

## **complaint**

Miss D complains that a used car she acquired via a conditional sale agreement with Moneybarn No.1 Limited wasn't of satisfactory condition. She says that she's incurred various costs due to it breaking down and Moneybarn has unfairly refused to reimburse her.

## **background**

In February 2017 Miss D acquired a used car from a dealership via a conditional sale agreement with Moneybarn. The car was around six years old and had a mileage of 20,566 and Miss D was told by the dealer that the car had been serviced before she'd bought it.

Unfortunately in May 2017 the car broke down when Miss D was driving to work. It had to be recovered and was taken back to the dealership where it was repaired. The repairs were covered by the dealership.

But in June the car broke down again. Miss D took the car to a garage that was local to her. The garage said that an injector clamp had broken and needed replacing. The garage also said that as damage had been caused to the other injector clamps they should all be replaced. Miss D paid £180 to have the car repaired.

The garage told Miss D that the car was out of service by a few 1000 miles so Miss D agreed to have the car serviced as well as being repaired. The service cost Miss D £166.39. However Miss D later discovered the dealership had serviced the car shortly before she bought it, but hadn't recorded this in the service book.

Around two weeks later the car again developed similar problems to the two previous breakdowns. Miss D called out a recovery company who advised her that the car had a fault with its injector. Miss D asked the recovery company to take the car to the dealership.

The dealership kept the car for inspection and a road test. It replaced one of the car's injectors as a goodwill gesture. In the meantime Miss D needed to hire a car so she could get to work and although her insurance company provided a rental car for two days she had to keep it longer due to the time it took the dealership to repair her car and return it. The hire car cost Miss D £236.91.

In June Miss D also had to purchase two new tyres for the car which cost her £327.32.

Miss D complained to Moneybarn about the extra costs she'd incurred due to problems she'd had with the car. She asked that it reimburse her. Moneybarn disagreed with Miss D. It said that the dealership hadn't refused to assist her with the issues she'd experienced with the car. But when Miss D had the car fixed for the second time in June 2017 she'd done so before Moneybarn could investigate what the problem had been and whether it had been present at the point of sale. Miss D had also agreed to pay the costs of those repairs.

Moneybarn said that all the costs raised by Miss D had been incurred before she'd complained to it about the problems she'd had. And so she hadn't given Moneybarn sufficient time in which it could either have assisted her or prevented the costs from being incurred.

Moneybarn also said it didn't have enough evidence to consider whether the dealership had failed to record the car's service.

Miss D was unhappy at Moneybarn's response and complained to this service. Our investigator recommended that Miss D's complaint should be upheld and that most of the costs she'd ask for be repaid by Moneybarn.

The investigator said that the car's problems had been with the fuel injectors which should last for around 50-100,000 miles. Miss D's car had a mileage of around 29,000 so although she had driven a large number of miles in the time she'd had it the fuel injectors wouldn't have been expected to cause problems. He thought this meant it was likely the problems with the fuel injectors had been present at the point of sale. The investigator said Moneybarn should cover the repair costs and the hire car costs together with interest.

The investigator said he thought the dealership had failed to update the service book which led Miss D to have the car serviced unnecessarily. He thought it was reasonable for Moneybarn to repay Miss D those costs with interest, but excluding the items that Miss D would've had to replace anyway such as the oil and the air and oil filters.

The investigator said that based on the number of miles Miss D had driven it would be reasonable to expect wear on the tyres. He didn't think it would be fair to ask Moneybarn to cover those costs.

Miss D agreed with our investigator's view as she thought it was fair. Moneybarn disagreed and arranged for an independent engineer to give their opinion as to whether they thought the problem with the fuel injectors would've been present at the point of sale.

The independent engineer looked at all the paperwork and said they didn't think there was enough evidence to say the issues were developing at the point of sale. Our investigator said the report wasn't enough for him to change his view. The engineer hadn't provided any explanation as to why the car's injectors had developed problems much sooner than would reasonably be expected.

