

## **complaint**

Mr O acquired a used car in May 2015, by means of a conditional sale agreement with Moneybarn No. 4 Limited. He complains that the car was not of satisfactory quality and not as advertised by the supplying dealership. He wants the faults exhibited by the car repaired, and its price adjusted to reflect an accurate description of it. He also wants compensation for the trouble and upset this matter has caused him.

## **background**

Very shortly after taking delivery of the car, Mr O complained to the supplying dealership, which was not accredited by the car's manufacturer. Mr O said that some repairs undertaken by the dealer were unsuccessful, and he paid £150 for these to be completed elsewhere.

Mr O then complained to Moneybarn. The most significant problems raised were:

- The car had an oil leak, which was detected when Mr O took it to a garage accredited by its manufacturer
- The car was registered in 2010, and not in 2013, as advertised by the supplying dealership – this also became apparent when the car was taken to the accredited garage, and was because of an error made by the manufacturer

Moneybarn offered either to unwind the conditional sale agreement, or to fully repair the car. Mr O chose the full repair option, and agreed that the work should be undertaken by the supplying dealership, followed by an independent inspection paid for by Moneybarn, in order to ensure the quality of this work. But this did not happen, as Mr O was unhappy with the arrangements made by the supplying dealership to collect his car.

Mr O referred his complaint to us. He told us that he wanted the oil leak repair to be undertaken by a manufacturer accredited garage, and not by the supplying dealership. He also provided a repair invoice to us, and said he wanted compensation from Moneybarn.

Moneybarn told us that it had been unable to help him further, as he had denied the supplying dealership access to his car. It said the repair option was still open, but Mr O would need to transport his car to the dealer.

Moneybarn also told us that Mr O would need to change his car's registration. Moneybarn added that the manufacturer should cover any costs incurred, because it had caused this problem.

Our adjudicator thought the complaint should be upheld. He recommended that:

- Moneybarn should adjust the car's price, to reflect its correct value, and amend the conditional sale agreement accordingly
- The supplying dealership should repair Mr O's car, as previously agreed
- Moneybarn should arrange for the car to be collected from and returned to Mr O.
- Moneybarn should cover any costs incurred by Mr O in changing his car's registration (because it had a responsibility relating to the supplying dealership's advertising)
- Moneybarn should reimburse to Mr O the cost of repairs (£150) paid for by him
- Moneybarn should pay compensation of £150 to Mr O for trouble and upset

Moneybarn agreed to reduce the car's price by £2,400. This would be achieved by amending the conditional sale agreement, so that Mr O made his normal monthly payments for one less year. It also agreed that the supplying dealership should repair Mr O's car. But it did not accept our adjudicator's other recommendations.

Mr O said his car should be repaired by a manufacturer accredited garage, and not by the supplying dealership, in order to ensure the quality of this work.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I find that I have come to the same conclusions as our adjudicator, for similar reasons.

Moneybarn has a responsibility to ensure that goods of satisfactory quality, and corresponding to their description, have been supplied. This means that a reasonable person would have regarded the goods as satisfactory, taking into account all relevant circumstances, which for cars include age and mileage travelled. But there are limits to Moneybarn's responsibilities. In particular, faults must be present at the point of sale.

Moneybarn has acknowledged its responsibility by agreeing to adjust the car's price. I understand this adjustment reflects the difference in value between models registered in 2010 and 2013, with mileages similar to that of Mr O's car.

Moneybarn has also acknowledged its responsibility by offering to unwind Mr O's agreement. But Mr O chose (and signed up to) a different option: full repair by the supplying dealership, followed by an independent inspection paid for by Moneybarn. Arrangements were made for the supplying dealership to collect Mr O's car, but he denied access and his preference is clearly that a manufacturer accredited garage should undertake this work.

I understand Moneybarn's reluctance to reinstate these arrangements. However, I think it is fair and reasonable for Mr O to accept that the supplying dealership should undertake the repairs, and for Moneybarn to accept that arrangements should again be made to collect his car for this purpose.

I accept Moneybarn was unaware that the car's age had been wrongly described, and that this was because of an error made by the manufacturer. But Moneybarn still has a responsibility to ensure that goods correspond to their description at the point of sale. If the goods are not as described, and this is the fault of a third party, then Moneybarn can take that up with the third party.

I do not accept Moneybarn's argument that the repairs paid for by Mr O constitute betterment. I agree with our adjudicator that they relate to problems with the car, present at the point of sale, which were not resolved by the supplying dealership.

Finally, there is a technical note about trouble and upset on our public website, in which we describe:

- how we decide whether to award compensation for distress, inconvenience, damage to reputation, pain and suffering
- how we decide what to award, where compensation is appropriate
- cases where we have awarded compensation

I feel that compensation of £150 in this instance (as recommended by our adjudicator) is appropriate, given the circumstances of Mr O's complaint. It is consistent with our approach to awarding compensation, and with those case descriptions and awards.

### **my final decision**

For the reasons explained above, my final decision is that I uphold this complaint. In full and final settlement of it, I order Moneybarn No. 4 Limited:

1. To adjust the car's price, in order to reflect its correct value, and to amend the conditional sale agreement accordingly (as outlined above);
2. To arrange for the supplying dealership to repair Mr O's car, and for it then to be independently inspected, as previously agreed;
3. To arrange for the car to be collected from Mr O (for the purpose of repair and inspection) and returned to him ;
4. To cover any costs incurred by Mr O in changing his car's registration (upon receipt of appropriate invoices);
5. To reimburse £150 to Mr O;
6. To pay compensation of £150 directly to Mr O.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 8 February 2016.

Roy Mawford  
**ombudsman**