

## **complaint**

Mrs D is unhappy that a car supplied to her under a conditional sale agreement with Moneybarn No. 1 Limited (Moneybarn) was of an unsatisfactory quality.

## **background**

On 12 July 2018, Mrs D took out a conditional sale agreement with Moneybarn to cover the cost of a used car. On 1 August 2018 she told the dealership she'd got the car from that the air-conditioning (AC) wasn't working properly and the engine management light (EML) had come on.

Mrs D got a report from an independent garage on 6 August 2018, which said there were faults with the AC, and the EML needed further investigation. Mrs D told Moneybarn about the problems with her car on 17 August 2018.

The dealership attempted to repair Mrs D's car but, on 25 October 2018, Mrs D told Moneybarn that the car wasn't fixed – the AC still wasn't working, there was a fuel smell in the heater and there were issues with the steering. Moneybarn arranged for an independent engineer to inspect Mrs D's car. This didn't happen until 27 February 2019 and the independent engineer said:

- The breather pipe had been detached for some time, there was an associated oil leak, and oil was leaking onto the exhaust. This was causing the fuel smell.
- While the AC had no visible damage, defects or leaks, it wasn't working properly.
- There were no issues with the steering, and the EML wasn't lit.

The engineer said it was very unlikely the breather pipe/oil leak issue was present when Mrs D bought the car, and said the car was of a satisfactory quality at the point of sale. So Moneybarn didn't think they needed to do anything.

Mrs D was still unhappy and brought her complaint to the Financial Ombudsman Service. Our adjudicator thought any reasonable person would expect the AC to be working when they bought a car for almost £10,000. Because the independent engineer said the AC still wasn't working in February 2019, the adjudicator said the car was of an unsatisfactory quality at the point of sale. And because the dealership had been given the opportunity to fix this, the adjudicator also said Mrs D should be allowed to reject the car.

He recommended that Moneybarn unwind the original agreement and refund Mrs D her deposit, plus interest; refund her 10% of the payments she'd made to Moneybarn; remove any adverse credit history from her credit file; and pay her £250 for the distress and inconvenience she'd been caused.

Moneybarn didn't agree with the adjudicator. They don't believe that the fault with the AC means the car wasn't of a satisfactory quality and doesn't justify the car being rejected. So they've asked that an ombudsman review the complaint and make a final decision.

## 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 this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, and codes of practice; and (where appropriate) what I consider was good industry practice at the time.

Mrs D was supplied with the car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The relevant law says, amongst other things, that the car should be of a satisfactory quality when supplied. And if not, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description and other relevant circumstances.

In this case, this would include things like the age and mileage at the time of sale; and the vehicle's history. The quality of the goods also includes their general state and condition; and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. Durability means that the components within the car must last a reasonable amount of time.

When Mrs D took possession of the car, it was around 6 years old and had done 53,334 miles. I'd expect some wear and tear in a vehicle of that age and mileage. But I think any reasonable person would expect the car to be safe; driveable and without any significant undisclosed mechanical issues.

So, if I thought the car was faulty when Mrs D took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

There's no dispute there were some issues with the car. Mrs D had reported issues with the EML, the smell of fuel and the steering. But the crux of this complaint is the issues with the AC, and whether this means the car was of a satisfactory quality or not.

I've seen the independent engineer's report of 27 February 2019. This says that *"on functioning the air conditioning we found this to be ineffective due to ambient temperature emitting through the heater vents when the temperate setting was set to low."* So, essentially, the AC was only working when switched on fully – it'd gone from having a functioning range of temperatures to having two effective settings – off and high.

The engineer also says that *"fault codes were present as follows: P0530 "refrigerant pressure sensor" which was historic."* Having investigated this fault code, it relates to issues with the AC and can result in the EML being lit.

So the engineer found the AC wasn't working, and that this was an historic issue which would cause the EML to come on. And, within 30 days of taking possession of the car, Mrs D complained that the AC wasn't working and the EML was lit. And the dealership tried and failed to fix these issues.

So, while the independent engineer said the issues with the breather pipe/oil leak weren't present when Mrs D purchased the car, and there were no issues with the steering; I'm in no doubt that the AC issues were present when Mrs D purchased the car. And, despite the dealership attempting to repair the AC in 2018, the fault still remained in February 2019.

So the only question that remains is whether the fault with the AC makes the car of unsatisfactory quality, which means Mrs D has the right to reject this. Moneybarn don't believe this is the case.

Mrs D bought a used car, so I wouldn't expect the same quality as I'd expect in a brand-new car. But I would expect the car to be free from major defects. And I have to consider the price Mrs D paid for the car - almost £10,000. The more expensive the car, the fewer minor issues I'd expect to be present.

Where a £10,000 car is supplied with a major component like AC, given the price paid, a reasonable person wouldn't expect there to be a fault (which nobody seems to be able to get to the bottom of). And I consider AC that only works when turned fully up, and not at a lower temperature, to be a fault. And this fault is historic and results in the EML lighting up.

Because with Mrs D's car was supplied with a fault in a major component, I'm in agreement with the adjudicator that the car wasn't of a satisfactory quality when it was supplied. And, because the dealership has already had their opportunity to fix the problem, and they haven't, I also agree that Mrs D has the right to reject the car.

The AC not working has affected Mrs D's use of the car – she couldn't use a significant feature of the car that she's paid for, so it's fair some of her payments are returned to reflect this. And, while it hasn't stopped her from being able to drive the car, the whole issue has caused Mrs D some inconvenience – she's had multiple trips to the dealership to try and get this repaired, and she hasn't been able to do so.

So, I think that the recommendations made by the adjudicator are reasonable and are in line with what I'd normally award in circumstances like these.

But Mrs D is also behind in her payments to Moneybarn, and it wouldn't be fair to say she shouldn't pay for a period of time when she had use of the car. So I also think Moneybarn should be able to offset these arrears against any refund provided.

Both Mrs D and Moneybarn have been given the opportunity to comment on this specific change to the investigator's recommended remedy. And neither of them has objected to this.

### **my final decision**

For the reasons explained above I uphold Mrs D's complaint. Moneybarn No.1 Limited must

- unwind the agreement and collect the vehicle at no extra cost to Mrs D;
- refund the deposit paid plus 8% simple interest added, from date of payment to date of refund;
- refund 10% of all monthly payments received for impaired use;
- if applicable, remove any adverse credit history from Mrs D's credit file; and
- compensate Mrs D with £250 for the distress and inconvenience caused.

But Moneybarn No.1 Limited can also deduct 90% of the value of any monthly repayment arrears (90% because 10% of any payments that should've been paid would've been refunded to Mrs D) from the above. The remaining arrears should then be written off.

And, if the above is less than 90% of the current arrears, then the current arrears should be reduced by 10% and then further reduced by the full value of the above. Moneybarn would then be free to pursue Mrs D for any difference.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 20 August 2020.

Andrew Burford  
**ombudsman**