

The complaint

In summary, Miss T complains that a car purchased under a conditional sale agreement provided by Moneybarn No. 1 Limited, had various defects. Although the finance agreement was unwound and the car returned, Miss T is unhappy that deductions were made from the equity she had put into the car, in respect of damage to it, which she says was present at the point of sale.

What happened

At the beginning of May 2023, Miss T entered into a conditional sale agreement with Moneybarn to purchase a car. The cash price for the car was £11,164, with an advance payment of £2,042.46. The total amount of the credit was £9,121.54, and the total charge for the credit was £4,585.02. The term of the agreement was 59 months, with monthly payments of £236.32.

Prior to purchasing the car, the dealership provided Miss T with a video of it. Approximately three weeks later she reported a fault with it.

Miss T raised her concerns about the car with Moneybarn in July 2023. Moneybarn responded to Miss T's concerns in September 2023. It upheld her complaint in part and set out the communications that had taken place with Miss T. It went on to say it had decided the finance agreement should be cancelled, and that she would have no further financial liability towards it. With regards to cosmetic damage to the car, Moneybarn said that Miss T taking possession of it indicated her acceptance of its cosmetic condition.

In respect of the deposit Miss T had paid, Moneybarn said the dealership would be retaining some of the equity due to damage to the car. It explained how the refund of £945.92 it intended to pay had been calculated. It said £562 of that figure was a partial deposit refund and that the dealership would refund £919.46 to her. She was being charged £560.90 for the damage caused to the car.

Miss T didn't agree with the deductions for the damage. She accepted some damage to the sill had been caused during the period of time she owned the car, but she disputed the amount and extent of the repairs Moneybarn said needed to be carried out. So, she raised her complaint with this service.

One of our investigators looked into Miss T's concerns. The file of evidence provided by Moneybarn included photographs of the damage to the car when it was returned, which it said needed to be repaired. The investigator explained why they thought the complaint should be upheld.

Moneybarn didn't respond to the investigator's view. Miss T did, and she explained why she didn't agree with the award of compensation the investigator had suggested, in respect of the distress and inconvenience she had suffered. As no agreement could be reached, the case has been passed to me for review.

I asked the investigator to request further information from Miss T regarding the impact on her of not having the car. She provided details of her disabilities and the impact on her of being without a car. And she said she thought she received the refund from the dealer set out in the final response from Moneybarn, but she couldn't remember properly.

I issued a provisional decision on 14 August 2024, explaining why I was intending to uphold Miss T's complaint. Miss T responded and explained why she didn't think the compensation I had suggested was sufficient. And she was concerned I might not have considered the impact on her mental state and stress. She said she was confused as she had been refunded £919 but had paid a deposit of £2,042. So, she thought the outstanding amount should be £1,123.

I wrote to Miss T in response. I explained how the refunds had been calculated, and I said she had previously told the investigator she had received the refund from the dealership. I explained why I intended to make an award of £561 to her. I also wrote to Moneybarn and explained what I had said to Miss T.

Miss T wrote to me again. She explained that she had been through her bank statements dating back to 2022 until the account closed. And she couldn't find a refund from the dealer. The only refund she could locate was the one from Moneybarn. Miss T was then asked to provide copies of her bank statements, which she did, and these were also provided to Moneybarn.

The investigator wrote to Moneybarn explaining what Miss T had said and asked for confirmation from the dealer of the refund being paid and evidence of the payments made by the dealer and Moneybarn. Moneybarn provided evidence of the refund it had paid to Miss T. And it said it had nothing further to add in respect of the provisional decision. As no evidence of the refund being paid by the dealer had been provided, this was requested from Moneybarn again. The investigator explained that an examination of Miss T's statements revealed no evidence of a payment being made by the dealer.

Moneybarn asked for copies of Miss T's bank statements. It said if the payment was irrefutably not on there, then it would be inclined to agree that the refund needed to be made, which it would be happy to do.

The investigator provided copies of the bank statements supplied by Miss T to Moneybarn on 5 September 2024. They subsequently asked for any further submissions it would like to make in respect of the bank statements by 12 September 2024 at the latest. They said that if no further information was received, then I would issue my decision immediately after 12 September 2024, directing Moneybarn to pay Miss T the £919.46 that the dealer should have paid.

