

## The complaint

Miss A complains that a used car she acquired under a conditional sale agreement 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").

## What happened

In December 2018, Miss A entered into a conditional sale agreement with Moneybarn for a used car. It was then just over five years old and had a recorded mileage of 47,061 miles. Its cash price was £8,090. Miss A paid an advance payment of £400, and agreed to pay the balance plus finance charges by 59 monthly instalments of £304.88 each.

In May 2019, with its recorded mileage at 56,951 miles, the car broke down; its automatic transmission (CVT) stopped working. Miss A complained to Moneybarn, who arranged for the car to be inspected by an independent mechanical engineer ("IME 1").

IME 1 confirmed the engine cut out whenever a gear was selected. It said:

*"it is our considered opinion that the vehicle has an underlying issue possibly with the transmission torque converter or alternatively the transmission has an issue with the valve block, i.e. if there is an issue with the transmission valve block this can result in incorrect transmission oil pressure which has potential to cut the engine out, the most likely cause is that there was an issue with the vehicles torque converter."*

It didn't dismantle the gearbox to investigate the cause further. Asked to confirm if the issues were the result of wear and tear/sudden failure, would have been present at the point of sale, and would render the car of unsatisfactory quality/unfit for purpose, IME 1 said:

*"Undoubtedly the current condition could not have been present at the point of purchase as the vehicle could not have been driven the 10,000 miles or thereby since the point of sale, bearing this in mind and taking into account the vehicles overall visible condition leads us to conclusion that the vehicle was road legal and fit for purpose and of satisfactory quality for the vehicle, the age and reported mileage at the date of purchase."*

*With the current issue in our opinion having developed after the date of sale with the most likely cause being in-service wear of the torque converter lock-up clutch which is now known to give similar symptoms as noted at the time of inspection."*

*Wear of the clutch is a known issue and would be caused a long-term in-service age-related general wear and deterioration rather than a manufacturing defect, with we are now having progressed in service to the point that the transmission requires repairs as a result of routine maintenance."*

On the basis of this report, Moneybarn didn't accept Miss A's complaint. It said IME 1 confirmed the car was road legal, fit for purpose and of satisfactory quality at the point of purchase.

Miss A arranged her own report from another independent motor engineer ("IME 2"). He didn't dismantle the gearbox either. He said a number of online forums pointed out that this make of car and CVT transmission was prone to early failure. He said:

*"it would not be possible to predict this in normal circumstances. It is therefore an unforeseen event and other than oil checks there is no way of preventing it if car is driven sensibly and not abused – no evidence of abuse observable when inspected.*

*As a relatively short period has elapsed (under 6 months) and mileage is only slightly above average, we do not agree with the conclusions drawn by [Moneybarn/IME 1] that no recourse is possible."*

Moneybarn wouldn't change its view. It made a contribution of £150 towards Miss A's costs of a hire car, but wouldn't assist further. So Miss A arranged repairs to the CVT at a cost of £2,700, and complained to us. She wanted Moneybarn to refund all the hire costs she had incurred, and either pay for the repairs or allow her to reject the car.

### **Our investigator's view**

Our investigator didn't recommend that this complaint should be upheld. He accepted what IME 1 had said – that the fault wasn't present at delivery and was more likely to be the result of normal wear and tear rather than something which was developing at the point of sale.

Miss A challenged the investigator's recommendation on the basis that he had made no mention of IME 2's report. The investigator said he found IME 2's report unspecific on the question of whether the faults the car had were present or developing when the car was sold to Miss A. So he couldn't ask Moneybarn to do anything more.

### **My provisional findings**

I issued my provisional view to Miss A and to Moneybarn on 25 June 2020. In it I said that under the CRA, Moneybarn had a responsibility to supply Miss A with a car which was of satisfactory quality and fit for purpose. To satisfy this, the CRA said goods must meet the standard that a reasonable person would consider satisfactory, taking account of the description, the price paid, a number of listed aspects including durability, and all the other relevant circumstances.

It was clearly relevant that this was a used car, not a new car, and was priced accordingly. It was over five years old and had covered more than 56,000 miles when it broke down. However, there was no evidence of ill use, as IME 2's report confirmed.

I said the CVT transmission was a major component of a car. As IME 2 pointed out, a replacement CVT would have cost Miss A £7,000, which was more than the car was then worth. I thought a reasonable person in Miss A's position wouldn't have expected to have to replace this component, or carry out major repairs to it, five months after acquiring the car.

As the fault became evident within six months after delivery, the onus was on Moneybarn to show that the car was of satisfactory quality/fit for purpose when supplied to Miss A. I had been supplied with two expert reports, one of which said in the circumstances the car was of satisfactory quality, and the other said it wasn't.

On balance, I concluded that Moneybarn hadn't met the required onus of proof. I thought the fact that this major component failed so soon after delivery meant the car wasn't of satisfactory quality when supplied.

Moneybarn wouldn't pay for the car to be repaired, and only contributed £150 towards the hire costs Miss A incurred. Miss A had to pay £2,700 in repair costs, and I thought this contributed to her getting into arrears with her payments under the conditional sale agreement. This had affected her credit file.

To compensate Miss A, I thought it was fair and reasonable that Moneybarn should:

- reimburse Miss A the £2,700 repair cost she had to pay;
- reimburse Miss A the £120 she had to pay IME 2 for his report;
- reimburse Miss A one payment under the conditional sale agreement for the month of June 2019 when the car was unusable;
- pay interest on the items mentioned above at the yearly rate of 8% simple from the respective dates they were paid by Miss A until settlement;
- pay Miss A a further £250, in addition to the £150 contribution it made towards her hire costs, as compensation for the distress and inconvenience Moneybarn had caused her; and
- remove all adverse information for the period up to the date of settlement about the conditional sale agreement, and Miss A's conduct of it, from Miss A's credit file.

### **Responses to my provisional decision**

Miss A said she accepted my provisional decision. Moneybarn didn't respond to it.

### **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 Miss A 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 pay the money, and take the other steps, 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 Miss A the £2,700 repair cost she had to pay;
2. reimburse Miss A the £120 she had to pay IME 2 for his report;
3. reimburse Miss A one payment under the conditional sale agreement for the month of June 2019 when the car was unusable;
4. pay interest on the items mentioned in 1. 2. and 3. above at the yearly rate of 8% simple from the respective dates they were paid by Miss A until settlement; (1)
5. pay Miss A a further £250, in addition to the £150 contribution it made towards her hire costs, as compensation for the distress and inconvenience Moneybarn has caused her; and

6. remove all adverse information for the period up to the date of settlement about the conditional sale agreement, and Miss A's conduct of it, from Miss A's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 4 September 2020.

Lennox Towers  
**Ombudsman**