

The complaint

Mr R complains that a used car he acquired from Moneybarn No. 1 Limited ("Moneybarn") under a conditional sale agreement was of unsatisfactory quality, and not as described, contrary to the Consumer Rights Act 2015 ("CRA").

What happened

Mr R entered into the conditional sale agreement for the car in May 2018. It was then some six and a half years old, and had a recorded mileage of 35,601 miles. The cash price of the car was £6,832. Mr R paid an advance payment of £52, and agreed to pay the balance, plus finance charges, by monthly instalments of £216.62 each over 5 years.

Mr R was told there would be a delay in supplying the car from the supplying dealer ("SD") because of a problem with the car's injectors. When Mr R's wife collected the car, smoke billowed from the car on the journey home. The Fire Brigade attended and found a major diesel leak which had caught fire.

SD collected the car and repaired it. Mr R asked for details of the repairs SD had carried out. He also asked SD for evidence that the car had been serviced before delivery. The sales invoice included a service before sale, but the relevant stamp in the service book was absent. Mr R says that in spite of repeated requests SD failed to respond to these requests.

At the end of June 2018 Mr R noticed a noise coming from the engine which he was told could be the injectors. He says he tried to speak to SD about this but no one in SD's management would speak to him about it. So in November 2018 he got another motor repairer ("MR") to look at the car.

MR found that injectors 3 and 4 were leaking. It removed and cleaned them and fitted new sealing washers. When asked to say when, in its opinion, the problem with the injectors might have started it said:

"Even though I can't give you an exact time of how long this had been happening for, it doesn't tend to be something that would happen over night and would say it had been going on prior to your initial contact with us on the 5th November 2018."

In May 2019 Mr R found out that under the CRA Moneybarn was equally responsible with SD for any faults present in the car at delivery which meant it was of unsatisfactory quality. So he asked Moneybarn to reimburse what he had spent on repairing the injectors - £536.51 - and repairing a window switch which he said became faulty shortly after delivery - £88.42.

He also complained of other issues with the car, including:

- the fact it apparently hadn't been serviced before delivery contrary to the sales invoice;
- a missing cover for a headlight in the engine bay;

- a missing jack; and
- a faulty handbrake switch.

He said that more recently he also had to replace the flywheel and the clutch.

Moneybarn didn't accept his complaint. It said the matters Mr R complained of were largely down to wear and tear. It said the car had covered 15,000 miles since delivery and Mr R hadn't provided evidence that the faults were inherent or developing at delivery. So Mr R complained to us.

Our investigator's view

Our investigator recommended that this complaint should be upheld. She said Moneybarn's statement that the car had covered 15,000 miles since delivery was incorrect. The true figure was just over 7,000 miles.

She noted that:

- delivery of the car had been delayed because of faulty injectors;
- SD had been unwilling to provide information about the supposed repairs it carried out to the injectors; and
- MR had said that in its opinion the problem with the injectors had developed within the first six months after delivery.

On this basis the investigator said she was satisfied that the issue with the injectors was likely to have been present or developing at delivery. Mr R said the fault with the window switch was reported to SD within a few days of delivery. So the investigator thought this fault had also been present at delivery.

As this was a used car, the investigator didn't uphold the complaint about the window wiper as this was a wear and tear item. She didn't have any evidence about the other items Mr R complained about, but thought they too were likely to be the result of wear and tear, with the exception of the jack.

The investigator said the car was advertised, and sold, as having a service. But the service book was unstamped, and so she didn't think it had received the promised service, or the 114 point check that was also mentioned on the sales invoice. She said she wouldn't comment on the later issues with the flywheel and clutch, as they arose later and weren't part of the complaint originally raised with us by Mr R.

The investigator recommended that Moneybarn should reimburse the cost to Mr R of repairing the injectors and the faulty window switch, plus interest to the date of settlement. She also recommended that Moneybarn reimburse Mr R for the cost of one service of the car subject to his providing an invoice in respect of this.

Moneybarn responded to say, in summary, that what MR said about the issue with the injectors was just its opinion, and no evidence had been provided to support or substantiate it.

My provisional findings

I issued my provisional view to Mr R and to Moneybarn on 11 May 2020. In it I said that as the owner, and provider of finance, under the conditional sale agreement, Moneybarn was

responsible under the CRA for ensuring that the car was of satisfactory quality at delivery to Mr R. In considering what was reasonable the standard for a used car would be different from that expected for a new car.

Where a fault appeared in the first six months after delivery, the onus was on the supplier, Moneybarn, to show it wasn't present at delivery. Where a fault appeared after this, the onus was on the consumer, Mr R, to show it was present at delivery. I accepted MR's professional opinion that the fault with the injectors was likely to have been evident within the first six months after delivery.

