

## complaint

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

## background

Miss C acquired a car with the benefit of a conditional sale agreement with Moneybarn. The car was approximately 5 years old and had done just over 37,000 miles at the point of sale.

Miss C took possession of the car on 4 October 2017. The day after she called the garage to say there was a problem with the diesel particulate filter (DPF). She said her mechanic could resolve with this by regenerating it at a cost of £80. The selling garage agreed to this and sent Miss C £80.

On 10 October 2017, Miss C called again to say there seemed to a problem with the car's ignition system. The selling garage arranged to have the car inspected at the local main dealership, who said there seemed to be a problem with the fuel in that it seemed something had been added to it. It flushed out the fuel system, removed and cleaned the fuel tank and replaced the fuel filter.

At the same time it noted there was a problem with the clutch and said "*our master technician has diagnosed this as a slave cylinder. It has also been noted the gearbox is leaking some fluid, only slightly, but can still be related to the slave cylinder*", It estimated the cost of the repairs for this to be £1,036.07. The selling garage however took the car to a clutch specialist who didn't agree there was a problem so no repairs to the clutch were done at this time.

Miss C got the car back on 19 October but she complained there was still a problem with the clutch. An independent inspection however didn't find a problem. But two days later she contacted the garage to say she was concerned that, with the all the problems she'd had with this car to date, there'd be further problems that would cost her money. She wanted to return it and to unwind the credit agreement. The garage didn't agree and said the car was now running well.

Later that day Miss C called again to report white smoke coming from the exhaust. Since then she's also had problems with the engine management light coming on, the car going into "limp home mode" and further issues with the DPF. It's now been reported that the DPF is missing from the car.

Miss C says the car wasn't of satisfactory quality at the point of sale. She says the garage had agreed she could return the car and unwind the agreement but Moneybarn later denied this. And she says it's now failed its MOT and she doesn't feel it's safe to drive.

Moneybarn said the initial problems reported by Miss C had been fixed and the car was then running well. It said the smoke from the exhaust had been caused by something being added to the fuel and it didn't feel this had happened while the car was in the garage being repaired. It noted the independent ACE report hadn't identified any particular mechanical fault and didn't agree the car had been faulty at the point of sale. With regard to the DPF, this had been repaired by a mechanic of Miss C's choosing so any problems with that were for that mechanic and not the selling dealership.

Our investigator said if the car was found to be defective at the point of sale Miss C was entitled to bring a claim against Moneybarn. In this case there'd been two main issues reported by Miss C had very soon after she acquired the car. These were problems with the clutch and the DPF.

With regard to the DPF, Miss C had had this regenerated by her own mechanic shortly after purchase. But the problems with the DPF had continued. She'd taken into account Moneybarn's view that something had been added to the fuel and this had caused the smoke but against this she'd considered the recent independent inspection that reported "*excess white smoke emission consistent with a DPF defect*". She said she couldn't be satisfied this problem had been caused by Miss C knowingly or unknowingly.

The independent report had identified problems with the clutch and DPF. Although it couldn't be certain these had been present at the point of sale, this had to be seen in the light of the other information available. In particular she'd seen an email from the main dealership to the selling garage on 13 October that confirmed there was an issue with the clutch at that time. But the selling garage hadn't had the repairs done. Instead it had taken the car for a second opinion to a specialist centre, who'd said there wasn't a problem. However the recent independent report in April 2018 had concluded there was a problem with the clutch and, on balance and taking all this information into account, the investigator felt it was probable that this problem had been there at the point of sale.. On that basis she felt the car had been faulty at the point of sale. She recommended Miss C be allowed to terminate the agreement without further liability to her.

In addition, Moneybarn should collect the car and remove the agreement from Miss C's credit file, reimburse her payments (together with 8% simple interest) for the periods she'd been without the car, and reimburse her payments from 27 April 2018, the date of the independent report and the date from which the car had failed to start. She also recommended Moneybarn pay Miss C £200 compensation for the inconvenience and trouble she'd had.

