

## **The complaint**

Miss C complains about the quality of a car supplied to her by Moneybarn Limited ("Moneybarn") under a conditional sale agreement ("agreement").

## **What happened**

In November 2022 Miss C entered into an agreement with Moneybarn for a car that was around six years old, had 49,550 miles on the odometer and which cost £24,888.00. According to the GOV.UK website the car passed an MOT test on 3 August 2022 (with no advisories) when the odometer read 49,550 miles.

Under the terms of the agreement, everything else being equal, Miss C undertook to make an advance payment of £408.00 followed by 59 monthly payments of £768.33 making a total repayable of £45,739.47 at an APR of 31.9%.

In February 2023 Moneybarn sent Miss C a missed payment notice (£768.33) and a notice of sums in arrears (£1,536.66).

In April 2023 Moneybarn sent Miss C a missed payment notice (£768.33) and a notice of sums in arrears (£1,536.66).

In June 2023 Moneybarn sent Miss C a missed payment notice (£768.33) and a notice of sums in arrears (£1,536.66).

In July 2023 Miss C said she had repairs (to the turbo) undertaken by a garage that I will call "E" at a cost of £3,252.00.

In July 2023 Moneybarn sent Miss C an arrears notice (£1,536.66).

In July 2023 Miss C complained to Moneybarn about a number of issues with the car.

In August 2023 Moneybarn issued Miss C with a final response letter ("FRL"). Under cover of this FRL Moneybarn said it wasn't persuaded the issues with the car now meant it was of unsatisfactory quality when supplied to Miss C in November 2022.

In August 2023 Moneybarn sent Miss C an arrears notice (£2,304.99).

In August 2023 Moneybarn advised Miss C of her agreement exit options.

In September 2023, and unhappy with Moneybarn's FRL, Miss C referred her complaint to our service.

According to the GOV.UK website the car passed an MOT test on 22 September 2023 (with no advisories) when the odometer read 58,205 miles.

In October 2023 Moneybarn sent Miss C an arrears notice (of £2,463.32).

In October 2023 Miss C had paid £6,396.31 against payments due of £8,859.63 (£408.00 advance payment plus 11 monthly payments of £768.33) placing her agreement with Moneybarn £2,463.32 in arrears.

In December 2023 Moneybarn sent Miss C a notice of sums in arrears (£3,231.65).

In December 2023 a garage that I will call "N" undertook an inspection of the car (at a cost of £72.00 and when the odometer read 58,527 miles) and found a number of faults with it.

In December 2023 N advised Miss C that it estimated the cost of repairing the car was in the region of £14,000.

In December 2023 Miss C had paid £7,294.64 against payments due of £10,396.29 (£408.00 advance payment plus 13 monthly payments of £768.33) placing her agreement with Moneybarn £3,101.65 in arrears.

In January 2024 N provided further context to its December 2023 inspection to Miss C.

In February 2024 N provided further context to its December 2023 inspection to our service.

In February 2024, and having considered everything that Miss C and Moneybarn had said and submitted, one of our investigators concluded that Miss C's complaint should be upheld and that Moneybarn should:

- end the agreement with nothing further for Miss C to pay
- collect the car at no cost to Miss C
- refund to Miss C the advance payment she made of £408.00
- refund to Miss C all agreement payments she made after October 2023
- refund to Miss C the repair cost she incurred of £3,252.00
- refund to Miss C the inspection report cost she incurred of £72.00
- pay Miss C simple interest at 8% per annum on the above refunds from the date of payment to the date of settlement
- pay Miss C £250 for the distress and inconvenience she had suffered as a result of being supplied with a car that was of unsatisfactory quality
- remove any adverse information it had recorded with credit reference agencies in respect of Miss C's agreement

Miss C accepted the investigator's conclusions but Moneybarn said that it would like an independent inspection of the car undertaken before it could confirm its acceptance or rejection of the investigator's conclusions.

In March 2024 an inspection of the car, on behalf of Moneybarn, was undertaken by an engineer that I will call "A" when the odometer read 58,527 miles.

In April 2024 Moneybarn advised Miss C of her agreement exit options.

In April 2024 Moneybarn supplied the investigator with A's inspection report.

In April 2024 and having had regards to the inspection report provided by Moneybarn the investigator advised both parties that he saw no reason to depart from his February 2024 conclusions.

Miss C accepted the investigator's conclusions but Moneybarn didn't.

In May 2024 Moneybarn confirmed to Miss C that in line with her request it would now collect the car from her for onward sale.

