

## **complaint**

Mr S complains that the car he acquired with finance from Moneybarn No. 1 Limited ("ML") isn't of satisfactory quality.

## **background**

Mr S acquired the car in August 2017. He complained to ML about this matter in October 2017. And, being unhappy with its response, he complained to this service.

Mr S says less than two months after he acquired the car, it broke down. He says it started smoking and wouldn't accelerate, so he immediately drove it to a garage and had it inspected. He says he was told the car had engine failure, it had lost compression in cylinder four and it was misfiring.

Mr S says he discovered other faults that he also reported to ML, including that the exhaust system had been modified, the air conditioning wasn't functioning properly and an interior light was broken.

In addition, Mr S says he needed the car for work and as it was broken it seriously impaired his ability to earn money. He says ML told him there was the possibility of a hire car, but it didn't actually provide one.

So, Mr S says he wants to reject the car and end his finance agreement, with no further liability. Alternatively, he says he would be happy if the car is fully repaired by ML.

ML says when Mr S acquired the car it was nearly six years old and had covered around 49,000 miles. It says an independent inspection report was carried out into the issues Mr S had reported. It says the report concluded there was a broken piston and an engine misfire; that the exact cause of the misfire was undetermined and required further investigation, but that this fault wasn't present at the point of supply. It says the independent report also concluded the exhaust system legal conformity is unknown, but that if the catalytic converter had been removed, this would have an impact upon its emissions and legality. And it says the engineer advised additional checks to confirm the presence of the catalytic converter.

ML also says the finance broker's confirmed its interpretation of the independent report is that Mr S would've been aware that an aftermarket exhaust was fitted to the car when he acquired it; that as the car had passed an MOT shortly before purchase, it couldn't conclude the catalytic converter wasn't present at the time; and that the report states the misfire developed after the start of the finance agreement and wasn't present at the point of supply.

So, ML says, based on the evidence to hand, including the independent inspection report, it couldn't uphold Mr S's complaint.

Our investigator thought Mr S's complaint should be upheld. She said ML should cancel the agreement with nothing further for Mr S to pay. The investigator also said ML should refund Mr S's deposit, collect the car at no cost to him; refund the monthly payments for the time he wasn't able to use the car; and remove any adverse information from his credit file.

ML disagreed with the investigator's conclusions. It said the car had an MOT on 28 July 2017 that didn't identify a problem with the exhaust system. It said the independent inspection report concluded the fact the car had an aftermarket exhaust would've been

clearly identified as not likely to be a standard component, due to excessive noise, at the point of supply. And it said the engineer stated it's unlikely the engine misfire was present at the time of purchase as the fault's easily noticed. So, it says it's assumed this fault developed at a time close to when it was identified on 10 October 2017.

So, the matter's been referred to me to make a final decision.

I recently issued my provisional findings on this complaint. I said I could see Mr S reported the issues he's complained about less than two months after acquiring the car, during which he'd only covered a small mileage. I could also see the main issues appear to be a broken piston and (probably related) engine misfire; a non-standard exhaust and possibly missing catalytic converter; and possibly defective air conditioning.

I noted that the independent inspection report concluded it's unlikely the engine misfire (and presumably also the broken piston) was present when the car was supplied to Mr S. But I also noted the inspector went on to say further investigation would be required to correctly identify the exact cause of this issue. And I noted it appears no further investigations in fact took place. In any event, given this fault appeared within a few weeks of Mr S acquiring the car, during which he'd only covered a low mileage, I was minded to conclude it's most likely this issue was developing at the point of supply.

I noted it wasn't possible to test the air conditioning system during the independent inspection. But again, Mr S reported this issue very soon after acquiring the car. And there's an expectation that cars will remain free of defects for a reasonable time following supply. So I was minded to conclude if there is a fault with the air conditioning it's most likely this issue was also present or developing when Mr S acquired the car.

I could see ML's pointed out that the car passed an MOT less than three weeks before it was supplied to Mr S, so it doesn't think any exhaust defect, including the possible absence of a catalytic converter would've existed at the point of supply. But I noted Mr S reported this matter only a few weeks later. And I'd no reason to think he'd made any modifications to the exhaust system in the meantime. So, I was minded to conclude it's more likely this issue was present when Mr S acquired the car.

I also noted Mr S says he wasn't aware the car had a non-standard exhaust system. And I was minded to conclude he wouldn't necessarily have been aware of this when he acquired it, notwithstanding the comment in the independent inspection report about the noise the exhaust would've made.