Moneybarn disagreed and said in summary:

- the initial faults had been repaired and the car was running well when it was returned to Miss C on 19 October. It felt that something had been added to the fuel deliberately to cause it to emit white smoke and that it was more than coincidence.
- The DPF had been regenerated by Miss C's mechanic and he was responsible for any ongoing issues with this;
- The recent independent report hadn't found any specific mechanical issues;
- The car had done over 4,330 miles since inception and it felt any ongoing issues with the clutch were wear and tear.

## **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 available is incomplete or disputed ( as some of it is here) then I have made my decision on the balance of probabilities or in other words what I consider to be more likely than not to have happened.

As the provider of the car under the finance agreement, Moneybarn has a responsibility to make sure that the car provided to Miss C was of satisfactory quality. That is what a reasonable person would consider to be satisfactory, which in the case of a car will include its age and mileage. But there are limits to this responsibility, in particular that any problems must have been present or developing at the point of sale. It's clear Miss C has had a number of problems with this car but for the reasons given I've focussed on the quality of the car when Miss C acquired it.

Miss C took delivery on 4 October but within the first week she'd raised concerns about the DPF and the clutch. Looking first at the DPF it's clear Miss C reported an issue with the DPF almost as soon as she got the car. However Moneybarn says Miss C made her own arrangements for this to be repaired and any ongoing problems should be referred back to her mechanic.

But the initial repair was simply a regeneration of the DPF and since then, there's been a number of other problems reported with the DPF. This was most recently confirmed by the independent report.

I can see the main dealership and Moneybarn believed the white smoke was caused by something being added to the fuel and that it wasn't a mechanical fault. But it's not clear that's the case or if so, who was responsible. I've considered the first inspection on 13 October that reported the fuel in the car was "too heavy" and something had been added. However it didn't identify any smoke from the exhaust at this time so it's not clear why, if a similar event occurred two weeks later (as has been suggested) smoke began to appear. In the circumstances I can't be satisfied that this was the cause of the later problems or that Miss C was responsible for this.

However Miss C also reported a problem with the clutch within the first week. The car was then inspected by a main dealership on 13 October who identified a problem. And the recent independent report in April 2018 also found a problem with the clutch in the same terms as Miss C had been complaining about since the first week.

I've seen Moneybarn says even if there is an issue- which it doesn't necessarily agree with- its wear and tear but I can't agree. A fault with the clutch was diagnosed on 13 October but not repaired and, as the recent report has said, it's still there.. In the circumstances I consider it more probable than not that this problem was present at the point of sale and on that basis, the car wasn't of satisfactory quality.

Where I find a car is of unsatisfactory quality I then have to consider how best to remedy this. In short, the choices are to repair or replace the car or to allow Miss C to reject it and unwind the credit agreement.

In this case the car's had a number of problems which began almost as soon as Miss C acquired it. Understandably by 19 October Miss C had lost confidence in it and I think that would be the position even if the car was repaired again. Moreover the selling garage had the opportunity to carry out repairs to the clutch in October but didn't do so. In addition if I look at the recent history for this car it appears that repairs may not be possible or at least not at a price that just be justified against the value of the car.

In the circumstances I consider that the only fair outcome is to allow Miss C to reject the car and to have the agreement unwound. Moneybarn should also

- a) remove all reference to this agreement from Miss C's credit file;
- b) arrange to collect the car at no cost to Miss C;
- c) refund any deposit paid by Miss C together with simple interest at 8% from the date of payment to the date of repayment;
- d) reimburse (together with simple interest at 8%) payments made by Miss C while the car was in for repair and those made after 27 April 2018 when the car was considered to be unfit to drive.

In addition I consider that it's fair for Moneybarn to compensate Miss C for the trouble and inconvenience she's had with this car since October 2017. The investigator has recommended £200 and I consider this is reasonable.

### **my final decision**

My final decision is that I uphold Miss C's complaint and direct Moneybarn No 1 Limited to

- a) allow Miss C to unwind the agreement and remove details of the agreement from Miss C's credit file;
- b) refund any deposit paid by Miss C together with simple interest at 8% from the date of payment to the date of repayment;
- c) reimburse (together with simple interest at 8%) payments made by Miss C while the car was in for repair and those made after 27 April 2018 when the car was considered to be unfit to drive;
- d) collect the car at no cost to Miss C;
- e) pay Miss C £200 compensation for her trouble and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 16 September 2018.

Cerys Jones  
**ombudsman**