

The complaint

Miss J is unhappy with a car she got using finance provided by Moneybarn No. 1 Limited. She says she's had various issues with the car and wants to reject it.

What happened

Miss J acquired a used car in April 2019. The car cost £5,999 and the full price was funded with a conditional sale agreement provided by Moneybarn. The car was just under eight years old and had covered around 13,000 miles.

In July 2019 Miss J complained to Moneybarn about the car. She said she was unhappy with the tyre condition and the gearbox had issues. In particular, she said it was difficult to select reverse gear. She said she wanted to reject the car.

Moneybarn said the tyres were a wear and tear issue and the car had passed an MOT before being sold. But, it arranged for an independent inspection to be carried out to look at the gearbox. This was carried out at the end of July 2019 and the mileage was recorded as 13,732.

The independent inspection identified issues with the gearbox, in particular difficulty selecting reverse gear. Following this, the car was returned to the dealer and the clutch replaced. Moneybarn then issued a final response letter (FRL) saying it was upholding Miss J's complaint, but it wasn't allowing her to reject the car as things had been put right by the repair.

In late August 2019 Miss J contacted Moneybarn again saying the car still had issues. She said it was still difficult to select reverse gear, the car had a warning light illuminated, it was making an odd noise and it had trouble starting. Moneybarn initially said to speak to the dealer about the issues. Miss J again asked to reject the car at this point.

Miss J and Moneybarn continued to communicate about the car and in September 2019 a second independent inspection was carried out. The mileage at this point was recorded as 14,867. The inspection noted various problems including issues with the car starting, a noise from the suspension and problems selecting reverse gear. The inspection said it thought it was likely the previous repair had failed.

Moneybarn spoke to the dealer. The dealer said two independent garages it had referred to couldn't find a fault with the car. The dealer then arranged for a manufacturer's garage to look at the car at the beginning of November. The mileage was recorded as 14,892. This garage said it couldn't find an issue with the gearbox and believed it was operating in line

with the characteristics of the model. Moneybarn then offered to send the car for another inspection at a different garage, but Miss J refused – saying she agreed with the independent report.

Later in November Moneybarn issued a second FRL. This said it wasn't upholding the complaint as the manufacturer's garage couldn't find a fault with the gearbox. And it said the other issues were due to wear and tear.

Miss J then brought the complaint to this service. She said this issue had caused her a great deal of distress and she had to take time off work due to this. While the case was waiting to be looked at, Moneybarn took possession of the car as Miss J had left it at the dealer.

Our investigator upheld Miss J's complaint. She said she thought it was most likely the car wasn't of satisfactory quality. She thought the issue with the gearbox was likely to be intermittent and she thought it was most likely the independent reports had identified issues with the car. To put things right, she thought Miss J should be allowed to reject the car. But, she didn't recommend any additional payment for the distress and inconvenience caused. She said this was due to Miss J having only paid one repayment towards the agreement.

Miss J agreed with the investigator's opinion. But, she asked her to reconsider an additional payment for the impact this situation had on her and her health. Moneybarn disagreed. It said it agreed with the garages' comments that the gearbox was working as normal for this make and model.

The case has now been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I think this complaint should be upheld. I'll explain why.

This complaint is about a car financed by a conditional sale agreement. This is a regulated agreement, so this service can consider Miss J's case against Moneybarn.

When considering what's fair and reasonable, I take into account relevant law. The Consumer Rights Act 2015 is relevant to this complaint. This says that when Miss J got the car, the supplier – Moneybarn – had a responsibility to make sure it was of 'satisfactory quality'. 'Satisfactory quality' is what a reasonable person would expect – taking into account any relevant factors. In this case, I would consider relevant factors would include the car's price, mileage and description – amongst others.

So, I need to consider if the car was of satisfactory quality when it was supplied to Miss J. I'll consider that although the car was around eight years old, it had a low mileage for its age of around 13,000. So, I think a reasonable person would've expected it to have been in better condition and to have suffered from less wear and tear than a car of a similar age but higher mileage.

It seems in this case that Moneybarn initially accepted the fact that there was an issue with the car's gearbox. But, given Miss J says this issue continued and Moneybarn later changed its opinion, I think it's worth considering this myself. Miss J reported this issue around three months after getting the car. I've thought about what the first independent inspection from July 2019 said about this. In this report it says:

“When trying to select reverse gear we found this difficult to select and a degree of force had to be used to select reverse gear. Reverse gear would then select with a clunking type noise”

“we would conclude that at the time of our inspection we found reverse gear very difficult to select. Resistance could be felt on selection and would take several attempts to engage gear”

“Taking into consideration the time and mileage covered by the vehicle since the point of finance inception we do consider this, on the balance of probability, to have been developing or present at that time”

Thinking about this, along with what Miss J told us, I’m satisfied there was an issue with the gearbox and selecting reverse gear that was present or developing at the point of sale. And, I’m satisfied that this meant the car wasn’t of satisfactory quality when it was supplied.

After this report had been received, the car was returned to the dealer and the clutch was replaced. But, a few weeks later Miss J said the gearbox still had issues in selecting reverse gear. And she said a warning light was on and the car was struggling to start. A second independent inspection was completed. The report said:

“We then repeated the start up procedure on several occasions and we found the vehicle, on occasion, would crank over but not start. On other occasions clicking type noise could be heard from the starter motor.”