So, taking all of these matters into account, I was minded to uphold Mr S's complaint. And I was minded to require ML either to:

- pay for the repair needed to the piston and remedy the misfire;
- make sure the exhaust system's standard and repair or replace it as necessary;
- and ensure the air conditioning is functioning properly, repairing it as necessary,

or alternatively:

- to allow Mr S to reject the car and end his finance agreement;

- repay any cash deposit Mr S paid when he acquired the car;
- and pay him interest on any cash deposit he paid at 8% simple from the date he paid it until the date of settlement.

In either case, I was minded to require ML:

- not to charge Mr S for the time the car's been off the road as a result of these issues;
- to reimburse any additional transport costs he's incurred as a result of the car being off the road, subject to him giving it evidence of these costs;
- to remove all adverse information about the finance agreement from Mr S's credit report;
- and to pay him £200 compensation for the distress and inconvenience he's experienced as a result of this matter.

This was different from the investigator's opinion, so I invited both parties to comment and provide any additional evidence for me to consider.

A copy of my provisional decision is attached and forms part of this final decision.

### **my findings**

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

In response to my provisional decision Mr S says he now definitely wants to reject the car and end his finance agreement.

ML hasn't responded to my provisional decision.

Matters have become slightly more complicated by the car being removed by DVLA. Mr S says he's tried to speak to DVLA about this but it wasn't able to help him as the car is owned by ML (under the hire purchase agreement). He says that DVLA have told him it has would write to ML, as the owner of the car.

Taking everything into account, I think it's fair for me to uphold Mr S's complaint. And to allow him to reject his car on the terms and for the reasons set out in my provisional decision, except that ML should collect the car from the DVLA premises where it is currently located. And I think it's reasonable for ML to be able to deduct from the payment it makes to Mr S any charges or fines levied by DVLA, provided it gives Mr S a detailed breakdown of these charges.

And I uphold Mr S's complaint on this basis.

### **my final decision**

I uphold Mr S's complaint against Moneybarn No. 1 Limited. It must:

1. allow Mr S to reject the car and end his finance agreement;

2. collect the car from the DVLA premises where it is currently located;
3. repay any cash deposit Mr S paid when he acquired the car;
4. pay Mr S interest on any cash deposit he paid at 8% simple from the date he paid it until the date of settlement;
5. not charge Mr S for the time the car's been off the road as a result of the issues he's experienced with it;
6. reimburse any additional transport costs Mr S has incurred as a result of the car being off the road, subject to him giving it evidence of these costs;
7. remove all adverse information about the finance agreement from Mr S's credit report;
8. and pay Mr S £200 compensation for the distress and inconvenience he's experienced as a result of this matter;
9. but it may deduct from the total payment arising under 3,4,5,6 and 8 above it makes to Mr S any charges or fines levied by DVLA, provided it gives Mr S a detailed breakdown of these charges.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 December 2018.

Robert Collinson  
**ombudsman**

### **copy of my provisional decision**

#### **complaint**

Mr S complains that the car he acquired with finance from Moneybarn No. 1 Limited ("ML") isn't of satisfactory quality.

#### **background**

Mr S acquired the car in August 2017. He complained to ML about this matter in October 2017. And, being unhappy with its response, he complained to this service.

Mr S says less than two months after he acquired the car, it broke down. He says it started smoking and wouldn't accelerate, so he immediately drove it to a garage and had it inspected. He says he was told the car had engine failure, it had lost compression in cylinder four and it was misfiring.

Mr S says he discovered other faults that he also reported to ML, including that the exhaust system had been modified, the air conditioning wasn't functioning properly and an interior light was broken.

In addition, Mr S says he needed the car for work and as it was broken it seriously impaired his ability to earn money. He says ML told him there was the possibility of a hire car, but it didn't actually provide one.

So, Mr S says he wants to reject the car and end his finance agreement, with no further liability. Alternatively, he says he would be happy if the car is fully repaired by ML.

ML says when Mr S acquired the car it was nearly six years old and had covered around 49,000 miles. It says an independent inspection report was carried out into the issues Mr S had reported. It says the report concluded there was a broken piston and an engine misfire; that the exact cause of the misfire was undetermined and required further investigation, but that this fault wasn't present at the point of supply. It says the independent report also concluded the exhaust system legal conformity is unknown, but that if the catalytic converter had been removed, this would have an impact upon its emissions and legality. And it says the engineer advised additional checks to confirm the presence of the catalytic converter.

ML also says the finance broker's confirmed its interpretation of the independent report is that Mr S would've been aware that an aftermarket exhaust was fitted to the car when he acquired it; that as the car had passed an MOT shortly before purchase, it couldn't conclude the catalytic converter wasn't present at the time; and that the report states the misfire developed after the start of the finance agreement and wasn't present at the point of supply.

