

The complaint

Miss W is unhappy with the compensation Moneybarn No.1 Limited have offered, after accepting rejection of a car she was supplied with under a conditional sale agreement.

What happened

agreement with Moneybarn. Miss W paid an advance payment of £315 and the agreement was for £6,995 over 60 months, with monthly repayments of £213.02. At the time, the car was almost seven years old and had done 67,523 miles.

The following day Miss W experienced problems with the car misfiring. After contacting the supplying dealer (who was located some miles away), Miss W took the car to a local garage who identified problems with the catalytic convertor and vacuum pump. The dealership didn't accept the garage's quote for the repairs and referred Miss W to a second garage. Who wouldn't fit the replacement parts the dealership sent them. So, on 4 April 2022, Miss W complained to Moneybarn.

Moneybarn investigated the issues, obtained an independent engineer's report on the car, and, on 11 July 2022, provided their final complaint response. In this, they agreed the car supplied to Miss W wasn't of a satisfactory quality and could be rejected. They refunded the payments made under the agreement, as well as paying Miss W's insurance costs, the costs of the first garage's attempts to repair the car, and £150 compensation for any distress and inconvenience she'd been caused. However, they didn't agree to refund the costs of Miss W hiring a car while this matter was resolved.

Miss W wasn't happy with this response. She said she needed a car for her day-to-day transportation while Moneybarn were considering matters. So, between 12 April and 11 July 2022, she hired a car at a cost of £4,095. And she brought her complaint to us for investigation.

Our investigator said that, while he appreciated Miss W needed to remain mobile, he'd not seen anything to show that Moneybarn had agreed to Miss W hiring a car and/or covering the costs of renting a car for this period. And, because of this, he didn't think it was fair or reasonable to ask Moneybarn to cover the rental costs.

Miss W didn't agree with the investigator. She said that *"Moneybarn should at least contribute something due to the length of time they took to deal with this."* She said that Moneybarn took longer than the 56-days allowed to deal with her complaint about the quality of the car, and she had no other option but to hire a car. And she didn't think the investigator had considered how she'd been impacted *"which breaches my statutory rights under the consumer rights act."*

I issued a provisional decision on 25 January 2023, where I explained my intention to uphold the complaint. In that decision I said:

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss W was supplied with a vehicle under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

Before I explain why I've reached my decision, I think it would be useful for me to explain exactly what I've been able to consider. Miss W has commented on Moneybarn's complaint handling, how long that process took, and how the delays made her feel. But complaint handling is an unregulated activity, and so falls outside of my jurisdiction. This means I'm unable to consider, or comment upon, the way Moneybarn handled Miss W's complaint or how long it took. And it also means any upset or inconvenience Miss W suffered during the complaint process can't be considered when I think about what a fair offer of compensation should be.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when 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. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Moneybarn can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Miss W to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss W took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

From what I've seen, it's not disputed that there was a fault with the car supplied to Miss W, or that this fault made the car of an unsatisfactory quality. So, I'd expect Moneybarn to do something to put things right.

I'd expect Moneybarn to collect the car and end the agreement; to refund any payments Miss W paid (less any deduction for fair usage); and to cover any other costs Miss W incurred i.e. repair costs. And I've seen they did this. Moneybarn also paid Miss W £150 for the distress and inconvenience she'd suffered.

However, Miss W also thinks Moneybarn should've covered her hire car costs. I've seen that, when Miss W raised her complaint with Moneybarn, she explained why she needed transportation for both her family and her job. And I don't doubt that was the case.

Had there not been an issue with the car, Miss W would've had transportation and the costs associated with this – the payments to Moneybarn and her insurance premiums. And, as Miss W didn't have transportation, Moneybarn have refunded these transport costs. As such, if Moneybarn were to also refund Miss W the cost of the hire car then she essentially has received double recovery – her original and alternate transport costs would've been paid by Moneybarn, and Miss W would've been able to travel for free. And I don't think this is fair.

However, because Miss W was supplied with a car that wasn't of a satisfactory quality, I do think Moneybarn had an obligation to keep her mobile. I've seen that, in an email to Miss W on 4 July 2022, Moneybarn confirmed that "our car hire policy is to contribute £170 per week, based on a quotation and a receipt, every week."

But, in a further email on 12 July 2022, Moneybarn said "the matter of the hire car was not discussed with us at any stage and the first [we were] made aware that you had hired a car was in the email from you on 14 June 2022 ... neither the dealership, your broker nor Moneybarn are obliged to provide a courtesy vehicle or a hire car ... we would have requested a formal quotation before entering any such arrangement, and it is unreasonable to expect we would settle an amount of which we were not made aware." Given this, Moneybarn said "having considered the facts, we are not in a position to reimburse that expense."

As I think that Moneybarn were obliged to keep Miss W mobile, and as they've confirmed they would usually contribute £170 a week towards hire car costs, then I think that Moneybarn should pay towards the hire car. But, for the reasons already given, I also need to consider that Miss W shouldn't be paid twice for the same thing – her transport costs.

Miss W hired a car for 13-weeks - 12 April to 11 July 2022 – which is roughly a month after she first had problems with the car to the day Moneybarn agreed rejection in writing. I don't think this is an unreasonable period of hire. And, at Moneybarn's rate of £170 a week, this means they would normally contribute £2,210 towards Miss W's transport costs. However, I've seen they've already paid Miss W £844.80 towards these costs. As such, I think it would be reasonable for Moneybarn to now pay Miss W the difference between these two figures - £1,365.10.

For the reasons explained, I intend to uphold Miss W's complaint, and ask Moneybarn No.1 Limited to pay her an additional £1,365.10 towards her transport costs.

Responses

Miss W has accepted my provisional view. However, Moneybarn have chosen not to comment.

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 objected to my provisional view. And I haven't been provided with any further evidence by either party. Given this, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision.

Putting things right

Given the above, Moneybarn should pay Miss W an additional £1,365.10 towards her transport costs.

My final decision

For the reasons explained above I uphold Miss W's complaint and Moneybarn No.1 Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept

or reject my decision before 28 March 2023.

Andrew Burford
Ombudsman