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 done so, I remain of the opinion that Miss T's complaint should be upheld. I've set out my reasoning below.

The finance agreement that Miss T entered into with Moneybarn, was a regulated conditional sale agreement. As a result, this service can consider complaints relating to the agreement. And the agreement is a contract to supply goods under the Consumer Rights Act 2015 (CRA). This means that under the provisions of the CRA, Moneybarn is responsible for

ensuring the car supplied to Miss T under the conditional sale agreement, was of *“satisfactory quality.”*

In this case Moneybarn has agreed to cancel Miss T's finance agreement. And it has accepted the return of the car she purchased utilising the credit it provided, together with one of the monthly payments. So, the outstanding issues I need to consider relate to the damage to the car when Miss T returned it, and whether the compensation the investigator suggested was appropriate.

This case is slightly unusual in that I have been provided with video evidence of the exterior and interior condition of the car prior to Miss T taking delivery of it, and photos of damage to the exterior after it was returned to the dealer. The walk around video provided by Moneybarn, clearly shows some damage to the exterior paintwork of the car which is pointed out by the dealer. This includes a scratch to the driver's side wing mirror.

The dealer also explains when showing an angled view of the offside side of the car, that there are no major scratches or dents. He then goes on to say when taking a side on view that there are no dents or scratches. These statements are contradictory, and I think it's more likely than not, that the initial angled view taking into account what was said by the dealer, did indicate some scratches and dents, that probably couldn't be easily seen from a side on view. If there weren't any scratches or dents, then logically, I think there wouldn't have been any reason for the dealer to have said that there were.

When the offside of the rear bumper is shown, the dealer explains there was a mark which he says will rub out. He then points out what appears to me to be a relatively significant deep scratch under a parking sensor, which he says will need painting. He also points out another chip on the other side of the bumper. It is then pointed out that there are some scratches on the nearside corner of the bumper. And it looks to me there are scratches above and below the crease line of the bumper to the left of the parking sensor. There are also stone chips highlighted on the front bumper. So, I am satisfied from the evidence provided to me that there was pre-existing paintwork damage to the car when it was sold to Miss T.

However, Moneybarn says there was further damage to the paintwork that was incurred during the time that Miss T had possession of the car. And Miss T accepts that she caused some damage to the paintwork on the underside of the car. That's not in dispute. But I have concerns about the evidence Moneybarn has provided which it says shows the damage caused by Miss T. I'll explain why.

Moneybarn has provided an estimate of the repairs it said needed to be carried out. And this records that the rear bumper needed repairing and painting together with the offside front and rear door, the lower sills on both sides and the bonnet. It has also provided photos of the damage it says needs repairing.

I have concerns about the extent of repairs claimed by Moneybarn. It appears to me from the evidence provided, that some of the damage Miss T was asked to pay for was pre-existing damage from when she purchased the car. I say this because one of the photos Moneybarn has supplied which it says shows the damage to the car, is of a wing mirror. And it looks to me as if the scratch on the wing mirror is the same as that shown on the wing mirror in the walk around video. The repair estimate also records that the rear bumper needed repairing and painting.

But as I have set out above, it's clear to me that the rear bumper had pre-existing scratches. And again, some of the scratches on the bumper on the nearside corner, appear to me to be the same scratches that could be seen on the walk around video. And it seems to me that Moneybarn is claiming that Miss T caused damage which was known to be pre-existing. All

of this leads me to have real concerns about the accuracy and reasonableness of the damage claim that Moneybarn says Miss T is responsible for.

Also, in my experience it is commonly accepted within the motor industry that there will often be an element of wear and tear during a period of ownership. And not all scratches and dents will warrant a repair if they are considered to fall within acceptable guidelines. Guidance as to what is considered to be acceptable wear and tear, is provided by the British Vehicle Rental & Leasing Association (BVRLA). And whilst I accept Miss T only had the car for a short period of time, given the guidelines common usage and acceptance in the industry, I think it is appropriate to have reference to them when assessing the damage that Moneybarn says Miss T is responsible for.

