

## **complaint**

Mr B complains that a car that was supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited was misrepresented to him.

## **background**

On 10 March 2018 Mr B acquired a car with the benefit of a conditional sale agreement with Moneybarn. Mr B says he was told by the dealership that it was a 1.6 diesel and this was also confirmed on the sales invoice and in the advert. He says when he went to insure the car it was confirmed as a 1.6 diesel and was insured on this basis.

But he says the car developed problems with its performance and seemed to be underpowered. He took it back to the garage three times within the first few months and the garage then replaced the pressure boost sensor and said it was fixed. Mr B felt it was still underpowered. When he checked the car's documents, he found it was a 1.2 diesel, not a 1.6 as he'd been told.

Mr B says if he'd known he wouldn't have bought the car. His previous car was a 1.8 diesel and he was looking for something similar. He feels he was misled by the selling garage and persuaded into acquiring the car on the basis of the misrepresentation. He'd like the agreement cancelled.

Moneybarn disagreed and said regardless of what was said in the sales invoice and dealer's advert, the conditional sale agreement had described the car correctly so it felt Mr B would have known this before he signed the agreement. It noted the engine size was correctly described in the car's registration form (V5C) and the HPI document which again would have put Mr B on notice of the actual engine size.

It noted Mr B hadn't complained about the misrepresentation until August 2018, some 5 months after he'd acquired it and only after he was facing some financial difficulties. It didn't agree he'd been misled or that it should now cancel the agreement.

Our investigator said Mr B had acquired the car under a conditional sale agreement with Moneybarn and, as such, Moneybarn was responsible if the selling garage told Mr B something about the car that was untrue but which he then relied on in deciding whether to go ahead in acquiring the car.

There was little direct information about what had been said between the dealership and Mr B at the time. The finance agreement listed the car as a 1.2 diesel but the sales invoice signed by Mr B stated the car was a 1.6. The insurance document also recorded the car as having a 1.6 engine, and this fitted with what Mr B had said about looking for a car with a similar sized engine to his previous car, a 1.8 diesel. While there was no clear information about what had been said at the dealership, on balance he felt it probable Mr B had been told this car had a 1.6 engine and that he'd gone ahead on that basis. In particular he thought it unlikely he'd have insured it as a 1.6 diesel, and paid higher premiums as a result, if he hadn't genuinely thought that was the case.

He'd also taken into account Mr B's concerns about the car's lack of power once he'd taken delivery. This was clearly important to him and added weight to his statement that he wouldn't have been interested in a car with a smaller engine.

Although Mr B had seen and signed the finance agreement, which was correct, this had to be balanced against the other information, in particular the sales invoice that showed a different engine size. There was conflicting evidence but on balance our investigator felt there'd been misrepresentation by the dealership that Mr B had relied on in deciding to go ahead with this car. On that basis he recommended that Mr B be allowed to cancel the agreement with nothing further to pay. However Mr B had use of the car for several months before it was taken back so he didn't recommend a refund of any payments. He did however recommend Moneybarn pay Mr B £150 for the inconvenience caused by what had happened.

Mr B accepted the recommendation. Moneybarn however didn't agree. It felt Mr B had had enough information to know the correct size of the engine or at least to have queried the information. It asked for the complaint to be referred to an ombudsman.

### **my provisional findings**

On 3 June 2019 I issued a provisional decision in which I said, in summary:

If Mr B was given misleading or inaccurate information which persuaded him to enter into the finance agreement, then as the provider of the finance, Moneybarn would be responsible for this and could be required to take steps to put matters right.

There was strong evidence to suggest Mr B was told he was buying a 1.6 diesel. This was stated in the sales invoice signed by the garage and was identified in the insurance policy he took out for the car at this time. I thought it improbable Mr B would have insured it as 1.6 diesel unless he understood this to be correct and the only way he'd have come to that view was if he'd been told this by the garage.

I also took into account that Mr B had had a 1.8 engine in his previous car and had been looking to replace it with something similar. Taking all this into account I felt it more probable than not that Mr B understood he was acquiring a 1.6 diesel and that he wouldn't have been interested in a car with a lower specification. On that basis, I considered that, intended or not, the car had been misrepresented to Mr B and that Mr B relied on this in deciding whether to go ahead.

But this had to be balanced against the fact that the correct engine size was stated in the conditional sale agreement signed by Mr B. It wasn't clear why Mr B hadn't spotted this at the time but it seemed he'd assumed the details were the same as he'd had before and went ahead on that basis. And when the car's log book was sent to him shortly after, he simply put it away without reading it in detail. Although this didn't take away from the original misrepresentation, it did explain why Mr B hadn't seen the error sooner. As Mr B was in part responsible for this, I'd taken it into account in the remedy.

In the circumstances of this particular case, I was of the view Mr B hadn't received the car he'd been led to believe. On that basis, I proposed that he should now be allowed to end the agreement with nothing further to pay. Moneybarn should also mark the agreement as settled on Mr B's credit file and ensure any adverse information recorded in relation to this agreement was removed. Mr B had made a number of payments until the issue was identified but these payments reflected the use he'd had of the car at this time so I wouldn't be asking Moneybarn to refund them. And for the reasons given, I consider Mr B was in part responsible for the time it took to identify this error so I didn't consider it reasonable for Moneybarn to also pay compensation to Mr B.

Mr B accepted the decision but also asked for the deposit of £50 he'd paid to the garage to be refunded. Moneybarn also accepted the decision but queried the refund of this deposit as it had no record of it.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I haven't seen anything to change my provisional view and I've therefore decided to adopt this as my final decision.

I've looked at the information available and on balance, I think it probable that Mr B was looking to find a similar sized car as a replacement and that this was what he understood he'd be getting when he agreed to go ahead with this car. And it seems clear to me that this must have been part of the discussion with the garage as this was what was shown on the sales invoice and on the back of that, in the insurance document. In the event the car was a smaller sized model which I don't believe Mr B wouldn't have bought had he known this at the time. For that reason I remain of the view it's fair and reasonable in the circumstances to allow Mr B to reject the car and cancel the agreement.

However I didn't agree that Moneybarn needed to refund the monthly payments already made by Mr B or to pay him compensation. The correct details were set out in the finance agreement and in the car's log book so I felt Mr B could have identified the problem at the time and, if he had, then the problem could have been resolved sooner. And the monthly payments simply reflected the use Mr B had of the car until the problem was identified.

In his comments Mr B has said he also paid a deposit of £50 to the garage. However this wasn't shown in the finance agreement and it appears to have been a private arrangement between Mr B and the garage. If Mr B wishes to pursue this then I advise him to contact the garage but I can't see that this money was paid to Moneybarn or that it was included in any way in the finance arrangement so I can't reasonably ask Moneybarn to refund this as well.

**my final decision**

My final decision is that I uphold Mr B's complaint in part and direct Moneybarn No 1 Limited:

- to allow Mr B to cancel the finance agreement
- to mark the agreement as settled on Mr B's credit file and remove any adverse information recorded in connection with this agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 August 2019.

Cerys Jones  
**ombudsman**