In May 2024 Miss C had paid £7,294.64 against payments due of £15,774.60 (£408.00 advance payment plus 20 monthly payments of £768.33) placing her agreement with Moneybarn £8,479.96 in arrears.

In June 2024 Moneybarn confirmed to Miss C that having collected the car it would be in touch shortly to advise what she still owed it.

In June 2024 Moneybarn confirmed to Miss C that following an inspection of the car and its sale she owed it £15,575.09, broken down as follows:

- total repayable under the agreement                      £45,739.47
- 50% of the above sum    £22,869.73
- payments made    £7,294.64
- balance due    £15,575.09

According to the GOV.UK website the car passed an MOT test on 1 July 2024 (with no advisories) when the odometer read 58,590 miles.

Because Moneybarn didn't accept the investigators conclusions Miss C's complaint was passed to me for review and decision.

In October 2024 I issued a provisional decision on this case. In summary I said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*While I might not comment on everything (only what I consider key) this isn't meant as a discourtesy to either party – it simply reflects my role resolving disputes informally.*

*What I need to decide in this case is whether the car supplied to Miss C was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.*

*The agreement in this case is a regulated one. As such, this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.*

*The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".*

*The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.*

*I've considered what both parties have said and submitted in support of their respective views on whether Miss C was supplied with a car, in November 2022, that was of unsatisfactory quality. And having done so I can confirm that I'm satisfied, on the balance of probabilities, that she was.*

*In the main Moneybarn, in coming to the view that Miss C wasn't supplied with a car that was of unsatisfactory quality, has relied on the inspection findings of A.*

*A's inspection report states:*

*"We were unable to confirm the faults of timing chain noisy, engine breathing heavy, engine breather passing oil into the turbo and DPF" [sic]*

*So I've to say that I find the inspection, albeit for reasons I understand, to have been very limited in its scope and the report produced following it to be inconclusive.*

*In the main Miss C, in coming to the view that she was supplied with a car that was of unsatisfactory quality, has relied on the inspection findings of N.*

*Initially N concluded, amongst other things:*

*"faults found...*

- fuel tank corroded away
- dpf has been cut out and welded causing high emissions
- engine breather, passing oil into the turbo
- engine breathing heavy, suspect rings of valve stem seals
- timing chain is noisy when engine speed is raised

*overview*

*vehicle should not have been sold in this condition as it is not legally roadworthy"*

*N then advised Miss C:*

*"The likely cause of the engine issues is removal of the dpf and remapping of the vehicle. This would cause a variety of issues in the vehicle including the failure of the turbo.*

*The initial job on the turbo may have been successful, but by having the dpf removed and remapping done it would likely cause damage and worsen the state of the turbo as time went on, as having this done affects all fuel tolerances and sensors in the vehicle.*

*With this in mind, it is highly likely that the issues brought to light are likely to be ongoing issues since the dpf and remapping was first done. The vehicle would have still been able to run but in doing so damage would occur."*

*N then confirmed to our service that in its opinion the dpf was probably removed 2 years ago.*

*So with the above in mind and given when Miss C first reported her concerns with the car, the mileage she had added to the odometer whilst the car was in her possession, the photographs that have been provided and given that I'm of the view that it's very unlikely Miss C undertook any modifications to the car herself I'm persuaded, on the balance of probabilities, the car was of unsatisfactory quality when Moneybarn supplied it.*

*So having concluded the above what I now need to decide is what Moneybarn should have to do to fairly and reasonably compensate Miss C.*

*In my view Miss C should only have to pay for the use she had of the car. It's my understanding that Miss C had use of the car for 12 months, being the period November 2022 to October 2023 inclusive. So with this in mind, and having paid £7,294.64, Moneybarn should reduce the sum its seeking the recovery of from Miss C to £1,925.32 (£9,219.96 [12 x £768.33] less £7,294.64).*

*I'm also of the view that being supplied with a car that was of unsatisfactory quality has caused Miss C a degree of distress and inconvenience for which she should also be compensated for. And having thought about what this compensation sum should be I can confirm that I'm in agreement with the investigator. Therefore Moneybarn should further reduce the sum its seeking the recovery of from Miss C to £1,675.32 (£1,925.32 less £250.00).*

*The investigator concluded that Moneybarn should refund Miss C the sum of £72.00 she says she paid N for an inspection of the car undertaken in December 2022. On balance I'm satisfied that this sum was paid by Miss C so it should be refunded to her. Therefore Moneybarn should further reduce the sum its seeking the recovery of from Miss C to £1,603.32 (£1,675.32 less £72.00).*