Moneybarn asked to raise that point with the independent engineer. But it hasn't provided any further evidence and so the complaint has been passed to me.

### **my findings**

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

Miss D says she chose a car with a low mileage as she needed a car that would be reliable as she drove a large number of miles and needed to be able to rely on it to get to work.

But the car has broken down on three occasions and each time the problem was linked to the car's fuel injectors. I appreciate that on the last occasion the dealership wasn't able to find a problem and as a gesture of goodwill replaced one of the injectors. But Miss D has reported that the car has been problem free since that repair which I think shows it's likely the injector was the cause of with the car breaking down.

I've read the independent engineer's report and I appreciate they say there isn't enough evidence to say the car's problems were either developing or present at the point of sale. But they don't explain why this car had the problems that it did.

Where evidence is unclear or contradictory then I must decide what I think is the most likely thing to have happened. A car's fuel injectors are expected to have a life of between 50-100,000 miles depending how the car's driven. I appreciate Miss D has driven around 9000 miles since she's had it but the total mileage was still only around 30,000. So far lower than the 50,000 miles expected before problems with injectors might arise.

Looking at the evidence, Miss D has reported similar problems with the car each time it broke down so I think it's likely all the problems were linked. And I've seen all the repairs were linked to the fuel injectors and that since an injector was replaced there haven't been any further problems.

I think it's more likely than not that the car had an inherent problem with a fuel injector and this means it would've been present at the point of sale. So the car wasn't of satisfactory quality when Miss D acquired it under the finance agreement and I'm upholding her complaint.

I appreciate that when the car broke down the second time Miss D had it repaired at another garage. But I'm not surprised she chose that course of action as she needed the car repaired quickly. And Miss D also says that the first time the car had broken down the dealership had told her the repair was as a gesture of goodwill. So I don't think Miss D acted unreasonably taking the car to another garage for repair.

As the car had an existing problem I don't think it's fair Miss D is left out of pocket with repair costs. I require Moneybarn to reimburse Miss D the cost of the repair she paid for in June together with interest.

And as Miss D took out the finance agreement so that she would have a car I think it's reasonable and fair for Moneybarn to cover the cost of Miss D having to rent a replacement while hers was being repaired.

Moneybarn hasn't said anything about our investigator's view that it should reimburse Miss D the cost of the unneeded service. I've seen a copy of the service book which clearly shows the services have been added in the wrong date order. So I think it's likely that the dealership's failure to properly record it had serviced the car in January 2017 led to Miss D being told in June 2017 that the car had missed a service and it needed to be done. If the record had been correct Miss D wouldn't have that expense.

So I think it's fair for Moneybarn to reimburse Miss D that expense with interest. But I also agree it isn't fair that Moneybarn covers the costs for items Miss D would've had to pay for anyway such as the oil and the oil and air filters so I have deducted £60.76 from the invoice of £166.39.

Miss D has agreed with our investigator's view about the tyres. I also think that the tyres would be considered as fair wear and tear due to the number of miles driven by Miss D. So I'm not going to ask Moneybarn to cover that costs.

I'm aware that Miss D has had some financial problems recently but she hasn't complained about Moneybarn's handling of that. I can see that Moneybarn has tried to contact Miss D about that and would suggest she talks to it about any ongoing problems she may have.

### **my final decision**

I'm upholding Miss D's complaint and require Moneybarn No. 1 Limited to do the following:

- Re-pay Miss D the sum of £180 for the repairs she'd covered in June 2017
- Re-pay Miss D the sum of £105.63 for the unnecessary service carried out in June 2017
- Repay Miss D the sum of £236.91 for the car rental

Moneybarn No. 1 Limited is to add interest at the rate of 8% simple per year to each of the sums above from the date Miss D paid that cost until the date of settlement.

If Moneybarn No. 1 Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss D how much it's taken off. It should also give Miss D a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 1 June 2018.

Jocelyn Griffith  
**ombudsman**