

The complaint

Mr L complains that a used car he agreed to buy from Moneybarn No.1 Limited ("Moneybarn") wasn't of satisfactory quality or fit for purpose contrary to the requirements of the Consumer Rights Act 2015 ("CRA"). He is assisted in bringing this complaint by a solicitor, whom I'll call "S".

What happened

Mr L entered into a conditional sale agreement with Moneybarn in respect of the car in April 2018. The car was then some four and a half years old and had a recorded mileage of 47,793 miles. The cash price of the car was £13,143. Mr L didn't pay any deposit, and agreed to pay the cash price and finance charges by fifty nine monthly instalments of £389.85 each.

Mr L says that soon after delivery he noticed a buzzing noise from the engine. He thought this was just a feature of the car. However, the noise got worse, and in September 2018 the car broke down.

Mr L took it to a dealer for this make of car. The dealer didn't examine it in detail but said he shouldn't drive it further. It thought the fault was likely to be with the timing chain or variator, and was likely to cost over £1,000 to repair.

In September 2018, Mr L complained to Moneybarn about the fault. He also complained that he hadn't received a log book for the car, or any paperwork about possible Gap insurance. Moneybarn arranged for an inspection to be carried out on the car by an independent motor engineer, the "IME", in November 2018.

The IME ran the engine and confirmed there was a severe rattle coming from the timing chain area. It ran diagnostic tests which didn't show any fault codes. It didn't carry out any further inspection of the engine. It suggested the engine needed to be dismantled to inspect the timing chain and balance shafts.

The IME said chain deterioration wasn't uncommon, and was often preceded by abnormal chain noise. There could be a number of causes, and would occur in the range of 60,000 to 120,000 miles. Mr L had covered 4,207 miles since delivery.

The IME said that in view of the mileage covered and the five months that had passed since delivery, its view, on the balance of probability, was that the fault would not have been developing or present at the date of delivery. So it thought the cost of repair should be the responsibility of Mr L, not Moneybarn.

On the basis of this report, Moneybarn told Mr L in December 2018 that it didn't accept his complaint. It also said that Gap insurance wasn't a product it financed so it didn't accept that it should have provided any documentation about this. It did offer to reimburse the £25

cost of obtaining a replacement log book from DVLA if Mr L provided evidence of his obtaining this.

Mr L didn't accept what Moneybarn said. In June 2019 he complained to us about its decision, and about poor service by Moneybarn in responding to his complaint.

Our investigator's view

Our investigator thought Moneybarn had acted reasonably when it received Mr L's complaint in September 2018 by having the car inspected by the IME. So he thought the service Moneybarn had provided when Mr L complained was reasonable.

However, he thought that for the timing chain to fail when it did indicated that it wasn't of the durability that Mr L could reasonably have expected. The IME suggested that it would have been expected to have lasted for at least 60,000 miles.

So he concluded that the car wasn't of satisfactory quality when supplied to Mr L. Mr L hadn't been able to use the car since 18 September 2018. He had to buy another car to be able to take his children to school. The investigator recommended that Moneybarn should:

- refund all payments made by Mr L after the car broke down on 18 September 2018;
- arrange for the car to be collected and repaired at no cost to Mr L; and
- pay Mr L compensation of £250 for the distress and inconvenience it had caused him.

Mr L accepted the investigator's recommendation.

Moneybarn responded to say, in summary, that the information about the likely life of the timing chain was generalised information, and shouldn't be taken to override the specific view of the engineer who had inspected the car. It pointed out that the car had covered 52,725 miles when inspected by the IME.

My provisional findings

I issued my provisional view to Mr L and to Moneybarn on 30 June 2020. In it I said that I found the IME's report somewhat limited. The IME ran the engine and confirmed there was a severe rattling noise coming from the timing chain area. To avoid further damage it shut down the engine. In its opinion the problem lay with the timing chain or associated components. But no further examination was made to confirm this, or establish how or why it had arisen.

I said that in modern car engines, timing belts or chains are items which aren't expected to need replacement for some considerable time into the life of the engine. A timing chain, as fitted to this car, was expected to last longer than a timing belt. The IME said in its report that chain wear wouldn't be expected to develop until a car had travelled 60,000 to 120,000 miles.

The recorded mileage of the car when it was delivered to Mr L was only 47,793 miles. Mr L said he heard a buzzing noise soon afterwards which proceeded to get worse. He had covered only 4,207 miles when the car broke down.

Like the investigator, I thought that for the timing chain to fail so soon after delivery meant that it didn't show the durability that Mr L was reasonably entitled to expect under the CRA. So I didn't think the car was of satisfactory quality as required under the CRA.

It appeared that Mr L wasn't able to use the car after it broke down on 18 September 2018, and had to buy other cars in order, amongst other things, to transport his children to and from school. He also had to continue making payments for the car to Moneybarn, which led to financial difficulties for him.

In March 2019 he stopped making payments on the car, with the result that Moneybarn recovered it and in July 2019 sold it at auction. Moneybarn said a balance of £15,990 was now owed by Mr L under the conditional sale agreement.

Although the recommendation the investigator made for Moneybarn to arrange for the car to be repaired would, in my view, have been reasonable when Mr L brought his complaint to us, by the time it was issued Moneybarn had recovered the car because Mr L had stopped making payments, and had sold it at auction. So a repair was by then no longer possible.

I found that:

- the car broke down because it was of unsatisfactory quality when delivered to Mr L;
- Mr L was unable to use it after 18 September 2018;
- although he kept up payments for a short time, he couldn't maintain these as well as financing replacement cars; and
- as a result the car was repossessed and sold.

In these circumstances, I thought it was fair and reasonable that Moneybarn should:

- treat the conditional sale agreement as at an end as from 18 September 2018 – the date of breakdown, with Mr L owing nothing more under the agreement as from that date;
- refund all payments made by Mr L under the agreement after that date, with interest;
- remove from Mr L's credit file all adverse credit information about Mr L arising from the conditional sale agreement and Mr L's conduct of it after 18 September 2018; and
- pay Mr L compensation of £250 for the distress and inconvenience it has caused him.

Responses to my provisional decision

Neither Mr L nor Moneybarn responded to my provisional 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.

As neither Mr L nor Moneybarn has provided any fresh information or evidence in response to my provisional decision, I find no reason to depart from my earlier conclusions.

Putting things right

I think Moneybarn should take the steps, and pay the money, 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. treat the conditional sale agreement as at an end as from 18 September 2018 – the date of breakdown, with Mr L owing nothing more under the agreement as from that date;
2. refund all payments made by Mr L under the agreement after that date, with interest at the yearly rate of 8% simple from the respective date each payment was made until settlement; (1)
3. remove from Mr L's credit file all adverse credit information about Mr L arising from the conditional sale agreement and Mr L's conduct of it after 18 September 2018; and
4. pay Mr L compensation of £250 for the distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 2 September 2020.

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

Lennox Towers
Ombudsman