“All forward gears selected smoothly, but we found that reverse gear offered resistance and was difficult to select and notchy on selection. Again, this was intermittent.”

“we would conclude that the issues are still present on selection of reverse, which would require further investigation. We do consider that this issue is still present due to failed previous repairs”

When it received this report, Moneybarn communicated with the dealer and the car was returned. The dealer then says two garages looked at the car and couldn’t find a fault. But, I haven’t been given any evidence of this such as any reports or job sheets.

The car was then taken to a manufacturer’s garage to look at. Moneybarn supplied a copy of the invoice from this visit. This says:

“Roadtested vehicle, and carried out on ramp vehicle inspection. Unable to fault selection of reverse gear, all in accordance to normal characteristic of vehicle”

Moneybarn says that this shows there was no fault with the car and it was working in line with its characteristics. But, having thought about this, I don’t agree.

I’ve considered the level of information that the invoice includes about the car. The short passage above is all the detail it contains about the issue. Whereas, the two independent reports go into much more depth about the problem, what was looked at and the road tests involved. So, I’m more persuaded by the independent reports than the invoice.

I’ve also thought about the fact that the second independent report specifically says that the issue with selecting reverse gear is intermittent. The invoice does say the car was road-tested, but it doesn’t say for how long. So, I think it’s quite likely that the reason the manufacturer’s garage didn’t find a fault is due to it not happening all the time.

Thinking about this, I'm satisfied the issue with selecting reverse still continued after the dealer attempted a repair. So, I'm satisfied this meant the repair wasn't successful and the car still didn't conform to the contract.

I have considered that Moneybarn offered a second opinion from a further garage that Miss J declined. But, given the car had been tested at least three times at this point, I don't think it was unreasonable of Miss J to not allow this. So, this doesn't change my opinion.

I've also considered that the second independent report also found various other faults including an issue with the car not starting. In its response to us about the complaint, Moneybarn says the second report said the other issues were due to wear and tear and weren't Moneybarn's responsibility. But, I don't agree with this. The report does say issues are due to wear and tear of parts. But, it also says:

"We do consider that the other issues found are considered to be wear and tear related, taking into consideration the time and mileage covered by the vehicle since the point of finance inception. We do consider, on the balance of probability that these issues would have been present or developing at that point"

"The selling agent is responsible for the cost of repairs"

"We do consider the faults found to have been present since purchase"

In answer to the question:

"Please confirm any faults you consider to be wear and tear related or maintenance, which have developed since purchase?"

The report says:

"No faults considered wear and tear since purchase"

The second report does report various problems such as issues with a noise from the suspension and coolant leakage. But, there isn't much detail about these problems, so I don't know how serious they are. I also don't have much information about the initial issues with the tyres Miss J reported. So, I haven't seen enough to make me think these problems meant the car wasn't of satisfactory quality.

But, the second report does confirm issues with the car starting, which was also reported by Miss J. I think this is potentially a serious issue. And, I think it's quite clear that the second report says this fault was present or developing at the point of supply – even if it was due to wear and tear.

Thinking about this, I'm satisfied the issue with the car starting also means the car wasn't of satisfactory quality. It's worth pointing out that this means, even if I reached the opposite conclusion about the reverse gear and believed this was operating normally, I would still consider the car to have been of unsatisfactory quality when it was supplied.

I now need to consider what would be fair to put things right. Miss J has been quite clear that she wants to reject the car. When the issue was first reported, Miss J had a right for Moneybarn to repair the issue – which it attempted. But, I'm satisfied this repair failed. So, I think Moneybarn should've allowed Miss J to reject the car when it received the second independent report.

I've considered whether Miss J should receive some additional compensation from Moneybarn due to what's happened. She told us this situation has caused her some health problems and she said she had to take time off work. I've thought carefully about this. I'm sure this would've been a very stressful situation for Miss J. And I'm very sorry to hear she has been unwell. But, Miss J only made one repayment towards the finance. She was given a hire car for around a week when her car was repaired. For the rest of the time until the car was left at the dealers, Miss J did have some use of the car – even if it wasn't performing as it should.

Thinking about this, from the mileage recorded on the manufacturers garage's invoice, it appears Miss J covered just under 2,000 miles in the car when she had it. I'm satisfied it's most likely she was using the car for a longer period than she paid for. So, I think the fairest thing to do is to end the agreement with nothing further to pay - meaning Miss J won't have to make up the arrears on the account – rather than making a separate award for distress and inconvenience. I'm satisfied this is a fair outcome for both parties.

I believe Miss J will have had negative information recorded on her credit file in relation to the agreement. I'm satisfied had Moneybarn supplied a car of satisfactory quality, this wouldn't have been the case. So, Moneybarn should remove any negative information from Miss J's credit file. Moneybarn is now in possession of the car, so no action needs to be taken to collect it.

My final decision

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

- Cancel the agreement with nothing further to pay
- Remove any adverse information from Miss J's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 16 July 2020.

John Bower
Ombudsman