

## **complaint**

Mr F has complained about the condition of a car he entered into a conditional sale agreement for, financed by Moneybarn No. 1 Limited.

## **background**

Mr F took out a finance agreement for a car with Moneybarn in May 2015. The total cost of the finance was £11,497. But in the August, it broke down and could no longer be driven. An inspection showed the crank shaft had broken. This would need extensive, costly engine repairs.

Moneybarn had an independent report carried out, which confirmed that the problem was with the crank shaft. It also said that the issue wouldn't have been present at the point of sale. On this basis, it didn't feel it was liable for the repairs.

Our adjudicator also contacted a specialist dealership. It said that the problem can be avoided with regular servicing. It had last been serviced in the December of 2014, when the mileage was 96,464. It would need to be serviced again at 112,464 miles, or after 12 months (ie by December 2015). The car broke down in the August, when the mileage was 107,424.

A further issue then came to light. This concerned the mileage. It seems that when Mr F entered into the finance agreement, the mileage was 102,440. However, Moneybarn has confirmed that it wouldn't have financed a car with a mileage of more than 100,000. But the dealership had recorded the mileage as 99,973, and the finance had gone through on this basis.

Our adjudicator recommended that the complaint should be upheld, for two reasons. This was partly because she felt Mr F should have been able to drive the car for longer than three months before it needed substantial repairs. It was also because she felt that had the correct position been known about the mileage, the finance would never have been granted. She recommended that the car should be taken back and the agreement cancelled from the date the car broke down. She also felt Mr F's deposit should be returned.

Moneybarn disagreed, primarily because it didn't think the issue had been present at the point of sale, and because Mr F knew the mileage was over 100,000.

As agreement wasn't reached, the complaint's now been passed to me for my final decision.

## **my findings**

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 agree with the adjudicator. Although I've taken into account the report's findings, I don't think, on balance, that a car should suffer catastrophic engine failure within three months – particularly given its high price. Although the car had been driven by Mr F for 4,984 miles, which is more than average, it was still well within the mileage before another service was due. So I am satisfied that the problem didn't occur because Mr F wasn't maintaining the car properly.

Mr F had use of the car for three months, and reported the breakdown on 24 August. So I think it fair that he be liable for the monthly repayments until then. But he should have no liability after that date, save for what had already accrued. For the avoidance of doubt, he should have no liability for the problems caused by the crank shaft. He should also have his deposit returned, adding 8% simple interest a year, from the date he paid it until the date of settlement. Moneybarn should take the car away at its own expense.

I turn now to the issue of the mileage. It has been accepted that the finance would never have been granted had the correct mileage been known. I don't think Mr F has any responsibility for this, as he was entitled to assume all was well with the finance going through. Because of this, I think it fair that all record of the agreement be removed from Mr F's credit file.

### **my final decision**

For the reasons given above, it's my final decision to uphold this complaint. I require Moneybarn No. 1 Limited to:

- take back the car at its own expense;
- cancel the agreement as of 24 August 2015, and return any payments made after that date;
- remove all record of the agreement from Mr F's credit file; and
- refund the deposit in full, adding 8% simple interest per year, from the date it was paid to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 1 February 2016.

Elspeth Wood  
**ombudsman**