

## **complaint**

Mr M complains about charges for damage following the voluntary termination of his finance agreement with Moneybarn No.1 Limited (Moneybarn)

## **background**

Mr M purchased a second hand car in December 2014 and entered into a finance agreement with Moneybarn. He voluntarily terminated the finance agreement in 2017.

The car was inspected by BCA who noted 15 items of damage to the vehicle ranging from scratches and dents to a missing spare wheel. The estimated cost of the repairs totalled £1568.50 inclusive of VAT.

Moneybarn decided not to repair the vehicle and sold it at auction. They asked Mr M to pay the difference between the market guide trade value and the actual value achieved. This was slightly less than the estimated repair cost and they sent Mr M an invoice for £1,180.

Mr M complained to Moneybarn pointing out he hadn't signed the inspection document or agreed he had caused all the listed damages as some of the those listed were present at the point of sale.

Moneybarn say they have lost money because of the damage to the vehicle and under Mr M's agreement; they are entitled to charge him for that. Moneybarn have said they have no way of knowing the condition of the car at the time it was sold to Mr M but as a gesture of goodwill, they removed three noted defects from the bill relating to previous repairs. These totalled £410, leaving Mr M to pay £795.

Mr M was still unhappy with their decision he felt strongly that he wasn't responsible for the listed damage to the vehicle and asked this service to investigate.

Our investigator looked into things for Mr M and issued her first view upholding his complaint and finding Mr M only responsible for the scratches, front bumper and a missing spare wheel. This reduced the outstanding amount to £501.27. Mr M then provided further evidence to our investigator, which showed he'd had to purchase a spare wheel shortly after he received the car, and again he disputed responsibility for all the scratches, which he felt were there when he purchased the vehicle.

Our investigator considered the evidence again and in the absence of an initial inspection report showing the condition of the vehicle at the point of sale she concluded the fairest way to resolve the matter was to ask both parties to pay half the cost of the scratches but she felt the MOT evidence showed it was most likely the bumper had become misaligned in Mr M's possession and so she felt he should pay this cost as well. This left Mr M with a balance to pay of £240.20.

Mr M was happy to accept the investigators view but the business disagreed and asked for this review.

## findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have considered relevant law, regulation and industry standard and reviewed all the information provided by both parties afresh.

I understand Mr M feels strongly that he did not cause some of the damage listed on the inspection report and some is within fair wear and tear. He has also provided evidence that he has retained the missing spare wheel as it wasn't present at the point of sale and as he purchased it, it remains his property. He has admitted to causing some of the scratches and has accepted half the cost of those detailed repairs and the cost of damage to the bumper.

Moneybarn initially argued the loss in value was they achieved at auction was directly related to the damages listed in the inspection report. Money barn are not required to carry out the repairs and they chose to sell the vehicle at auction in its current condition. They used the Glasses Guide as a guide to the current value and as the value they achieved was less than guide value, they invoiced Mr M for the loss in value, which was less than the estimated repair costs. After Mr M complained, they further reduced their invoice by deducting the cost of damage items listed as "previous repairs". But, they didn't accept the further reduction suggested by our investigator or her reasoning for doing so. They feel the loss in value has been compounded by the damages to the vehicle and after reducing the invoice as a goodwill gesture, they don't accept there is justification for reducing it further.

I've looked at the terms and conditions of the conditional sale agreement Mr M signed firstly around his right to terminate the agreement. It says:

*You have the right to end this Agreement. To do so you should write to the person you make your payments to. They will then be entitled to a return of the goods and to half the total amount payable under this agreement that is £8732.01. If you have already paid at least this amount plus and overdue instalments and taken reasonable care of the goods, you will not have to pay anymore.*

Mr M has paid at least half of the amount payable under the agreement and so the area of dispute lies around whether he took reasonable care of the goods and if Moneybarn have shown Mr M caused the damage noted to the vehicle. In order to assess if Mr M has taken "reasonable care of the goods" I would be looking to see what the condition of the goods were at the point of sale. Moneybarn have been unable to provide any evidence to this service of the condition of the vehicle when Mr M took possession and have commented they have "no way of knowing" that information, whilst Mr M asserts some of the damages listed on the report were present when he bought the vehicle.

Where there is an absence of evidence, I must look at a balance of probabilities, that is to say what I think the most likely position to be based upon the information I have available. In this case the vehicle was second hand and had previous repairs carried out before Mr M took receipt of the vehicle. Moneybarn has acknowledged this as they reduced the invoice directly in relation to these three previous repairs.

I'm further persuaded, from the evidence Mr M has provided that there probably wasn't a spare wheel in the vehicle when Mr M purchase it as I'm not sure of any other reason Mr M would purchase one so soon after buying it.

Aside from the scratches detailed on the report there are a number of other items so of which may well fall into fair wear and tear such as the fog lamp which isn't damaged but has failed and that is to be expected given the age of the vehicle and as such wouldn't be chargeable. In any event, in order to agree that Mr M is liable for the charges listed I would need to be persuaded that he was more likely than not responsible for causing the damage.

I've looked at the MOT reports to see if they could provide any information regarding the condition of the vehicle. Mr M purchased the vehicle in December 2014. The first MOT following purchase was in September 2015 and makes no specific reference to any of the noted items of damage. But at the next MOT in August 2016, there is an advisory note suggesting the front end had repair screws missing and the trim was insecure. I think it's more likely than not then, the front bumper became misaligned after Mr M took receipt of the vehicle and so he should pay for this element of the damages.

I don't think the business has shown that Mr M has caused the internal damage to the vehicle or the dent to the front door and the items listed as chipping are quite small and could equally have been there when Mr M purchased the car.

Moneybarn aren't able to invoice Mr M just because they achieved a value at auction below that of the Glasses Guide. There are a number of factors that may influence the auction value of a second hand vehicle. They must show he either didn't take reasonable care of the vehicle or that he caused the damages listed in the inspection report.

Given the available information and taking into account Mr M says he caused at least one scratch and Moneybarn can't show what scratches or damages were present at the time they sold the vehicle so I'm persuaded a fair and reasonable approach is for Mr M and Moneybarn to share the cost of the repairs listed as scratches and Mr M should also pay for the repair cost to the front end bumper.

The total cost of the items listed as scratches is £407.80 and so half this cost is £203.70 plus a further £36.30 for the front-end bumper repairs.

### **my final decision**

For the reasons I have given I'm upholding this complaint.

I order Moneybarn Limited No.1 to limit their invoice to:

1. Half the value of the damage items listed as "scratches" on the BCA inspection report totalling £203.90
2. The damage item listed as front end bumper loose/misaligned on the BCA inspection report totalling £36.30

Moneybarn Limited No.1 should then refund any money received over and above this sum to Mr M within 14 days.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 August 2018.

Wendy Steele  
**ombudsman**