

## **complaint**

Mr M, represented by Mrs M, complains that the car he acquired through a conditional sale agreement with Moneybarn Limited was not of satisfactory quality.

## **background**

Mr M entered into a conditional sale agreement with Moneybarn in March 2016 to acquire a car. The car was just under seven years old at that time and had been driven 51,000 miles.

Mrs M says there were a number of issues with the car that were identified in the first few days. These included a smell coming from the engine, the CD player not working, and a problem with the petrol cap. The petrol cap and wire were fixed but no fault was found with the CD player.

The car's warning light then came on and the car started to shake. A courtesy car was provided while the car was looked at. The spark plugs were changed and the car returned. No fault was found with the CD player.

In April, Mrs M says it was agreed Mr M would unwind his agreement and acquire an alternative car. However when he went to unwind the agreement the car he had intended to acquire had been sold so Mr M kept the existing car.

Mrs M says there were further issues with the car. The car was tested again and a courtesy car provided. The alternator was replaced. However the car then broke down and had to be towed away. The engine then required to be rebuilt. After the car was returned there was an oil leak and a problem with the air conditioning. The car was towed away again and further repairs undertaken.

Mr M says there were still issues outstanding with the car including the broken CD player, a coolant leak and issues with the oil readings.

Mr M says that due to the numerous problems with the car he decided to hand it back. He wants his outstanding liability to be removed given the issues experienced and the ongoing nature of these.

Moneybarn says that Mrs M contacted it in May 2016 to say she had been told the car's oil consumption unit had failed and so the engine was being replaced. It says this happened at no cost to Mr M. It says it contacted the dealer in July 2016 to understand the issues with Mr M's car and it was confirmed that the car had been fully repaired. However an oil leak was then noticed and further repairs were carried out. It says a courtesy car was provided while the repairs were being carried out.

In its letter dated 4 August 2016, Moneybarn says that due to further issues raised with the car by Mrs M, it arranged for an independent inspection to be carried out. It says this showed an issue with the oil sensor but noted there was no evidence to suggest this issue would have been present at the point of supply. It says, other than the oil sensor, the report confirmed the car was fit for purpose. The report noted there was no coolant leak but evidence of a previous seepage and that the CD player was working. Moneybarn says the dealer agreed to arrange for the oil sensor to be replaced.

The adjudicator said that by the time the independent inspection was carried out the engine had been rebuilt and various other parts had been repaired or replaced. He noted that the MOT carried out in July confirmed a coolant leak and issue with the front suspension. The adjudicator said that the car had been driven less than 2,000 miles since Mr M acquired it and that the problems could not all be considered wear and tear.

The adjudicator said that because of the issues Mr M had experienced he should have been allowed to unwind his agreement. Mr M handed back the car in August 2016.

The adjudicator recommended that the agreement was cancelled with no further liability to Mr M. He said that because Mr M had use of the car or courtesy cars he did not recommend that his payments were refunded.

Moneybarn accepted that there were issues with the car but said these had been resolved. It said that the repairer accepted it caused the oil leak and so this could not be considered a point of supply issue. This was also repaired. It said that due to the car having been repaired it was not fair that the agreement was now unwound. It also noted that Mr M only made one instalment payment while he had the car.

### **my findings**

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

Mr M acquired a used car in March 2016. At this time the car had been driven over 50,000 miles. Mr M experienced issues with the car within the first few days. Then, over the following months, further problems occurred and repairs were needed.

I can see from the information provided that there were multiple issues with the car and that these happened shortly after acquisition. Based on this, I find it more likely than not that there were faults present with the car at the point of supply.

Because Mr M acquired the car through a conditional sale agreement, Moneybarn is liable if the car was not of satisfactory quality at the point of supply. In this case the evidence suggests the car did have issues at the point of supply.

When there are issues at the point of supply there are different acceptable remedies. I can see that repairs were carried out on Mr M's car at no cost to him. While the repairs were being carried out courtesy cars were provided.

Mrs M says that there were ongoing issues. Based on the information I have seen, I note there is a dispute over whether the CD player worked, the coolant leak and the noise from the suspension.

Moneybarn says that there was no fault found with the CD player and the independent inspection report also noted no issue with this. However I accept that Mr M has complained about this from the start.

In regard to the coolant leak, a slight coolant leak was noted as an advisory note in the MOT dated 26 July. The independent inspection carried out on 28 July states there was no coolant or oil leak. It did note staining suggesting a previous seepage. Based on this

conflicting information, I cannot determine whether there was an ongoing coolant leak. The car was returned and so this cannot now be considered further.

Likewise, it is clear there was a slight noise coming from the suspension which suggests this was an outstanding issue but given the car is no longer available it is not possible to carry out any further investigation into this issue.

It is clear that Mr M was supplied with a car that was not of satisfactory quality. I accept that repairs were carried out however the evidence is not clear that all the issues were resolved. Had Mr M not returned the car I would have said that it was reasonable that he reject the car. Because of this I find it reasonable at this stage that Mr M's agreement is unwound. I can see that Mr M did not make an advance payment under this agreement.

I agree with the adjudicator's comment that Mr M had use of the car and so it would be reasonable to expect him to have made the payments of £324.65 per month. Moneybarn has said that Mr M only made one of his payments. Based on this I find that Mr M should remain liable for the payments that he should have made while he had use of the car up to when it was returned. Mr M entered the agreement in March 2016 and the car was returned in August 2016. This gives a total of five months payments at £324.65 per month giving a total amount of £1,623.25. Based on the statement of account provided by the business, Mr M only made one payment that was not reversed and that was for £427.98. This suggests an amount owing of £1,195.27.

Mr M has been caused trouble and upset through this process and I find that his liability should be reduced by £150 compensation because of this.

### **my final decision**

My final decision is that I uphold this complaint.

Moneybarn Limited should:

- cancel Mr M's conditional sale agreement and remove any adverse information relating to this from his credit file.
- only hold Mr M liable for the amount he should have paid through his monthly payments up to the point when the car was returned, less any payments made; and
- deduct £150 compensation from the amount owing by Mr M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 November 2016.

Jane Archer  
**ombudsman**