

complaint

Mrs P is unhappy with the quality of the car she acquired through Moneybarn No. 1 Limited.

Mrs P is being represented by her husband, Mr P. For ease, I will refer to Mrs P throughout the decision.

background

Mrs P acquired a 2011 registration automatic car on finance with Moneybarn. The cash price was £7,020. The agreement began on 22 January 2018, and was due to run for five years, with monthly repayments of £235.94.

Moneybarn's contact notes show that Mrs P contacted them on 26 January 2018 to say the tyres were very worn. Moneybarn advised her to speak to the garage.

Mrs P made contact again on 30 January 2018 mentioning withdrawing from the agreement within the first 14 days, saying she wanted to change the car because there wasn't enough space in the back for the number of car seats they needed. She made contact again on 3 February 2018 and the notes say *"customer called regarding withdrawal. (dealer/broker) are stating that customer has no right of withdrawal. Customer to contact dealer again and explain unwind not enough seats for customer. ..."*

The contact notes show that Mrs P rang again on 6 February 2018 to say the car wasn't fit for purpose and that she wanted to unwind the agreement. The notes indicate the dealership wasn't in agreement. And that Moneybarn *"Advised cust to speak with Dealership/Broker to get a decision of Unwind, because cust is worried due to her only having tomorrow left in the unwind period. Advised Mrs P to speak to the dealer"*.

On 9 February Mrs P rang Moneybarn again. The notes from the call show that Mrs P reiterated the car wasn't fit for purpose, said she hadn't been able to get hold of the broker and that Moneybarn had said they'd try to speak to them. The notes suggest that someone would be calling Mrs P to discuss the unwinding of the agreement.

On 17 February Mrs P rang to say there were further problems with the car, including the engine making strange noises and problems with the steering.

Later that month, Mrs P complained to Moneybarn and then contacted us after Moneybarn didn't provide a response within the 8 week regulatory timeframe. Mrs P said she was so concerned by the issues with the car, including safety concerns around the gears being faulty, that she'd needed to look for another one.

She also mentioned a specific incident where the gears jumped and the car lurched forwards – that meant from that point onwards (until they got a replacement car), she didn't use the car and her husband only used it when travelling by himself without the children. Mrs P said she needed to borrow her brother-in-law's car during that time so that she and the children could get around.

An investigator here looked into things and upheld the complaint. She thought the car wasn't of satisfactory quality. She recommended that Mrs P be allowed to reject the car and get her money back.

Moneybarn disagreed, primarily because it didn't think Mrs P had evidenced the car wasn't of satisfactory quality, within the first 30 days. Moneybarn said though that it was prepared to arrange an independent inspection of the car. By this point, the car was in Moneybarn's possession as Mrs P had voluntarily terminated the agreement. However, after saying it would arrange for an independent inspection to be carried out, Moneybarn later said the car had been sold at auction.

The case was passed to me to decide. I issued a provisional decision on this case on 27 March 2019. In this I said:

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, in this case the Consumer Rights Act (CRA), says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". The quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the 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 mileage at the time of sale and the vehicle's history.

Under the CRA, 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.

The CRA also provides that any contract to supply goods by description implies a term into the contract that the goods will meet that description.

In addition, s56 Consumer Credit Act 1974 provides that a finance provider can be liable for what was said by the supplier/credit-broker before the credit agreement was entered into.

was the car mis-sold/mis-described?

Mrs P has said she was told before getting the car it would fit three car seats in the back. But that when she got the car, she found this not to be the case.

So I've thought about whether Mrs P was misled about how much space there was for car seats. I'm not persuaded she was. I accept the dealer may well have said the car could fit three car seats in the back. But Mrs P hasn't said that the dealer said the car would fit the specific car seats she had in mind (Mrs P was expecting another child), in the back. And as I understand it, the car could technically fit 3 car seats in the back – dependent on the type of seat being used.

So the fact Mrs P couldn't fit her specific car seats in the back doesn't mean that what the dealer said was incorrect.

were the good of satisfactory quality?

In the case, the car was around seven years old and had done 46,450 miles when Mrs P acquired it. The cash price was £7,020. With this in mind, I think it is fair to say that a

reasonable person would expect that components of the car might have already suffered notable wear and tear. And there is a greater risk this car might need repair and maintenance sooner than a car which wasn't as road worn at the point of supply. That said, the car stills needs to be of satisfactory quality at the point of supply.

Mrs P brought the car to a tyre garage on 27 January 2018 to be looked at. By this point the car had driven only around 46,598 miles, so about 150 miles from supply. The garage noted that some of the tyres needed replacement and that there was a possible wheel alignment issue. Mrs P paid to have the tyres replaced. The dealership agreed to cover the tyre replacement on the basis the replacement tyres were 'budget' ones.

Mrs P had an inspection carried out of the car on 9 April 2018. The resultant report mentions a number of issues with the car – including problems with the gearbox, a tapping noise coming from the engine and a significant water leak. The report lists a number of fault codes, including ones relating to the gearbox.

Moneybarn says it has concerns about the evidence Mrs P has provided to support her case, in terms of:

- It being produced a considerable time after the car was supplied. The faults mentioned may not have been there at the outset.*
- The report is on an editable word document, there isn't a VAT registration number and no mileage is recorded.*

I've spoken to the mechanic who assessed the car to get more of an understanding of the issues with the car. The mechanic said he'd driven the car as part of his assessment and experienced problems with the automatic gears, including the gears 'sticking'. He confirmed that all of the fault codes listed in the report had been identified from diagnostics he carried out.