*The investigator concluded that Moneybarn should refund to Miss C the sum of £3,252.00 she says she paid E for a turbo repair undertaken in July 2023. However, although I can't say for certain Miss C didn't pay this sum she hasn't persuaded me that she did so. Therefore I'm not persuaded I can fairly and reasonably direct Moneybarn refund this sum.*

*The investigator concluded that Moneybarn should remove any adverse information it had recorded with credit reference agencies in respect of Miss C's agreement. However, although I think some amendment might be necessary I'm satisfied that Moneybarn is entitled to record any payments Miss C failed to make between November 2022 and October 2023. So with this in mind I'm satisfied that what Moneybarn should have to do is amend what it has recorded with credit reference agencies to show no missed payments after October 2023 and a balance outstanding, due and owing of £1,603.32 from November 2023.*

*Miss C admits to obtaining a false MOT test certificate in September 2023. She says she did this because Moneybarn wouldn't agree a repayment plan with her without one.*

*Miss C's submission in this respect is supported by the contact notes Moneybarn has provided our service, so I don't dispute it. But for the avoidance of doubt I want to make clear that I'm not persuaded Miss C's decision to obtain a false MOT test certificate has any bearing, in itself, on whether this complaint should be, or shouldn't be, upheld.*

*So in summary I'm currently of the view that Miss C's complaint should be upheld and that Moneybarn should:*

- *reduce the sum its seeking the recovery of from Miss C to £1,603.32*
- *have regards to its various obligations to treat Miss C positively, sympathetically and with forbearance when seeking recovery of the sum of £1,603.32*
- *amend what it has recorded with credit reference agencies to show no missed payments after October 2023 and a balance outstanding, due and owing of £1,603.32 from November 2023*

Moneybarn responded to my provisional findings to say it accepted them.

Miss C responded to my provisional findings to say:

- that she paid for the turbo repair undertaken by E in cash
- she barely used the car after it "*started to go wrong*"
- the whole matter has affected her health
- to settle matters Moneybarn should write off what it says she owes in its entirety

### **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 would like to thank Miss C for supplying a receipt in support of her submission that she paid E £3,252 in cash for the turbo repair undertaken in July 2023. However, I'm not persuaded the submission of this is enough for me to change my provisional finding that this payment, on the balance of probabilities, wasn't made. I say this for the following reasons:

- the receipt is not a separate document but an unsigned annotation of the invoice previously provided to our service (by Miss C) unannotated
- I might, given that £3,252 is a substantial sum, expected Miss C to have asked for, and to have been supplied with, a separate receipt document
- I might have expected Miss C to have provided this receipt to our service substantially sooner than she did
- I might have expected Miss C to confirm that she made this payment in cash, rather than by card say, substantially sooner than she did
- £3,252 is a substantial sum of money and I don't find it particularly plausible Miss C would have settled such a liability in cash
- I can't reconcile Miss C's submission that she was able to pay E £3,252 in cash with the fact that she was in agreement arrears of between one or two months for the five months prior to July 2023 and in financial difficulties
- the information provided, or the lack of information provided, by E in respect of the July 2023 turbo repair

I don't dispute that after the car came into N's possession Miss C didn't have the use of it. But based on what has been said and submitted I remain of the view that Miss C did have use of it, and in the main uninterrupted use of it, between November 2022 and October 2023 inclusive and that she should have to pay £9,219.96 for that usage.

I would also add that between November 2022 and December 2023 approximately 9,000 miles were added to the car's odometer. And this fact is a further reason for me to be satisfied that it's only fair and reasonable that Miss C should have to pay £9,219.96 for usage.

I don't underestimate the distress and inconvenience this whole matter has caused Miss C, but I remain of the view that £250 for this distress and inconvenience is both fair and reasonable.

Given what I say above and given that Moneybarn has confirmed it accepts my provisional findings I can confirm I see no good reason to depart from those findings and I now confirm them as final.

### **My final decision**

My final decision is that Moneybarn Limited must:

- reduce the sum its seeking the recovery of from Miss C to £1,603.32
- have regards to its various obligations to treat Miss C positively, sympathetically and with forbearance when seeking recovery of the sum of £1,603.32
- amend what it has recorded with credit reference agencies to show no missed payments after October 2023 and a balance outstanding, due and owing of £1,603.32 from November 2023

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 22 November 2024.

Peter Cook  
**Ombudsman**