

## **The complaint**

Mr E has complained about a car he acquired under a conditional sale agreement with Moneybarn No.1 Ltd.

## **What happened**

The circumstances of the complaint are well known to the parties, so I'm not going to go over everything again in detail. But, in summary, Mr E acquired a used car under a conditional sale agreement with Moneybarn in November 2022. The car cost around £18,000 and the agreement was due to be paid back over four years with payments of around £540. The car was a 2019 car and was sold with around 15,000 mileage.

Mr E said he obtained a settlement figure in early 2023 because he was looking to sell the car. He said he tried to sell it in March 2023, but the dealer told him it wouldn't be able to buy the car because there was finance on it and a mileage discrepancy. The sale was cancelled.

Mr E raised a complaint with Moneybarn, the broker and the supplying dealer. As things weren't resolved promptly, he referred his complaint to the Financial Ombudsman. He also tried to sell the car elsewhere, but this was refused because the dealer found evidence the mileage was around 56,000. Mr E informed the parties he'd complained to. Mr E said the supplying dealer offered to send the car to a manufacturer to check whether manipulation had taken place. Mr E said the supplying dealer gave him misinformation to start with, but the manufacturer garage ultimately said the car had its mileage manipulated.

Mr E said the supplying dealer offered to buy back the car from him for £16,250 but he had to pay around £1,400 himself to settle the agreement. Mr E said a missed payment was reported by Moneybarn in the meantime. He said the matter caused significant distress and inconvenience because it was holding up a house sale.

Moneybarn sent a final response letter in June 2023. It apologised for the delay in responding to Mr E's concerns. It said once it received sufficient evidence it agreed the mileage had been manipulated. To resolve the complaint, it offered a refund of 3 month's repayments totalling around £1,600. It offered £75 compensation, and together with interest on the repayments the total it gave back to Mr E was around £1,750. Mr E wasn't happy with the resolution.

Our investigator looked into things and thought the car wasn't of satisfactory quality. He thought the three month's refund was broadly fair, but he thought the compensation should be increased to £200.

Mr E was unhappy with the assessment. He reiterated he'd spent three months trying to resolve things. The problem happened at a really bad time considering the house sale and the compensation wasn't sufficient. He originally requested compensation of around £20,000. But later he said he wants all the payments he made towards the agreement refunded; the difference between the cash price of the car and what the supplying dealer bought it back for, and £2,000 compensation. He said he was willing to accept £4,000.

I can't see we received a response from Moneybarn.

I issued a provisional decision that said:

*I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to resolve complaints quickly and with minimum formality. I want to assure Mr E and Moneybarn that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.*

*Mr E acquired the car under a regulated conditional sale agreement. Our service is able to consider complaints relating to these sorts of agreements.*

*The Consumer Right Act 2015 sets out, amongst other things, that goods supplied should be as described and of satisfactory quality.*

*In Mr E's case, the parties all seem to have accepted the mileage of the car had been manipulated. The supplying dealer agreed to buy the car back. What's left to decide is how to put things right for Mr E.*

*It's important to note that I'm considering a complaint against Moneybarn, and not the dealer or the broker. I can see Mr E was unhappy with the service from the dealer in particular. But I can't generally hold Moneybarn responsible for actions of the dealer after the supply of the car. But as the supplier of the goods under the conditional sale agreement, Moneybarn is responsible for dealing with a complaint about its quality.*

*I've looked at the payments Mr E made towards the agreement. He made payments from December 2022 to April 2023. And he tells us he stopped paying in May 2023 which is around the time he says he declared the car off road and cancelled his insurance. I think it's fair Mr E pays for his use of the car. There's no exact science to work out how fair usage should be calculated. But I think the monthly repayments towards the conditional sale agreement are broadly a fair measure.*

*Mr E didn't pay a deposit, but he's made repayments from December 2022 to April 2023. Mr E also tells us he paid £1,466.91 when the supplying dealer bought back the car to cover the shortfall in the settlement, so this needs to be taken into account as well.*

*Moneybarn offered Mr E a refund of three month's repayments totalling £1,617.99. This is around £150 more than he paid when the supplying dealer bought back the car. Moneybarn also offered £75 compensation on top of this. And our investigator has recommended this is increased to £200. Therefore, Mr E will be receiving around £350 compensation with interest on top. While I appreciate Mr E doesn't think this goes far enough, in all the circumstances I think this is a fair way to put things right. Moneybarn also asked if there were any other out of pocket expenses occurred which I think was fair of it.*

*In summary, I'm not going to direct Moneybarn to refund Mr E all his payments for the reasons I've set out above. I think it's fair for Mr E to pay for the use he had of the car. While I appreciate Mr E wants the difference between the cash price of the car and what he sold it for, I don't have the grounds to direct Moneybarn to reimburse him this amount. If he'd rejected the car direct with Moneybarn he wouldn't have been due this amount. I've not been supplied any evidence Mr E has suffered a separate financial loss as a result of the problem, nor of the direct impact on the house sale. I think compensation of around £350 is broadly a fair way for Moneybarn to recognise the impact the mistake had on Mr E, and the inconvenience he was put to in resolving things. For completeness, I think it's fair that any adverse information is also removed from Mr E's credit file as well, if there is any.*

Mr E responded to clarify the timeline. In summary, he also wanted to say Moneybarn didn't carry out due diligence when appointing a broker. He wanted to know why Moneybarn took so long to acknowledge the issue. He also said his house sale was about to fall through because of the issue. Mr E said the compensation doesn't go far enough. He said there's been no apology from Moneybarn and that the Financial Ombudsman has endorsed its behaviours. He said he doesn't have hesitation in escalating the claim through other means.

Moneybarn said it accepted the provisional decision.

### **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'd like to thank the parties for their responses. I've not been supplied anything materially new to consider, so I'm not going to depart from the conclusions I reached in my provisional decision. I appreciate Mr E doesn't think the compensation goes far enough. But I've set out in my provisional decision why I think it's fair. He's not supplied any further supporting evidence to show the impact the issue had on his house sale for example.

I also need to point out that it's my role to investigate the individual circumstances of Mr E's dispute. It's not my role to endorse or authorise Moneybarn's practices. The Financial Conduct Authority handles regulation and authorisation. Moreover, Moneybarn has apologised to Mr E, so I'm not going to direct it to do that again.

In all the circumstances, for the reasons given above, I think what I said in the provisional decision is broadly fair. No amount of money can change what happened. But I think the total sum under the award broadly reflects what went wrong, and for how long Mr E was impacted by the issue.

Mr E doesn't have to accept the decision. He's free to pursue the complaint by other means, such as through the courts, if he wishes.

### **My final decision**

My final decision is that I uphold this complaint and direct Moneybarn No.1 Ltd, to the extent it's not done so already, to:

- Refund Mr E the three repayments it referred to in its final response letter together with 8% simple annual interest from the date each payment was made to the date of settlement.
- Pay Mr E £200 compensation.
- Remove any adverse information about the agreement from Mr E's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 15 January 2024.

Simon Wingfield  
**Ombudsman**