

## complaint

Mr G complains that Moneybarn No. 1 Limited supplied him with a car that was not of satisfactory quality. He wants a refund.

## our initial conclusions

Our investigator recommended that Mr G's complaint be upheld. She had experts' reports showing that the car had modifications to the DPF filter and the EGR valve that were so severe that they would have made the car un-roadworthy. On this basis she thought Moneybarn should refund Mr G's money pay interest on this sum and take the car back. She also thought it should amend his credit file.

Mr G accepted this recommendation. Moneybarn didn't. It gave a number of reasons for its rejection, in summary these were:

It doesn't "*source*" the vehicles it provides finance for, the consumer does that. The "*onus*" was on Mr G to make sure he was happy with the condition of the car. Further, if he had any concerns about the car he should've told it at the time.

Shortly before Mr G acquired the car it passed its MOT. If it had the modifications to the DPF filter and EGR valve at that point it wouldn't have passed the MOT. This led it to think these modifications were carried out after the car was supplied by it to Mr G.

It didn't think that Mr G's expert "A" was impartial. It had done work on the car. It had a "*vested interest*" in blaming Moneybarn. Rather than "*admitting that [its] own repairs have been ineffective or poorly conducted.*" Further it thought it was "*not uncommon*" for garages to blame the supplier when it came to their attention that the car was supplied via finance. Perhaps because the garages think finance companies "*can afford the repairs, regardless of who should be held liable*". It thought it significant that "A" carries out the very modifications which would've caused the car to fail the MOT.

It thought its own expert "S" was much more reliable. Not only because it hadn't done any repairs but because it had said explicitly that it had an overriding duty to the court in preparing its report.

It pointed out that the sales invoice had handwritten comments on it about modifications. It can't be sure who wrote them or when. And in any case the modification mentioned related to the ECU not the DPF filter or the EGR valve.

Further it said it knew nothing about any modifications at all until Mr G told it about problems with the car around six months after he acquired it. By this time he'd managed to drive it for about 6,000 miles.

It thought it possible that it was Mr G who had these modifications done.

S had said there were also problems with the other parts of the car but it had said these were normal wear and tear items which in the circumstances didn't make the car of unsatisfactory quality.

Moneybarn asked that an ombudsman review Mr G's complaint.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've finished my review. I think that Moneybarn ought to take this car back and give Mr G a refund. Please let me explain why I've come to this conclusion.

I've read and thought about the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr G and Moneybarn don't always agree about what happened here. Where that happens I have to decide which I think is the most likely version of events.

*who is responsible to make sure the car was of satisfactory quality when it was supplied and why?*

I have to take into account relevant law when coming to a decision. Mr G acquired a car using a conditional sale agreement. The law says the supplier, here Moneybarn, has to make sure the car is of satisfactory quality. The onus isn't on the consumer here and never can be in these circumstances, it's as simple as that.

*is the car of satisfactory quality now?*

I agree with Moneybarn. Its expert is the more impartial one for the reasons it says. And what did S say? It said the modifications of the DPF filter and the EGR valve made the car not fit for purpose.

It couldn't say when the modifications were done. But in its opinion the MOT would've picked up the modifications if they'd been present then. And the car would've failed the MOT.

The records I've seen show the MOT was done about three months before the car was supplied.

Further S said that the modifications to the ECU would need further investigation. I think it's possible that this modification too could have made the car of unsatisfactory quality. I say this because Moneybarn has said and I agree that modifications to the ECU can cause catastrophic engine failure. In the circumstances this might explain the problems Mr G is complaining about.

For all of these reasons I think it is clear that because of the modifications there is something wrong with the car now that has made it un-roadworthy. But the crucial question is when were the modifications done? As Moneybarn should only fairly and reasonably be held to account for modifications that were there at the point the agreement was made with Mr G. Let's take a look at that point next.

*when is it likely that these modifications took place?*

The sales invoice has a handwritten note on it saying "*modified car*". It then lists a number of things including "*possible remap to engine/ECU*". It isn't clear if the list of things coming after the words modified car is meant to be a list of the modifications or not.

The sales invoice doesn't mention modification of the DPF filter and the EGR valve specifically. But they could've been included in the catch-all *phrase "modified car"*.

I can't find the business, who I'll call "V" that seemingly wrote this on the invoice to ask it more questions. It's gone out of business according to the Mr G and Moneybarn.

I don't think the fact that the note is hand-written is, by itself, significant. It may well have been that V was an informal sort of place. It had its standard printed invoice and then any amendments were handwritten. There is space for this on the invoice and I don't get the impression that V was the kind of business that was overflowing with admin staff who could've typed up any amendments on the invoice directly. On the face of it, I think on balance, the note was written by V.

There was enough of a gap between the MOT and the supply of the car for the modifications to have been done before Mr G got it. So I don't think the timing of the MOT supports Moneybarn's version of events in the way it suggests.

I don't think it is significant that Mr G ended up going to A the modification specialist. Mr G says he had no idea what the modification was so that's why he went to a specialist to find out. That sounds reasonable to me. I've no reason to think he had any prior relationship with it. Neither in the circumstances, do I think it likely that A is seeking to blame someone else for shoddy work it did, as it seems likely the car was modified long before A ever laid eyes on it.

It's regrettable that in Moneybarn's experience garages try to shift the blame unfairly on finance companies. But whilst that may be a practice it is aware of in a wider context, it hasn't explained why this might be so in this individual case or shown that A in particular has a history of doing this.

Neither does what I've seen make me think Mr G got the modifications carried out himself after he got the car. The sales invoice says modified car and he received the invoice when he got the car. S independently confirms the car is modified. So everything points to the car having been modified at the point it was supplied rather than afterwards.

Mr G did get to drive the car but I don't think just because he was able to drive the car at some points this means that the faults weren't there from the get-go. Nothing I've seen says that any of the modifications would've prevented Mr G from driving the car for 6,000 miles.

For all of these reasons I think it's fair and reasonable the Mr G be allowed to return the car to Moneybarn and get a refund.

### **my final decision**

My final decision is that Moneybarn No. 1 Limited must:

1. Allow Mr G to reject the car and it must collect the car at no cost to Mr G.
2. End the agreement with nothing further owed by Mr G. And mark Mr G's credit file showing the agreement was settled with nothing further owing by him.
3. Refund any deposit and any fees paid by Mr G in relation to the agreement.
4. Refund any repayments that Mr G made when the car was not available for him to use, for example when the car was in the garages having work done.
5. Refund any car hire fees Mr G paid at the same time as he was making repayments to the agreement.
6. Refund any amounts that Mr G paid to repair the car for which he has provided invoices.

Moneybarn should add interest to the refunds set out in 3,4,5 and 6. The interest should be at the rate of 8% simple per year. The interest to run from the date the payments were made until the date of settlement.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mr G can reclaim the tax if he is able to.

Mr G should refer back to Moneybarn if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 August 2017.

Joyce Gordon  
**ombudsman**