

The complaint

Ms N complains about the quality of the car she acquired through a conditional sale agreement taken out with Moneybarn No.1 Limited "Moneybarn" in July 2023.

What happened

In July 2023, Ms N took out a conditional sale agreement to buy a used car. She says the car wasn't as advertised; specifically, it didn't come with a Sat Nav system installed even though she'd stipulated that she required one for work and the advertisement said the car came with Sat Nav already installed. Ms N told us:

- She raised the matter with the dealership, and it offered her £100 towards having a system installed, but she wasn't happy with this resolution, so she told Moneybarn she wished to reject the car;
- she also identified some mechanical issues with the car; problems with the brakes; an oil leak; and an illuminated engine management light.

Moneybarn explained that it had registered two complaints from Ms N. The first one pertained to the issue with the missing Sat Nav, the second to the faults with the car highlighted by Ms N. Moneybarn said it was still investigating the second complaint, but it confirmed it had upheld the first complaint.

It acknowledged the difficulties Ms N had experienced contacting both the dealership and the person responsible for the advert. And it concluded that in these circumstances, the fair remedy to the complaint about the missing Sat Nav system was for it to be installed at no cost to Ms N. Moneybarn confirmed that this had been agreed with the selling dealership.

Moneybarn told us that the issue was that the car simply hadn't been sold with Sat Nav, not that it didn't have the facility to have Sat Nav installed retrospectively and, because of this, it deemed Ms N's complaint to be one about the satisfactory quality of the car at the point of supply, rather than one of misrepresentation or breach of contract. It was satisfied that the appropriate course of action was to have the missing system installed at no cost to Ms N.

Unhappy with its response, Ms N brought her complaint to this Service. She also referred to the other issues with the car – the ones still being investigated by Moneybarn – and confirmed to us that she wanted to reject the car.

Our investigator looked at this complaint and said she thought it should be upheld. She explained that she considered this to be a case of misrepresentation, and that there'd been a breach of contract because of the incorrect information given to Ms N; information that she was satisfied had induced Ms N to acquire this particular car. She noted that Ms N had exercised her right to reject the car within the first 30 days, and although Moneybarn had offered to 'repair' the issue, it was for Ms N to decide how she wanted the matter resolved.

Moneybarn accepted our investigator's opinion and requested some information so that it could arrange to collect the car; unwind the credit agreement; and make the agreed compensation payment to Ms N.

Ms N disagrees so the complaint comes to me to decide. She says that because she needs a car for work, Moneybarn should be required to provide her with a replacement vehicle.

Ms N subsequently told this Service that earlier this year she had an accident in the car and that it would be classified as a write-off. We received confirmation from Moneybarn that it had received a payment from the insurer, and it had written off the remaining balance on Ms N's credit agreement. It further confirmed that the credit agreement had ended and no further payments from Ms N were required. And it says it confirmed this to Ms N in writing.

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.

Having considered all the evidence, I've reached the same conclusion as our investigator and for broadly the same reasons, I think this complaint should be upheld and I'll explain why.

As the conditional sale agreement entered into by Ms N is a regulated consumer credit agreement this Service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

In this particular case, both parties agree that the car should've been supplied with Sat Nav and that it wasn't. And I know Ms N needed the car for work and she told us that a working Sat Nav was something she required, so it's understandable that she said she wanted to reject the car when she first brought her complaint to this Service. And I've noted that Moneybarn agreed to rejection of the car – either because of this particular complaint, or a combination of this one and the other complaint points highlighted to it by Ms N under a separate complaint that this Service hasn't looked at. Because of this, I don't need to make any findings about whether the car was of satisfactory quality when supplied.

The parties do not agree entirely on the redress for this complaint, so this is the focus of my decision.

Ms N says that no consideration has been given to Moneybarn providing her with a replacement car which, she says, would be easiest option. But I have to tell Ms N that this isn't how this Service operates. When a complaint such as this is upheld, we set out and expect redress that places the consumer in the position they would've been in if they hadn't been sold the car in question. What this means in practice is the unwinding of the finance agreement and the return of the car – so that to all intents and purposes, it's as if the contract was never entered into.

In this particular case, Moneybarn has agreed to settle this complaint in line with what we've asked it to do. It said it would:

- Cancel the finance agreement with nothing further to pay
- Collect the car from Ms N at no inconvenience to her
- Refund 20% of her monthly payments to reflect her loss of enjoyment and impaired usage of the car.

I've considered this very carefully, and I'm satisfied it's both fair and reasonable, and in line with the approach that this Service expects for these types of complaints. So, I'm not going to ask Moneybarn to do anything more.

I've noted that the car has subsequently been involved in an incident and been written-off – but this is purely academic – the insurer has paid Moneybarn as a result of this accident, and Moneybarn has written-off the outstanding balance on Ms N's account. The overall position is the same as the redress suggested by our investigator and agreed to by Moneybarn.

Putting things right

I understand that Moneybarn has already closed Ms N's credit agreement and written off the outstanding amount following payment from the insurer, and no further payments are required from Ms N. There's clearly no car to collect from Ms N – it's been written off. So, all that remains for Moneybarn to do, if it hasn't already, is:

- Refund 20% of Ms N's monthly payments to reflect her loss of enjoyment and impaired usage of the car. It will need to pay 8% simple interest on all refunded amounts from the date of payment until the date of settlement.

My final decision

My final decision is that I uphold this complaint and direct Moneybarn No.1 Limited to pay redress as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 12 June 2024.

Andrew Macnamara
Ombudsman