

## Complaint

Mr A complains that Moneybarn No. 1 Limited refused to let him reject a faulty car.

## Background

In September 2018 Mr A acquired second hand car costing £25,000 funded by a conditional sales agreement. The car was some three years old and was sold as having done 82,987 miles.

Within a few weeks Mr A says he had identified a number of problems. He says there was a rip in a tyre, a loose seatbelt, an airbag warning, the fob battery was low and the front doors were squeaking. Mr A contacted Moneybarn and it in turn spoke to the dealer.

It was agreed that the dealer would carry out repairs, but Mr A didn't live close by and he suggested they be carried out by a third party at the dealer's expense. The dealer rejected this as it didn't consider it could guarantee the work. Moneybarn asked Mr A to contact the dealer to arrange the repairs. I gather he didn't do so, but had the tyre replaced.

Mr A brought his complaint to this service where it was considered by one of our adjudicators who recommended it be upheld in part. She noted that the Moneybarn had said it would look at the possibility of collecting the car to be repaired, but this hadn't been followed up. The issue of the disputed mileage hadn't been fully examined by Moneybarn as Mr A hadn't sent in the evidence it had sought.

She concluded that the various faults Mr A had raised were wear and tear issues which could be addressed by the dealer if Mr A had taken it back. As for the mileage discrepancy she said the photograph of the dashboard provided by Mr A wasn't proof as it could have been from another car or from any date. However, she thought that Moneybarn had failed to follow up the offer of collecting the car and for that she thought it should pay £50 in compensation.

Moneybarn agreed, but Mr A said he wished the matter to be considered by an ombudsman and that he would send in further information which has yet to be received. I issued a provisional decision as follows:

I noted that Mr A had asked that I defer a decision to allow him to provide more information. However, I pointed out that had had some nine months to do so and I could see no reason why I should delay matters yet further. I appreciated he had said the Covid 19 crisis has hampered him, but only in the preceding few months so I didn't consider it fair to Moneybarn to delay matters further.

In any event, I explained that the issue for which he was seeking more time concerned the mileage discrepancy and I was happy to accept that the figure shown on the invoice was inaccurate. I said I didn't know what was shown on the car advert or whether Mr A inspected the car before purchase and had seen the actual mileage. However, I noted the MOT carried out in December 2017 recorded a mileage figure of 81,343, the next in December 2018 recorded 90,193 miles and in December 2019 it had done 103,217 miles.

These suggested Mr A has been doing about 12,000 miles a year and it seemed more likely than not the actual mileage at the time of sale was some 87,000 miles. I had no reason to think this would have caused Mr A to walk away from the purchase, but he might have been

able to negotiate slightly better price. I thought it hard to say how much this might have been, but if one took 0.4 pence a mile as a reasonable figure I suggested he may have saved £160. I added that a higher mileage means greater wear and tear on the car which should result in a reduced price.

As for the other issues Mr A encountered, I noted the dealer was willing to repair these and Mr A chose not to accept that offer. It may have been inconvenient for him to get to the dealer, but it was his choice to buy a car from that dealer and so he must accept the consequences of that decision. I agreed that Moneybarn didn't follow up its offer to see if collection would be possible and for that I considered compensation of £50 to be fair.

All the issues Mr A complained of regarding the state of the car appeared to be matters of wear and tear and I said I had seen no evidence that they were of such seriousness that they would merit rejection. I said it was quite possible for these to be repaired and I thought the dealer's offer to make repairs was both fair and reasonable. The faults didn't prevent Mr A from making use of the car and he seems to have done over 12,000 miles a year which is greater than the average for cars. I also said that it is not obliged to pay for work he had done at third party garages.

### **My findings**

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

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time. The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

The business has accepted my provisional decision, but Mr A has not. He asked for an extension to the deadline to respond and this has been given. He has submitted a subject access request to Moneybarn and the broker. I already have had access to all Moneybarn's records and I cannot see that further information will add anything of value. I would add that our adjudicator issued her view letter a year ago and my provisional decision was sent out over two months ago. I don't consider it fair to continually defer reaching a conclusion on this

complaint. I believe Mr A has been given a considerable amount of time to supply further information.

Mr A also said that I hadn't been given the correct information or evidence supporting his claim. I am satisfied I have seen all that he has submitted. My summary of the background is a distilled version of that set out by Mr A and I have already accepted that the mileage quoted by the dealer was wrong.

Mr A also sent another copy of an estimate he had from a local garage for work on the steering column and for new tyres. This was dated 28 September. I have noted that Mr A didn't complain about the steering column to Moneybarn, but did raise it with this service later on. He also refers to a 30-day cooling off period which I presume refers to the consumer law which allows a consumer to return goods if they are not fit for purpose taking into account the age and previous usage.

I don't disagree that Mr A complained to the dealer within 30 days, but I have not been persuaded that the car suffered from such defects as to be deemed faulty taking into account its age, mileage and price. The car had covered a very high mileage for its age and the issues Mr A has mentioned are relatively minor which could be repaired and which the dealer offered to address. I think the fact that he has been able to make extensive use of it over a period of almost two years indicates it was fit for purpose at the point of sale.

Of the various issues Mr A has raised, the tyres, squeaking doors etc I believe these to be wear and tear. The only issue which may not have been wear and tear was the apparent issue with the steering column, but I must stress that it only may have been more than wear and tear. Having given the matter much consideration I don't consider that to be sufficient to merit rejection.

On the matter of the mileage it is clear from Mr A's comments that he was looking for a price reduction of the incorrect information given by the dealer and I am happy to agree.

I have concluded that my original decision should stand. Mr A is entitled to some recompense for the incorrect mileage being quoted and for Moneybarn's failure to follow up on its offer.

### **My final decision**

My final decision is that I uphold this complaint and I direct Moneybarn No. 1 Limited to pay Mr A £160 to reflect the incorrect mileage and £50 compensation. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 September 2020.

Ivor Graham  
**ombudsman**