He also said that, in line with the report he'd produced, he wasn't sure of the exact cause of the water leak or the tapping noise coming from the engine (or indeed the extent of faults with the automatic gear system). It would've been very costly to identify the exact nature of the issues, and then repair costs would've depended on what was ultimately found to be wrong.

Having spoken to the mechanic, I'm satisfied that the report is genuine and an accurate reflection of the issues with the car.

So although I can't be sure of the exact cause of the problems, the issues mentioned in the report are potentially significant ones – relating to the engine and the automatic gears. The report (supported by the conversation I had with the mechanic) indicates these were not problems that could be quickly and easily fixed. So I can understand why Mrs P was concerned and looking to get a different car.

The car when supplied wasn't new but on balance I think the faults were present or developing at the point of supply. Mrs P raised a number of issues within the first 30 days, including concerns about the engine and noises coming from it. These were issues also mentioned in the mechanic's report produced in April 2018. So I think it likely the issues were present or developing when the car was supplied. Taking everything into account, on balance I find the car wasn't of satisfactory quality when it was supplied.

what is a fair and reasonable remedy?

Moneybarn has said Mrs P didn't evidence problems with the car, within the first 30 days. It says under the CRA it, the onus is on the consumer to provide evidence of the issues if they want to exercise their short term right to reject.

The relevant law says that to exercise the right to reject goods and obtain a refund, the consumer must indicate to the seller/provider that they are rejecting the goods and treating the contract as at an end within the first 30 days. According to Moneybarn's own contact notes, Mrs P made a number of references to wanting to 'unwind' and 'withdraw' from the agreement, within the first 30 days and give the car back. And the issues raised about the car included concerns about the tyres, the car pulling to one side and, on 17 February 2018, "problems with an engine, making strange noises."

From what Mrs P has said, after she raised the various concerns about the car to Moneybarn, she was repeatedly told to speak to the dealer/broker. And she was having difficulty getting the dealer to engage with her about the issues. This is supported by the contact notes from Moneybarn. Had the dealer/broker engaged more with Mrs P's concerns, for example by carrying out or arranging some kind of inspection, this might have shed light at an earlier stage of the nature/extent of the issues raised by Mrs P. And this might have led to other ways of resolving Mrs P's complaint.

It also seems to me that Moneybarn could've done more to look into the issues Mrs P had raised – including doing more to contact the dealer/broker itself at an earlier stage. And, regardless of the extent to which the dealer was engaging with the issues raised, Moneybarn could've arranged its own inspection of the car to evaluate the issues and its liability relating to those issues.

The evidence I do have shows that Mrs P raised concerns about the car's engine, including it making strange noises, within 30 days of it being supplied. And she tried to exercise her right to short term rejection.

Ultimately, Mrs P voluntarily terminated the agreement. But to put things right here, I think Moneybarn should treat Mrs P as though she could have rejected the car at the point that she voluntarily terminated the agreement.

I can see that Mrs P has had use of the car, so I think it fair that Moneybarn keeps most of the monthly payments up to the point of voluntary termination. I think though that Mrs P should be compensated for the impaired usage of the car. She experienced a number of problems from the outset and has said she was worried about safety with the automatic gears not working as they should. And after a particular incident where the car lurched forwards, she borrowed her brother-in-law's car so that she and the children could get around.

Taking everything into account, I think it would be reasonable for Mrs P to receive 25% of all of her monthly payments up to the point of voluntary termination.

I also think a payment for distress and inconvenience is warranted here. I say this because I think Moneybarn should've done more to look into things when Mrs P was communicating the problems she was having with the car. It seems clear to me that Mrs P was having some difficulty getting the dealer/broker to engage with the issues and I think Moneybarn could

and should have done more to look into the issues itself. Had it done this, it's likely Mrs P would've encountered less stress and worry.

I think £100 represents a fair amount and is consistent with awards we make in similar circumstances.

my provisional decision

I currently intend to direct Moneybarn No. 1 Limited to do the following to put things right:

- *remove any arrears, charges or fees so that Mrs P no longer has any liability under the account.*
- *refund 25% of every payment Mrs P made after the agreement began, up to when the agreement was voluntarily terminated. Plus 8% yearly simple interest from the date of each payment to the date of the calculation†*
- *remove any adverse information from Mrs P's credit history*
- *£100 for distress and inconvenience*

I asked both parties for their comments and both said they accepted my provisional findings.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As both parties have accepted my provisional findings, I see no reason to depart from them.

This means I still find that the car wasn't of satisfactory quality when supplied. And that Mrs P had tried to exercise her right to short term rejection.

It follows that I still think Moneybarn needs to treat Mrs P as though she could have rejected the car at the point that she voluntarily terminated the agreement.

And I still think a payment for distress and inconvenience is due and that Mrs P should get back part of her monthly payments.

my final decision

My final decision is that I uphold this complaint. I direct Moneybarn No. 1 Limited. to do the following to put things right:

- remove any arrears, charges or fees so that Mrs P no longer has any liability under the account.
- refund 25% of every payment Mrs P made after the agreement began, up to when the agreement was voluntarily terminated. Plus 8% yearly simple interest from the date of each payment to the date of the calculation†
- remove any adverse information from Mrs P's credit history
- £100 for distress and inconvenience

†If Moneybarn considers that it is required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs P how much it has taken off. Moneybarn should also give Mrs P a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 11 May 2019.

Ben Brewer
ombudsman