

## **complaint**

Ms W complains Moneybarn No. 1 Limited ("Moneybarn") won't allow her to reject a car which she doesn't think was in good enough condition at the time of sale.

## **background**

Ms W acquired a second hand car through Moneybarn in September 2016.

In September 2017 the car failed its MOT because of 'excessive corrosion' (rust). Ms W said that the garage that carried out the MOT also suggested that the car might have been involved in an accident previously. Ms W arranged for an independent expert report to be carried out on the car as Moneybarn required her to demonstrate any faults that were present at point of sale. The report said that the extent of the damage meant that repair would probably be uneconomical, meaning the car would be considered a 'total loss'. The report said it's likely that the corrosion was present at the point of sale. Ms W asked Moneybarn to take back the car and for the finance agreement to be terminated.

Moneybarn pointed out that Ms W had had the car for 12 months and the car had covered more than 12,000 miles in that time. It said that the Consumer Rights Act 2015 requires a car to be free from defects within the first six months of purchase, other than normal wear and tear considering age and mileage. And it said the car passed its MOT in September 2016 suggesting it was roadworthy at the time.

Moneybarn said the onus was on Ms W to complete due diligence checks on the car at the time of sale and, if she'd found rust, she could've refused to purchase the car or asked for it to be addressed before she purchased it. But, in line with what the report said, it believes the corrosion would've been present to some degree at the point of purchase. It also said that it didn't know how Ms W had stored the car during the time she had it so thinks that the deterioration of the corrosion was likely to be because of poor maintenance.

Moneybarn said that it wouldn't be unusual for a second hand car to have been involved in an accident and to have had repairs, and this wouldn't render the car to be of an unsatisfactory quality.

Our investigator considered this case. She thought it likely the corrosion was present and that the car wasn't of a satisfactory quality at the time of the sale. And she didn't think Ms W had had a reasonable period of use of the car without significant issues. So she upheld the complaint. Moneybarn disagreed. It said the onus was on Ms W to provide evidence that the faults were present at the time of sale, and didn't think she'd done this.

## **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 thought about everything that both parties have told me, I'm upholding Ms W's complaint and I'll explain why.

I've thought about the relevant laws when deciding on this case. There's no dispute about the current condition of the car; both parties agree it's severely damaged. Moneybarn said there isn't evidence to say that the corrosion was severe enough to render the car beyond economic repair at the point of sale. But I don't think that's what Ms W needed to demonstrate. I think the question here is whether there was corrosion present at the point of sale, to the extent that the car would be considered to be of unsatisfactory quality when it was sold to Ms W.

I acknowledge that communication from the independent report said "*It is difficult to determine if and to what extent the corrosion may have been visible some 12 months ago, without any documents or supporting evidence to show the vehicle at the time.*" And that it says the valid MOT pass certificate suggests the vehicle was likely to have been fit for purpose. But I also note it said "*I would expect that some evidence of corrosion would have been present at the point of sale.*" And Moneybarn also acknowledges there was likely to have been *some* degree of corrosion. So I think it's likely that there was corrosion at the point of sale.

So the next thing for me to consider is whether the damage was bad enough that Ms W should've noticed it at the time of sale or noticed it sooner than she did, or whether the damage is likely to have been because of Ms W's negligence.

Moneybarn isn't able to provide a pre-sale report so I can't determine whether the rust was on show or not. We asked Ms W about the appearance of the car when she acquired it. She said the paintwork had a 'bubbly' appearance but that she didn't think anything of it. Given that Ms W was buying the car, I think it's likely that she would've questioned any obvious signs of damage to the car.

The engineer's report said "*It is however, possible that the repairs and repainting had only recently been completed at [the time of sale], perhaps disguising or completely covering any corrosion present.*" So I think it's more than likely that the corrosion had been hidden by paint before Ms W purchased the car. This would mean that, unless Ms W had stripped the paint from the car, she wouldn't have realised it was damaged. And I don't think Ms W can reasonably have been expected to do this before deciding to purchase the car.

Moneybarn thinks Ms W would've been aware of the corrosion much sooner than the MOT test but has chosen to ignore the issue as it was developing. I don't think it's fair to say this as it would seem that much of the damage didn't become evident until the paint was stripped away when the MOT was underway, and some of the damage also seems to be on the underside of the car which Ms W is unlikely to have seen. Ms W told us she saw 'bubbly' paint but I don't think this would necessarily lead her to think the car was corroding. So I don't think Ms W was aware of the rust at the time of sale, or that she should've noticed it sooner than she did.

I don't think it's fair to assume that Ms W has neglected the car. The damage is extensive, and it's hard to imagine that Ms W would've been able to store a car in such a way that it's become damaged as much as it is, particularly in the time frame involved. So I don't think that the damage to the car is because of Ms W's negligence. I also don't think the mileage is relevant in this case. I think it's unlikely that the damage would've progressed to the extent it has if the car didn't already have considerable corrosion at the time of sale.

I think it's reasonable for Ms W to have been sold a car that was free from corrosion. And Ms W should reasonably have been able to expect that the car could function for a reasonable period of time without any significant issue. I don't think that a year is a *reasonable* period of time, particularly given that the car had become so damaged that it was considered a 'total loss' within 12 months of Ms W buying it. This suggests to me that it wasn't in a good condition some time before this.

I don't think Ms W was sold a car that could be considered as being of a 'satisfactory quality' by a reasonable person. I say this because of the corrosion, not because the car was potentially involved in an accident previously. While the extent of corrosion at the time of the sale can't be determined, both Moneybarn and the independent engineer have said that corrosion was likely to have been present. And by arranging for an independent report, Ms W has done as much as she reasonably can to prove the corrosion was present at the time.

Given the extent of the damage in this case, and given that I think the fault was already present at the time of sale, I don't think a repair is fair or viable. I think Ms W should be able to reject the car. But I recognise that Ms W did have use of the car between September 2016 and September 2017 without any real issues as the damage seemingly didn't affect the driving performance of the car during that time. It wasn't until it failed the MOT that Ms W lost use of the car, so I think it's fair that Ms W pays for her usage until then.

### **my final decision**

For the reasons given above, I uphold this complaint against Moneybarn No. 1 Limited.

I'm instructing Moneybarn to do the following to put things right:

- arrange a collection of the car from Ms W
- terminate the conditional sale agreement, releasing Ms W of any further liability
- refund the deposit paid for the car and pay 8% simple interest on that amount
- refund any payments made by Ms W from September 2017 - the date of the MOT failure - onwards.
- remove any adverse information relating to the agreement from Ms W's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 8 May 2018.

Melanie Roberts  
**ombudsman**