. He continued to follow this up when the documentation didn't arrive and then confirmed with the manufacturer. In the circumstances, I'm satisfied the service history was a key reason for Mr W entering the contract, so I do think the car was misrepresented to him.

Where there's been a misrepresentation our usual approach is to try to put the customer back to the same position, as if it had not occurred. In this case I don't think it would be right to allow Mr W to now reject the car –he wanted the car to be repaired, despite Moneybarn suggesting the car be rejected, the repairs were extensive and Moneybarn has since refunded the cost of those repairs. In addition, the agreement is now nearly 20 months old and whilst I accept Mr W didn't get as much use as he'd hoped, Moneybarn has also compensated him for the loss of use, up to the engine being replaced. In addition, Mr W has recently told us that he is now looking to settle the agreement and sell the car.

In the circumstances, I think the basis of redress should be based on the difference in price between what Mr W paid and what he would've paid if he'd known the correct position. That's not necessarily an easy matter to assess. Moneybarn agreed the value of the car was impacted by the lack of service history and has since reduced the balance on his account by 15%. Trade guidelines indicate the value of a vehicle might be affected by between 10% and 40% by service history. But price is affected by multiple issues and in this case, Mr W's car is a rare model, with only 100 produced worldwide and just ten of those being made for the UK market, so I think the impact would be more significant. There is no exact formula here, but as 20% is the median, I think it would be fairer for Moneybarn to reduce the balance on Mr W's account by a further 5% that is by £498.75 (a total of 20% of the cash price of the car =£1995).

### *customer services*

Mr W is unhappy with the way Moneybarn handled his complaint and the delays in getting a resolution. Moneybarn accepts there were significant delays in resolving the complaint and it

*didn't provide updates when it should. It has paid Mr W £250 to reflect this, however I don't think this goes far enough, Moneybarn was made aware of the issues with the car, early on and whilst I accept there is always a degree of frustration and inconvenience trying to resolve issues, I think this would have been less stressful for Mr W, if Moneybarn kept him updated and responded to his contact.*

*Mr W has told us how stressful this has been and says it has impacted him getting to work, I'm satisfied this has caused a significant amount of stress for Mr W. This matter has been ongoing for over 19 months and as I understand it there has been further delays in Moneybarn paying the agreed settlement, in the circumstances, I think Moneybarn should pay Mr W an additional £500 (total £750) to reflect the worry and frustration caused by its actions.*

*Mr W has also told us that he hasn't received any written confirmation from Moneybarn to show the 15% reduction had been applied to his account. I don't think this is satisfactory and I think Moneybarn should now provide Mr W with written confirmation when it has reduced his balance by a total of 20% of the cash price.*

*I understand Mr W has asked Moneybarn for a settlement figure, so he can trade his car in, but he hasn't had a response. As this matter has been ongoing, I think it is fair for Moneybarn to provide Mr W with a settlement figure once it has reduced his balance by a total of 20% of the car's cash price.*

*My provisional decision*

*For the reasons given above I'm minded to partly uphold this complaint and tell Moneybarn No.1 Limited to;*

- Pay Mr W 8% simple interest per year on the refunds for all the repair costs (including the engine replacement) and the cost of the diagnostic test, from the date of those payments until the date of settlement.*
- Reduce the balance on Mr W's account by a further 5% (£498.75), bringing the total reduction to 20% of the cash price (£1995).*
- Pay Mr W a further £500 compensation for the distress and inconvenience caused.*
- Provide Mr W with written confirmation of the 20% reduction to his account, along with the corresponding interest rebate. After which it should provide Mr W with a settlement figure.*

Both parties were given an opportunity to respond to my provisional decision. Mr W responded to say he accepted my provisional decision, 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 thought about the conclusions reached in my provisional decision. Having done so, I still consider my findings and conclusions to be fair and reasonable.

## **Putting things right**

To put things right Moneybarn should do what I outlined in my provisional decision. However, given the delays and lack of contact Mr W has already experienced I also think that if Moneybarn fails to settle the complaint as I've outlined within 28 days from the date, we inform it Mr W accepts the decision, it should also pay him 8% simple interest per year on the £500 compensation payment from the date of this decision to the date of settlement.

## **My final decision**

For the reasons outlined above, I partly uphold this complaint and instruct Moneybarn No.1 Limited to;

- Pay Mr W 8% simple interest per year on the refunds for all the repair costs (including the engine replacement) and the cost of the diagnostic test, from the date of those payments until the date of settlement.
- Reduce the balance on Mr W's account by a further 5% (£498.75), bringing the total reduction to 20% of the cash price (£1995).
- Pay Mr W a further £500 compensation for the distress and inconvenience caused.
- Provide Mr W with written confirmation of the 20% reduction to his account, along with the corresponding interest rebate. After which it should provide Mr W with a settlement figure.
- Settle the complaint as outlined above within 28 days of the date on which we tell it Mr W accepts my final decision. If it fails to do this, it must also pay interest on the £500 compensation payment from the date of my final decision to the date of settlement at 8% simple interest a year.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 March 2023.

Karen Dennis  
**Ombudsman**