

## **complaint**

Miss D complains that the car she acquired under a conditional sale agreement with Moneybarn No. 1 Limited was not of satisfactory quality.

## **background**

Miss D entered into a conditional sale agreement with Moneybarn to acquire a car in October 2017. In April 2018, she says she was on a motorway when the car lost speed and came to a stop. On returning home she noticed a loud noise coming from the engine.

Miss D contacted Moneybarn and says she didn't get the service she should have. She says that an inspection was carried out on the car and after a very short drive the engineer told her the car had gone into limp mode and was unfit for purpose. However when the report was provided it had a different conclusion. She says she spoke with the engineer who said the report was tampered with. She also noted that the report said further investigation was needed.

Miss D had an investigation carried out by another party which provided a fault code linked to the turbocharger. She said that although the car passed an MOT this would not have looked at the issue she had experienced. She says that the car should have had a major service in 2017 before she acquired it but this didn't happen. The next service was not due until after the car had broken down.

Miss D also complains that the car should have been supplied with a full warranty. But she was told by the manufacturer that as there was not a full service history it would not accept any liability for repairs.

Moneybarn says that the car Miss D acquired through a conditional sale agreement had been driven around 59,500 miles. It says that when Miss D contacted it a satisfactory quality complaint was raised and an independent inspection was arranged and carried out on 30 April 2018.

The report says that there was an issue with the car but that it believed the car was fit for purpose and of satisfactory quality at the point of supply. Moneybarn further noted that Miss D had driven around 2,000 miles before the issue was raised and that the car passed an MOT in March 2018.

Moneybarn says that although Miss D had sent in further reports which confirmed faults, these did not show that the faults were present at the point of supply.

Our investigator upheld this complaint. She recommended that Miss D be allowed to reject the car or have a replacement. She noted that if the car was rejected, the car should be collected from Miss D at no cost and the agreement ended. She also noted that the deposit should be refunded along with the cost of the inspection and payments made from 19 April 2018. Our investigator also recommended that Miss D be paid £100 compensation for the distress and inconvenience she had been caused.

Moneybarn did not accept our investigator's view. It said that the issue was raised just less than six months after Miss D acquired the car. It instructed an independent engineer to inspect the car and that the report concluded that on balance the issue was not present at the point of supply. It said that no evidence had been provided to show the findings were

incorrect. It also noted that it offered to have a further inspection carried out but this was not accepted.

Miss D said that she had paid £300 for insurance which she had cancelled and had been told she would not get a refund for.

### **my findings**

I've 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, inconsistent or contradictory, I have made my decision based on the balance of probabilities - that is what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

My role is to decide each case based on its merits. I take relevant regulations into consideration but my decision is based on what I consider fair and reasonable given the individual circumstances of each complaint.

Miss D acquired a used car through a conditional sale agreement with Moneybarn. Under the regulations Moneybarn is liable if the car was not of satisfactory quality or not fit for purpose at the point of supply. Satisfactory quality takes into account the age and mileage of the car and also considers issues such as durability.

When Miss D acquired the car it had been driven around 59,500 miles. Miss D experienced an issue with the car losing power while on a motorway in April 2018 and then reported a loud noise coming from the engine. Although Miss D had been driving the car for just under six months at this time she had driven just under 2,000 miles.

An inspection report was arranged by the dealer to assess any issues with the car. I have looked through this report and it confirms the presence of a loud noise and also that the car went into limp mode within a short road test. Although no fault codes were found, this clearly supports the presence of the issues Miss D raised.

There is differing evidence as to what was the cause of the noise. The inspection report carried out for the dealer says that the noise *'doesn't have the characteristic whine expected from a turbocharger'* however it goes on to say that this cannot be ruled out and further investigation was needed. Miss D arranged for two investigations to be carried out. The first identified a fault code and noted the noise as coming from the turbocharger and advised Miss D not to drive the car. The second report found issues with the car and again noted the need to replace the turbocharger.

Moneybarn offered for a further inspection to take place. However given the time that has passed and the inspections that have already been undertaken, I do not find that Miss D acted unreasonably by not accepting this.

On balance, based on the inspection reports, it is clear that there is a fault with Miss D's car and it appears more likely than not that this is linked to the turbocharger.

The outstanding issue is whether or not the issue was present or developing at the point of supply. I have also considered the issue of durability.

The inspection report carried out for the dealer said that given the time since acquisition and that the noise was not suggested to be present at the point of sale it considered the car was fit for purpose and of satisfactory quality at the point of supply.

I have listened to the call on which Miss D discusses the inspection report. I note the person (who Miss D addresses using the same name as noted on the inspection report) says the report has been tampered with. But as I cannot say for certain that this call is with the engineer that undertook the inspection I have not considered this point further.

I have considered that Miss D had driven less than 2,000 miles before the issue arose. So, while the noise may not have been present at the point of sale, it is possible that the issue was developing at that time. I also find that given the limited mileage Miss D has covered before a major part failure, that the car was not sufficiently durable at the point of supply.

On balance, while I note the comments Moneybarn has made, I find it reasonable to accept that the car was not of satisfactory quality at the point of supply. I note our investigator recommended either replacement or rejection. While I can understand why a replacement was suggested, this can be difficult to deliver. Given the time that this issue has been ongoing I think it fair that Miss D is allowed to reject the car.

Miss D also raised concerns about the service history of the car and how it was advertised. However, as I have found that she should be able to reject the car I have not considered these issues further.

As our investigator set out the car should be collected at no cost to Miss D and her agreement ended with nothing further to pay. Any deposit paid would also be required to be refunded although no advance payment is noted in the conditional sale agreement. Miss D has not had use of the car since 19 April 2018 and so I find it reasonable that any payments she has made since this date should be refunded along with any costs she has incurred in regard to car inspections. I note a receipt for £130 has been provided for one inspection.

Miss D has also noted that she paid insurance for the car for the period she was not able to use it. As I uphold this complaint I find it reasonable that Miss D is refunded any insurance payments from 19 April 2018.

Our investigator also recommended that Miss D be paid compensation for the distress and inconvenience she has been caused. I can see that this issue has caused Miss D inconvenience. She has had the car investigated by two different companies and has explained that her commute to work has been affected. Therefore I agree with the recommendation that she be paid £100 compensation.

### **my final decision**

My final decision is that I uphold this complaint. Moneybarn No. 1 Limited should:

1. cancel the agreement with nothing further for Miss D to pay;
2. collect the car at no cost to Miss D;
3. refund Miss D the costs she incurred having the car inspected (subject to invoices / receipts being provided);
4. refund any payments made since 19 April 2018;
5. refund the costs Miss D has incurred for the insurance of the car from 19 April 2018 to the date of cancellation or settlement (subject to invoices being provided);
6. pay Miss D £100 compensation for the distress and inconvenience she has been caused; and
7. remove any adverse information relating to this agreement from Miss D's credit file.

Items 3, 4 and 5 are subject to 8% simple interest from the date of payment until the date of settlement.

If Moneybarn 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 25 February 2019.

Jane Archer  
**ombudsman**