

The complaint

Mr M is unhappy that a car supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited trading as Moneybarn, was of an unsatisfactory quality.

What happened

In May 2019, Mr M was supplied with a used car through a conditional sale agreement with Moneybarn. The agreement was for £4,220 over 51 months, with monthly repayments of £149.56. At the time, the car was almost 8 years old and had done 67,388 miles. In June 2019 the car broke down and, as a result, the clutch was replaced.

Mr M complained to Moneybarn on 28 June 2019, a few days before he had the clutch replaced. In response, Moneybarn said they thought the clutch was a wear and tear issue, but they reimbursed Mr M for the cost of the replacement as a goodwill gesture. Mr M accepted this, but he said he also wanted to reject the car. Moneybarn didn't agree and Mr M brought his complaint to the Financial Ombudsman Service in August 2019.

While the complaint was being investigated, Mr M raised further issues about the car. And in March 2020 he provided a report from a local garage which detailed some faults with the car. These have been considered as part of the overall investigation, and Mr M didn't raise them as separate complaints with Moneybarn in the first instance. These further issues were that:

- There was a water leak in the engine;
- The head gasket was on its way out;
- He had difficulty selecting reverse gear;
- The engine was rusty;
- He was having difficulty starting the car;
- When he took possession of the car it hadn't been serviced in the last 12-months;
- The tools and jack for replacing a wheel were missing;
- A previous owner of the car had already returned it to Moneybarn.

Our investigator said Mr M had bought a used car which had done a significant amount of mileage and might already have suffered notable wear and tear. So she thought there was a greater risk that parts would need replacing much quicker than on a brand-new car.

The investigator said there was evidence of faults with the car after Mr M replaced the clutch. But she said that, just because there were faults, it didn't mean the car wasn't of a satisfactory quality when it was supplied.

Because it was unknown how many miles the car had been driven between Mr M taking possession and replacing the clutch, or whether the clutch was an issue when the car was supplied, the investigator thought Moneybarn reimbursing Mr M for the cost of the clutch replacement was a fair way to resolve this.

The March 2020 report on the car had shown there were other faults. The investigator spoke to the company who did the report, and they didn't think these faults were present at the time the car was supplied to Mr M. The investigator also spoke to the company who replaced the

clutch. They said they didn't come across any other problems at the time they did the work, and they said they would've brought these to Mr M's attention if they had.

Because of this, the investigator thought the other faults with the car were normal wear and tear, and the car was of a satisfactory quality when it was supplied to Mr M. So she didn't think Moneybarn needed to do anything more.

The investigator said that servicing wasn't a legal requirement and the manufacturer recommended servicing yearly or every 20,000 miles - the car had done less than 20,000 miles since the last service when it was supplied to Mr M. And the MOT carried out just before the car was supplied to Mr M didn't indicate any problems. The investigator also said there were a number of reasons why a car can be returned. So this doesn't mean it's automatically of an unsatisfactory quality.

Mr M didn't agree with the investigator. He doesn't think the problems with the car are wear and tear. He believes there's a problem with the engine which has been there *"from day one."* He feels he's paying for a car he can't use and is *"off the road because it's unsafe to drive."* He'd like Moneybarn to take the car back, so he's asked for an ombudsman to make a final decision.

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.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr M was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The relevant law says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale; and the vehicle's history.

So, if I thought the car was faulty when Mr M took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

When Mr M took possession of the car in May 2019, it was almost 8 years old and had done 67,388 miles. I'd expect to see wear and tear in a vehicle of that age and mileage. And I think any reasonable person would expect to have to repair or replace some parts of the car over time.

The car broke down in June 2019 and Mr M had the clutch replaced. A clutch isn't designed to last the lifetime of a car, and it's reasonable to expect this to need replacing at some point. With an issue like this arising so soon after it was supplied, it'd be reasonable to expect this to be flagged to Moneybarn. This would allow the car to be inspected and, if the clutch problem was determined to be present when the car was supplied, the dealership could be given the opportunity to repair the problem and/or Mr M could ask to return the car.

