

## **complaint**

Mr J complains that Moneybarn No. 1 Limited wouldn't let him reject a car.

## **background**

In July 2017 Mr J bought a second hand car costing £4,999 with funding provided by a conditional sale agreement with Moneybarn. It was some eight years old and had done around 71,000 miles. He says he encountered a number of problems with the car.

He says the front brakes, windscreen wipers and key fob were faulty. The faulty key meant he couldn't lock it and so his insurance was void. He says he bought a key battery and took it to the dealer, but it didn't fix the key. He says he was also promised MOT renewal soon after he purchased the vehicle. This didn't happen so he visited a local garage and the car failed MOT on 1 September 2017 due to:

- *front brake disc in a such a condition that it is seriously weakened,*
- *offside rear coil spring not correctly located,*
- *front windscreen wiper does not clear the windscreen effectively*
- *advisory notice offside rear nail in tyre.*

Some 10 days later the dealer arranged for another garage to carry out a MOT which it passed without any work being done apparently. Mr J had concerns and refused to drive the car or pay Moneybarn and asked that it take it away. It did so. It rejected his complaint and said that it would cover the cost of a further MOT. It also said the dealer's pre-delivery inspection didn't identify any problems.

Mr J brought his complaint to this service where it was considered by one of our investigators who recommended it be upheld. She noted Moneybarn's offer, but couldn't see any call attempts from the business in the six months period before the car was taken back asking to arrange another inspection or to make necessary repairs. She thought it would have been appropriate of the business to have repaired the car, but it was too late as it had since been repossessed.

She believed that as Mr J had raised his concerns shortly after he acquired the car she thought it reasonable to conclude that repairs were required. She asked the business to explain why the MOT passed just 10 days later without any repairs but it said that it didn't know.

The investigator said there was a lack of clear evidence from the business and it was difficult to establish what had happened. However Mr J's testimony supported by evidence from both parties suggests that he brought the issues to the dealership's attention without obtaining any resolution. On balance she considered that Moneybarn should end the agreement with nothing more to pay and remove any adverse entries it had placed on Mr J's credit file. Moneybarn didn't agree and said it had been willing to arrange for another MOT and it noted Mr J had driven the car for 5,000 miles.

## **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.

Although the evidence is scant I am satisfied that there were issues with car shortly after Mr J acquired it. I accept that the lock didn't work and this limited his use of it as he could only leave it in places which were secure. That would also have affected the validity of his insurance.

In the circumstances I would have expected Moneybarn to pursue a resolution to his complaint, but I have noted that its calls to Mr J were seeking payment of arrears. It didn't appear to actively seek to deal with the faults.

I am also concerned that the car apparently passed a MOT a few days after it had failed one and there is no evidence of any repair work being carried out between the two. I can understand why Mr J felt uncomfortable with the work of the dealer and its associates. In normal circumstances I would usually suggest that the business arrange for the car to be repaired, but as it has been repossessed that is not an option.

I appreciate Mr J has had some use of the car, but as the investigator has pointed out this wasn't extensive and was primarily for getting to and from work. This is due to fact he couldn't leave it anywhere unsecure. Therefore I consider the suggested remedy put forward by the investigator is fair.

**my final decision**

My final decision is that I uphold this complaint and I direct Moneybarn No. 1 Limited to:

- end the hire purchase agreement with nothing further owed,
- remove any adverse information that may have been recorded with the credit reference agencies.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 7 June 2019.

Ivor Graham  
**ombudsman**