

## **complaint**

Mr T complains that a car he got with finance provided by Moneybarn No 1 Limited is not of satisfactory quality. He wants to reject it and get his money back.

Mr T has been represented by a family member at times, but I'll refer to everything that's been said on his behalf as if Mr T had said it himself, to keep things simple.

## **background**

Mr T acquired this car with a conditional sale agreement (CSA) from Moneybarn on 3 April 2018. He collected it a few days later and noticed a chip on the windscreen and a warning light illuminated the next day. He returned the car to the supplying dealer who agreed to do some repairs.

Mr T picked the car up again on 16 April but the warning light came on again when he was driving home. He took the car back to the dealer and was told more repairs were needed but the car would be ready on 25<sup>th</sup> of April. When Mr T arrived at the dealership on the 25<sup>th</sup> the car hadn't been fixed. The dealer said they were waiting for a part.

Mr T felt he'd been without the car for long enough by this time. He'd only been able to drive it for two days - it was with the dealer the rest of the time. He lost confidence in the dealer's ability to fix the problem and left the car there. Mr T contacted Moneybarn to say he wanted to reject the car under Consumer Rights Act 2015 (CRA) and stopped making payments under the finance. Mr T wants Moneybarn to accept the rejection and refund his deposit.

Moneybarn says the dealer offered to carry out repairs and Mr T agreed. Those repairs were completed in May and the car's ready for collection so Mr T shouldn't be entitled to reject it. Moneybarn offered to review matters if Mr T can show that the car still has issues - or he had to return to the dealer multiple times and/or the dealer agreed to take the car back.

Our investigator says the car should have been of satisfactory quality when Mr T got it under the CRA. And he had the right to reject - if a fault appeared within the first thirty days - or ask for a repair instead. She contacted the dealership and it couldn't supply any paperwork to show when and what work was done to the car. It was unable to dispute Mr T's time-line of events.

She's satisfied faults appeared within thirty days that were likely present at the point of supply. And Mr T gave the dealer the chance to repair but it didn't do so within a reasonable time. She thinks it is fair and reasonable that Mr T should be allowed to reject the car now. She recommends his complaint should be upheld and says Moneybarn should cancel the finance, take the car back at no cost to Mr T, refund the advance payment plus interest and remove any adverse information from Mr T's credit file.

Moneybarn doesn't think this is fair. It says Mr T agreed to have the car repaired a second time. Then he became frustrated and tried to collect it before repairs were completed. It considers Mr T waived his right to reject and the car is fixed now so it shouldn't have to provide a refund. Moneybarn asked for an ombudsman to review the matter.

## **my provisional findings**

I issued a provisional decision on 14 February 2019 where I said

*Moneybarn supplied this car under a finance agreement so it was obliged to ensure the car was of satisfactory quality at the point of supply. The level of quality that's to be considered satisfactory depends on individual circumstances. It's generally considered reasonable to take the age, cost and mileage of a car into account.*

*The car was about 6 years old when Mr T got it with over 70,000 miles on the clock and cost £12,750. As such I don't think he could reasonably expect it to be of the same standard as a brand new vehicle - as some parts would be worn and would probably need replacing at some stage.*

*There seems to be no dispute that the car had a crack in the windscreen of about 40mm and an emissions warning light came on within days of the car being supplied. Taking the age of the car, mileage, price and other relevant considerations into account I don't think a small crack in the windscreen, on its own, would necessarily mean it was of unsatisfactory quality.*

*On the evidence I've got, I can't be certain about the cause of the warning light. But, I'm not persuaded a reasonable person would be happy to accept a car like this with a warning light illuminated. I'm minded to find this car was probably of unsatisfactory quality when it was supplied. I think it is understandable that Mr T was unhappy in this situation and took the car back to the garage where he got it. The dealer seems to have accepted these issues were faults. It offered to correct them at no cost to Mr T and he agreed. I think that seems reasonable on both sides.*

*There's some disagreement about what happened next. Mr T says the dealer couldn't resolve the cause of the warning light illuminating - despite having the car in for nearly a month and plenty of opportunity to repair. Whereas Moneybarn says Mr T didn't have to return the car "multiple times" - it's simply that he wanted to take the car back before the dealer had a reasonable chance to fix things.*

*Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*M T has provided a detailed account of events from the day he collected the car until it was returned for the last time at the end of April. I think this account seems credible and it appears to be in keeping with some other evidence. Our investigator has spoken to the dealer. It doesn't have any paperwork to show when it had the car in and what was done exactly so the dealer was unable to dispute Mr T's timeline of events.*

*The CRA says consumers have a final right to reject if they have "sought a repair or replacement but this was not carried out within a reasonable time or without significant inconvenience to the consumer". I accept Mr T agreed the dealer could have the opportunity to fix things. Mr T acknowledges the windscreen was repaired when he went back to collect the car in the middle of April - but he says the warning light came back on. So, despite the dealer having made one attempt the car still wasn't working properly. On balance, I'm satisfied the car still had a fault at this point. And I don't think it was unreasonable of Mr T to take the car back to the dealer again.*

*Mr T doesn't dispute he agreed to let the dealer take another look at the car. He says the dealer told him the car would be ready for collection a few days later. I think Mr T probably relied on that assurance when he agreed to let the dealer have another go at resolving this*

*issue. And I don't think there's any dispute that the problem still hadn't been fixed when Mr T arrived at the garage to collect the car on 25 April. If I understand the dealer correctly it says Mr T wanted to take the car too soon - they were waiting on a part and repairs hadn't been completed. Mr T says he'd phoned the dealer numerous times for updates and he was assured the car would be ready for collection on the 25th.*

*I think Mr T had already experienced considerable inconvenience by this point. He'd been without his "new" car for most of the month at this stage. I understand he needed the car on a daily basis and I've seen nothing to suggest he was offered a courtesy car. Mr T says he'd been told the car would be fixed so it's not surprising he was disappointed and frustrated to find it still wasn't ready on the 25th. I've seen nothing to show that Mr T was given any realistic idea of how long the repairs were likely to take. And I find it understandable that he lost confidence in the car - and the dealer's ability to repair it successfully in this situation.*

*Taking everything I've seen so far into account, I'm inclined to find it fair that Mr T should be allowed to reject the car and have his deposit back. I have thought about whether Moneybarn should compensate Mr T for his loss of use and upset and inconvenience.*

*Mr T told our investigator he hasn't paid anything towards the finance apart from the deposit. So he appears to have paid nothing for the, albeit limited, use he had of the car. Mr T left the car at the dealership last April so I'm satisfied he hasn't been troubled by it since. And I am minded to conclude that the outcome recommended by our investigator seems fair overall.*

I invited both parties to think about these provisional findings and let me have any further comments or submissions by the 28 February 2019.

### **my findings**

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

The date for the parties to respond to my provisional decision has now passed. Moneybarn has replied accepting my provisional conclusions. Mr T hasn't objected or made any further submissions. And I see no reason to depart from my provisional findings.

### **my final decision**

My decision is I uphold this complaint. In full and final settlement I require Moneybarn No 1 Limited to

1. cancel the finance agreement with nothing further to pay;
2. take the car back at no cost to Mr T;
3. refund the deposit of £195 paid under the agreement;
4. pay interest on that refund at 8% simple a year from the date of payment to the date of settlement; and
5. remove any adverse information recorded about the finance from Mr T's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 14 April 2019.

Claire Jackson  
**ombudsman**