So, ML says, based on the evidence to hand, including the independent inspection report, it couldn't uphold Mr S's complaint.

Our investigator thought Mr S's complaint should be upheld. She said ML should cancel the agreement with nothing further for Mr S to pay. The investigator also said ML should refund Mr S's deposit, collect the car at no cost to him; refund the monthly payments for the time he wasn't able to use the car; and remove any adverse information from his credit file.

ML disagreed with the investigator's conclusions. It said the car had an MOT on 28 July 2017 that didn't identify a problem with the exhaust system. It said the independent inspection report concluded the fact the car had an aftermarket exhaust would've been clearly identified as not likely to be a standard component, due to excessive noise, at the point of supply. And it said the engineer stated it's unlikely the engine misfire was present at the time of purchase as the fault's easily noticed. So, it says it's assumed this fault developed at a time close to when it was identified on 10 October 2017.

So, the matter's been referred to me to make a decision.

### **my provisional findings**

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

I'm currently minded to uphold Mr S's complaint. I'm minded to require ML either to pay for the repair needed to the piston and remedy the misfire; make sure the exhaust system's standard and repair or replace it as necessary; and ensure the air conditioning is functioning properly, repairing it as necessary. Or alternatively to allow Mr S to reject the car and end his finance agreement.

And in either case, not to charge him for the time the car's been off the road as a result of these issues; to reimburse any additional transport costs Mr S has incurred as a result of the car being off the road, subject to him giving it evidence of these costs; to remove all adverse information about the finance agreement from Mr S's credit report; and to pay him £200 compensation for the distress and inconvenience he's experienced as a result of this matter. I'll explain why.

ML supplied Mr S's car under a finance agreement. So, it was responsible for ensuring the car was of satisfactory quality at the point of supply.

I see Mr S reported the issues he's complained about less than two months after acquiring the car, during which he'd only covered a small mileage. I also see the main issues appear to be a broken piston and (probably related) engine misfire; a non-standard exhaust and possibly missing catalytic converter; and possibly defective air conditioning.

I've noted that the independent inspection report concluded it's unlikely the engine misfire (and presumably also the broken piston) was present when the car was supplied to Mr S. But I also note the inspector went on to say further investigation would be required to correctly identify the exact cause of this issue. And it appears no further investigations in fact took place. In any event, given this fault appeared within a few weeks of Mr S acquiring the car, during which he'd only covered a low mileage, I'm minded to conclude it's most likely this issue was developing at the point of supply.

I note it wasn't possible to test the air conditioning system during the independent inspection. But again, Mr S reported this issue very soon after acquiring the car. And there's an expectation that cars will remain free of defects for a reasonable time following supply. So I'm minded to conclude if there is a fault with the air conditioning it's most likely this issue was also present or developing when Mr S acquired the car.

I see ML's pointed out that the car passed an MOT less than three weeks before it was supplied to Mr S, so it doesn't think any exhaust defect, including the possible absence of a catalytic converter would've existed at the point of supply. But I note Mr S reported this matter only a few weeks later. And I've no reason to think he'd made any modifications to the exhaust system in the meantime. So, I'm minded to conclude it's more likely this issue was present when Mr S acquired the car.

I also note Mr S says he wasn't aware the car had a non-standard exhaust system. And I'm minded to conclude he wouldn't necessarily have been aware of this when he acquired it, notwithstanding the comment in the independent inspection report about the noise the exhaust would've made.

So, taking all of these matters into account, I'm currently minded to uphold Mr S's complaint.

I'm minded to require ML either to:

- pay for the repair needed to the piston and remedy the misfire;
- make sure the exhaust system's standard and repair or replace it as necessary;
- and ensure the air conditioning is functioning properly, repairing it as necessary,

or alternatively:

- to allow Mr S to reject the car and end his finance agreement;
- repay any cash deposit Mr S paid when he acquired the car;
- and pay him interest on any cash deposit he paid at 8% simple from the date he paid it until the date of settlement.

In either case, I'm minded to require ML:

- not to charge Mr S for the time the car's been off the road as a result of these issues;
- to reimburse any additional transport costs he's incurred as a result of the car being off the road, subject to him giving it evidence of these costs;
- to remove all adverse information about the finance agreement from Mr S's credit report;
- and to pay him £200 compensation for the distress and inconvenience he's experienced as a result of this matter.

**my provisional decision**

For the reasons set out above but subject to both parties' responses to this provisional decision I'm currently minded to uphold Mr S's complaint against Moneybarn No. 1 Limited on the terms set out above.

Robert Collinson  
**ombudsman**