In the absence of any evidence from Moneybarn to the contrary, I thought, for the reasons the investigator explained, it was most likely that the faults with the injectors and the window switch were present at delivery. So I thought it was fair and reasonable that Moneybarn should reimburse the cost of Mr R repairing these, with interest from the date of payment until settlement.

Like the investigator, I thought the window wiper, the missing headlight cover, and the faulty handbrake switch that Mr R complained about were wear and tear items and in view of the age and mileage of the car at delivery I didn't think it was reasonable to require Moneybarn to attend to these. Similarly, the fact that the jack was missing in a car of this age didn't in my view make it of unsatisfactory quality.

The issues with the flywheel and the clutch weren't mentioned as part of Mr R's original complaint to us, and I hadn't seen any evidence to suggest they were present or developing at the time of delivery. So I wouldn't comment further on them as part of this decision.

I said there were two aspects of this complaint, however, on which I had come to different conclusions from the investigator:

Firstly, when Mr R acquired the car, the sales invoice prepared by SD promised as part of the transaction an "*Oil & Filter interim service*". Like the investigator, I wasn't persuaded that this was carried out by SD before delivery.

As compensation, the investigator recommended that Moneybarn should reimburse Mr R for the cost of one service of the car subject to his providing an invoice in respect of this. However, there were different types of car service.

The one SD promised was an oil & filter interim service, which is relatively cheap and straightforward. However other services such as a main or major service can be much more complicated and expensive, depending on the make of the car, and its age and mileage at the time.

From research I'd done, it seemed the manufacturer of Mr R's type of car offered a minor service for Mr R's type and age of car, including change of oil and filters, from its national network of dealers for £179. And other national vehicle repairing chains also offered an interim service for Mr R's type of car, including oil and filter changes, for a bit less than this.

I said I didn't know what services Mr R had carried out on his car or now required. So while I thought it was fair and reasonable that Moneybarn should reimburse Mr R for the cost of one service of the car, subject to his providing an invoice in respect of this, I thought the reimbursement should be subject to a cap of £179.

Secondly, I thought Mr R had suffered distress and inconvenience because of the unsatisfactory quality of the car, particularly the issue with the injectors. Much of this was caused by the poor customer service of SD, which persistently refused to deal with his

complaints. This arose before Mr R realised Moneybarn was responsible for the condition of the car under the CRA and complained to it.

While I couldn't hold Moneybarn responsible for SD's poor customer care, I said that when Mr R did complain to Moneybarn in May 2019, I didn't think it dealt fairly with his complaint. It quoted an incorrect distance covered by Mr R in the car, and wrongly suggested it was for Mr R to prove that the problems he had identified within the first six months were inherent or developing at delivery.

I thought Moneybarn's poor handling of Mr R's complaint lengthened his complaint, and caused him distress and inconvenience for which it was right that he should be compensated. I thought Moneybarn should pay Mr R a further £150 as compensation for this.

Responses to my provisional decision

Moneybarn raised three points in response to my provisional decision:

1. It asked what was the *"MR's professional opinion that the fault with the injectors was likely to have been evident within the first six months after delivery"* mentioned in my provisional decision. Moneybarn was referred to the email from MR to Mr R's wife which was in Moneybarn's business file.
2. It asked for sight of the car's service book evidencing that there was no stamp for a pre-delivery service. This has been supplied.
3. It believed the window switch was replaced in September 2018. It thought this was an electrical item which could fail at any time, and that Moneybarn shouldn't be responsible for its failure at that interval after delivery.

At the time I issued my provisional decision I believed this switch had failed shortly after delivery. I asked Mr R to say exactly when it had failed. He said it actually failed two and a half months after he collected the car.

Mr R had responded to say he accepted my provisional decision. I said that in view of what he had now told me about when the window switch failed, and the age of the car at that time, I thought this was more likely to have occurred because of wear and tear, rather than being an inherent fault at the date of delivery.

So I didn't now think it was reasonable to require Moneybarn to reimburse him for this. Mr R said he would accept this.

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.

With the exception of the point Moneybarn raised about the window switch, which Mr R has accepted, neither Mr R nor Moneybarn has provided any fresh information or evidence in response to my provisional decision. So with that exception, I find no reason to depart from my earlier conclusions.

Putting things right

I think Moneybarn should pay the money, and take the other steps, as set out in my final decision below.

My final decision

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

1. reimburse Mr R £536.51 for the injector repairs, and pay him yearly interest at the rate of 8% simple from the date he paid for the repairs until settlement; (1)
2. reimburse Mr R for the cost of carrying out one service on his car subject to his providing a receipted invoice for the service and subject to a reimbursement cap of £179, and
3. pay Mr R compensation of £150 for the distress and inconvenience its poor handling of his complaint has caused him.

(1) If Moneybarn considers that it's required by HM Revenue and Customs to withhold income tax from that interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 7 July 2020.

Lennox Towers
Ombudsman