

## **complaint**

Miss W complains that a car that was supplied to her under a conditional sale agreement with Moneybarn No. 1 Limited wasn't of satisfactory quality.

## **background**

A used car was supplied to Miss W under a conditional sale agreement with Moneybarn that she electronically signed in June 2018. The car was about seven years old and had been driven for 45,407 miles. Miss W complained to Moneybarn about issues with the car within a few days of it being supplied to her and she stopped making payments to it. She paid £49 for the car to be inspected in July 2018 and a number of faults with it were identified.

Moneybarn said that it would arrange for the car to be inspected by an independent expert. But the inspection didn't take place until November 2018 and by then Miss W had used the car to drive 3,527 miles. So Moneybarn arranged for the faults to be repaired. Miss W said that she wanted to reject the car so she complained to Moneybarn. She wasn't satisfied with its response so complained to this service.

The investigator recommended that this complaint should be upheld. She said that Miss W should be allowed to reject the car and that Moneybarn should: arrange an affordable repayment plan to make the payments that had been missed between July and October 2018 (and once those payments were made to remove any record of the finance agreement from her credit file); refund the deposit (if one was paid) with interest; and refund the inspection fee of £49 with interest.

Moneybarn has asked for this complaint to be considered by an ombudsman. It says, in summary, that Miss W continued to use the car which contradicts her wish to reject it and continued use of the car is not the appropriate action following a rejection request. It says that it agreed that the car could be returned in September 2018 and chased Miss W for her to hand it back. It also says that when the car was repaired Miss W refused to collect it and hasn't made any payments for the car.

It also says that Miss W wouldn't have been able to drive the car for 3,000 miles if it was unfit for purpose without causing significant damage to it and the car passed an MOT test three days prior to her purchase, with no advisories noted, which would suggest that the brakes didn't render it of unsatisfactory quality at the time of purchase. It says that it's a second hand car and there's bound to be some wear on the components and it's concerned about the legitimacy of the report from the garage.

## **my findings**

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

Moneybarn, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality. Whether or not it was will depend on a number of factors, including the age, and mileage of the car and the price that was paid for it. The car that was supplied to Miss W was about seven years old, had been driven for more than 45,000 miles and had a price of £4,475. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

The car had passed an MOT test in June 2018 and was supplied to Miss W at the beginning of July 2018. She complained to Moneybarn about faults with it less than two weeks later. Miss W paid for a garage to inspect the car in late July 2018. It identified, amongst other things, that the brakes were excessively worn and there was an issue with the transmission. That garage is long established and is an independent garage specialising in the make of car that was supplied to Miss W. Moneybarn has questioned the legitimacy of the report but I'm not persuaded that there's enough evidence to show that the report isn't valid.

Moneybarn has provided recordings of phone calls with Miss W from September and October 2018. It was confirmed in two calls that it had accepted that she could reject the car and she then agreed for the car to be inspected by an independent expert. Moneybarn arranged such an inspection in November 2018. The inspection report concluded:

*"Our opinion based upon the visible evidence is we can confirm that the rear brake friction components have completely expired. This was reportedly brought to the hirer's attention at 46'192 miles [in July 2018]. At which point the hirer appears to have ignored this advise and has continued to operate the vehicle in this state. Although at this stage there appears to have been no consequential damage due to continued use in a compromised state, the brake friction components do require complete replacement. On the balance of probability, the conditions would have been severely worn at the point of finance inception and therefore considered the responsibility of the selling agent".*

So the independent expert concluded that it was more likely than not that the brakes would've been severely worn when the car was supplied to Miss W and that it was the responsibility of the selling agent. And that was consistent with the findings of the garage that had inspected the car in July 2018. So I consider it to be more likely than not that the car wasn't of satisfactory quality when it was supplied to Miss W. And she'd asked to reject the car within 30 days of it being supplied to her.

Miss W continued to use the car after she became aware of the issues with it and she used it to drive about 3,500 miles between July and October 2018. She shouldn't have done so because the car could've been unsafe and she could've done further damage to it. But the independent report says that she hasn't caused any consequential damage to the car. And I consider it to be more likely than not that she continued to use the car because Moneybarn hadn't accepted that she could reject it, the car wasn't inspected until October 2018 and she needed to use the car for work. So I'm not persuaded that her use of the car means that she can't reject it.

The dealer repaired the car after it had been inspected – but Miss W didn't want the car to be repaired and she wasn't contacted before the repair took place. She hasn't collected the car and she stopped making the required payments soon after she had issues with the car. She shouldn't have done that – and I consider it to be fair and reasonable that she should pay for the use that she had from the car between July and October 2018.

Miss W says that the issues with the car have caused her other losses because she's not been able to work as much as she wanted to. But she wasn't paying for the car so she could've used the money that she should've paid for it to pay for alternative transport. And I'm not persuaded that there's enough evidence to show that the car and its service history were misrepresented to Miss W.

I consider that it would be fair and reasonable in these circumstances for Moneybarn to allow Miss W to reject the car. So I find that it should cancel the conditional sale agreement and try to arrange with Miss W an affordable repayment arrangement for the four monthly payments of £163.03 that she should've made between July and October 2018. Once Miss W has paid that amount to Moneybarn I consider that it would be fair and reasonable for it remove any adverse information about the agreement that it's recorded on Miss W's credit file. The conditional sale agreement shows that Miss W didn't pay a deposit for the car.

Miss W says that she paid £49 for the inspection in July 2018. I find that it would be fair and reasonable for Moneybarn to reimburse that amount to her (with interest).

**my final decision**

For these reasons, my decision is that I uphold Miss W's complaint. And I order Moneybarn No. 1 Limited to:

1. End the conditional sale agreement at no cost to Miss W.
2. Try to arrange an affordable repayment plan with Miss W for the four monthly payments of £163.03 for her use of the car between July and October 2018.
3. When she's made those payments, remove any adverse information about the agreement that it's recorded on her credit file.
4. Pay £49 to reimburse her for the cost of the independent report.
5. Pay interest on that amount at an annual rate of 8% simple from the date of payment to the date of settlement.

HM Revenue & Customs requires Moneybarn to deduct tax from the interest payment referred to at 5 above. Moneybarn must give Miss W a certificate showing how much tax it's deducted if she asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 21 February 2020.

Jarrold Hastings  
**ombudsman**