The photos appear to show scratches. But there is nothing that indicates the size of the scratches that Moneybarn says were caused by Miss T. And in assessing whether the scratches fall within the acceptable limits of 25mm provided for by the BVRLA guidelines, I would expect to see some form of measurement such as a ruler against the damage Moneybarn says was caused by Miss T, including the damage she accepts responsibility for. I'm surprised that the photos of the damage don't provide such measurements. And without any measurement which gives an indication of the size of the scratches, I can't safely say the scratches and damage caused by Miss T fell outside of the fair wear and tear guidelines. As I have said above Miss T has acknowledged that she caused some damage to the car, so I accept it could be argued she should pay for the repairs for the damage to the sill she accepts she caused. But in addition to the reasons, I have set out above, no breakdown has been provided to show how much a repair to the sill would have cost as requested. So, it doesn't seem to me to be fair or reasonable to include an amount for this deduction in any event.

I have also thought about what Miss T has said about the impact on all of this on her. Miss T has said that the problems with the car impacted her ability to take her disabled mother to appointments. But I can only consider the impact on Miss T, not on her mother.

Moneybarn's system notes from July 2023 record that Miss T was a vulnerable customer and that she suffered from high blood pressure and was disabled. It also records that the car was being collected and that she had been severely impacted by the problems with the car. Miss T provided further information when she spoke with Moneybarn again in August 2023. It records she was waiting for funds from the broker, and records details of how being without a car was impacting her. It wasn't until September 2023 that the finance agreement was cancelled. Moneybarn subsequently offered Miss T £75 for the distress and inconvenience she had been caused. So, I think Moneybarn was aware that Miss T was a vulnerable customer who was disabled, and that not having a car had a considerable impact on her.

I asked the investigator to request further details from Miss T about the impact the problems with the car had on her. Miss T explained the nature of her disability and that due to it, she was reliant on using a car for shopping and getting to work. And I'm satisfied from what she told Moneybarn and this service, that she is a vulnerable customer who has health issues and a disability, that made her particularly reliant on having use of a car.

I'm also satisfied that the time Miss T was without a car, and the time it took for her complaint to be resolved, had an impact on her, that was more significant than it might be to someone who might not have the disability and health issues that she has. As a result, I don't think the offer made by Moneybarn or the figure suggested by the investigator, is adequate to compensate Miss T for the distress and inconvenience she incurred as a result of the problems she had with the car.

I acknowledge that Miss T doesn't agree with the figure of £300 for distress and inconvenience that I set out in my provisional decision. I want to reassure her that I have carefully considered everything she has said. And I accept that it appears Miss T hasn't received the return of the deposit from the dealer.

Deciding on the amount of an award for distress and inconvenience isn't an exact science. I don't have the power to make a punitive award against Moneybarn, and it isn't my role to do so. But for the reasons I've explained, I remain satisfied that the figure of £300 is still an appropriate sum to compensate Miss T for the distress and inconvenience she has incurred.

I've examined the bank statements provided by Miss T. There isn't a deposit that matches the amount of £919.46 that was due from the dealer. And Moneybarn hasn't provided any further submissions or evidence that shows the dealer made the payment to Miss T. So, I think it's appropriate for Moneybarn to also pay Miss T the £919.46 that the dealer should have paid her.

Putting things right

I direct that Moneybarn should compensate Miss T by:

- Refund the remaining £561 from Miss T's equity. In addition, pay Miss T the £919.46 it said the dealer would pay her.
- Pay 8% simple interest per year on the outstanding amounts of £561 and £919.46 to be refunded to Miss T, from the date Moneybarn No. 1 Limited agreed to cancel the agreement and accepted a refund of money should be paid to her, until the date of settlement.
- If Moneybarn No. 1 Limited considers that tax should be deducted from the interest element of my award, they should provide Miss T with a certificate showing how much they have taken off so she can reclaim that, if she is eligible to do so.
- Pay Miss T a total of £300 for the distress and inconvenience she has been caused.

My final decision

My decision is to uphold Miss T's complaint. If Miss T accepts my decision, Moneybarn No. 1 Limited needs to compensate Miss T using the methodology I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 15 October 2024.

Simon Dibble
Ombudsman