Mr M having the clutch replaced himself stopped this happening. I understand why Mr M took this course of action – he's in Norfolk and the dealership was in Manchester. But because of this, it's now not possible to say whether the clutch problems were present when the car was supplied. So I can't say if Mr M would've had the right to reject the car because of the clutch. But Moneybarn reimbursed Mr M for the cost of the replacement clutch as a goodwill gesture. Given the circumstances, I consider this was reasonable.

Mr M has had further problem with the car after the clutch was replaced. I need to consider whether those faults, and the repairs Mr M's car needed, means the car was not of a satisfactory quality when it was supplied to him.

Mr M arranged for his car to be inspected on 2 March 2020. I've seen a copy of the report following this inspection, which says:

Engine starts on key, although does turn over for a while before starting, has water leak from hose to thermostat housing and possibly leak at thermostat housing. Oil filler cap shows signs of water and oil mixing to underside, however dip stick only has oil on it. Suspect early signs of cylinder head gasket worn or possibly oil breather fault. Slight difficulty put gearbox into reverse gear – has had clutch changed 6 months ago, possibly poor sector alignment.

The investigator spoke to the person who completed this inspection. They said it's likely the issues identified have only just started – they come on quickly so were unlikely to have been present when Mr M took possession of the car. They also said that, given the age of the car, any water leak would be rusty water, so it would leave a rusty crust on anything it touched. This surface crust would make it look like the engine was rusty, so I understand why Mr M has thought that it was.

I've also seen that the investigator spoke to the garage who replaced the clutch on Mr M's car. While they were working on the clutch and wouldn't necessarily have inspected the rest of the car, they have confirmed that, if they'd seen any other issues with Mr M's car, they would've made him aware of these at the time.

Mr M has also provided an invoice dated 27 July 2020, from the garage who replaced the clutch. This is for the work to fix the water leak and the starting problem. Based on the conversation the investigator had with this garage, I think it's most likely that these issues weren't present when the clutch was replaced in 2019.

It's unfortunate for Mr M that his car developed problems which led to further repairs being needed. But all the evidence I've seen suggests these problems weren't present when he took possession of the car. And, given the age of the car and the mileage it'd already done, the need to have to replace worn out engine components would've been reasonably expected.

Because of this, I don't agree that Moneybarn are responsible for the costs of repairing Mr M's car, nor do I think they should take the car back and unwind the finance agreement. I'm satisfied Mr M's car was of a satisfactory quality when supplied, considering all the relevant circumstances.

Mr M has said that, when he was supplied with the car, while it had a valid MOT it hadn't had a service in the last 12-months. It's not a legal requirement for cars to be serviced regularly, so Moneybarn didn't do anything wrong by supplying a car that had been serviced within the last 20,000 miles, but not within the last 12-months.

Mr M has pointed out that the car was supplied without a jack or any tools to change a wheel. Again, this isn't a legal requirement. And with older cars these things like this can go missing. This is something Mr M could've raised with the dealer when he took possession of the car, so I don't think Moneybarn need to do anything about this.

And I haven't seen anything to show me that the car was advertised as being sold with a full-service history and/or as having all tools included. So I don't think the lack of a recent service or the missing tools means that the car was misrepresented when Mr M took possession of it.

Mr M has said he has paperwork which shows a previous owner financed the same car through Moneybarn. And they didn't keep hold of it for very long. The previous owner could've got rid of the car for many reasons, for example suitability or affordability. So I don't think this automatically means the car wasn't of a satisfactory standard when it was supplied to Mr M. For the reasons stated above, I've seen no evidence that it wasn't.

Finally, the report on Mr M's car from March 2020 indicated there may be an alignment issue with the gear selector / clutch. Although Moneybarn reimbursed the cost of replacing the clutch, as Mr M arranged this himself, this is something he should consider raising with the garage who did the work.

My final decision

For the reasons explained above I don't uphold Mr M's complaint against Moneybarn No. 1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 October 2020.

Andrew Burford
Ombudsman