

The complaint

Mr S is unhappy that a car supplied to him under a conditional sale agreement with Moneybarn No.1 Limited (Moneybarn) was of an unsatisfactory quality.

What happened

I issued my provisional decision on this complaint on 27 July 2020, a copy of which is attached below and forms part of this decision.

In summary I said that Mr S had been supplied with a used car under a conditional sale agreement with Moneybarn. He had problems with the car and took it back to the dealership who supplied it. The dealership carried out some repairs, but Mr S was still having problems, so he complained to Moneybarn.

Moneybarn arranged for an independent engineer to inspect the car. The engineer said that the faults with the car were present when it was supplied to Mr S, and it was the dealership's responsibility to repair these faults. I said I thought this meant that the car wasn't of a satisfactory quality when it was supplied to Mr S.

I said that the Consumer Rights Act 2015 gave Mr S the right to reject the car within 30-days. And he had a further right to reject later on if any repairs were unsuccessful. Because the dealership had already had the opportunity to repair the car, and the faults were still present, it was my provisional decision that Mr S should now be allowed to reject the car.

Both Mr S and Moneybarn have been given the opportunity to comment on my provisional decision. Mr S agreed with my provisional decision but Moneybarn didn't.

Moneybarn said *"we cannot conclude the faults would have been evident at the time the dealership undertook the initial repairs."* And they said because the independent engineer said *"no unsuccessful repairs"* they don't think the dealership would've had the opportunity to address the faults the independent engineer identified. So they think the dealership should now be given the opportunity to repair the faults in the independent engineer's report.

copy of provisional decision

complaint

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

what happened

In late May 2019, Mr S took out a conditional sale agreement with Moneybarn to cover the cost of a used car. The agreement was for £7,945 over 57 months, with monthly repayments of £299.55. At the time the car was about 7 years old and had done just over 99,000 miles.

On 5 July 2019 Mr S complained to Moneybarn that there were faults with the car – he said there were issues with the sunroof, stereo, doors and suspension. He'd already complained to

the dealership who'd sold him the car, and they'd carried out repairs on the suspension. But Mr S believed these repairs had failed and he wanted to reject the car.

Moneybarn arranged for an independent engineer to inspect the car and this inspection took place on 17 July 2019. The engineer found faults with the car that were present when the finance started, and said the dealership were responsible for the repairs. As a result of the inspection, the dealership offered to fix the faults identified. Mr S has rejected this offer, and the car remains unrepaired.

Mr S has complained that the car was faulty when he took possession of it, and the dealership refused to let him hand the car back within the 14-day cooling off period.

Our investigator said Mr S had acquired a used car which had done a significant amount of mileage. There were faults present when he took possession of the car, and the investigator thought the dealership's offer to repair these faults was reasonable. So he didn't think Moneybarn needed to do anything more.

The investigator also said that Mr S didn't have the right to reject the car within a 14-day cooling off period, but he did have the right to withdraw from the agreement within this period, by paying Moneybarn the value of the finance and retaining possession of the car.

Mr S didn't agree with the investigator. He said the faults weren't pointed out to him when he took possession of the car, and if they were, he wouldn't have accepted it. He's also said the dealership told him the car would come with a full MOT with no advisories. He didn't receive an MOT certificate and there were advisories when he had the car MOT'd himself. Mr S has also said that the finance agreement did give him the right to reject the car within a 14-day cooling off period. So he's asked for an ombudsman to make a final decision.

my provisional findings

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 S was supplied with the 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 be of a satisfactory quality when supplied. And if not, 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 and other relevant circumstances.

In this case, this would include things like the age and mileage at the time of sale; and the vehicle's history. The quality of the goods also includes their general state and condition; and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. Durability means that the components within the car must last a reasonable amount of time.

So, if I thought the car was faulty when Mr S bought 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 S took possession of the car it was around 7 years old and had done over 99,000 miles. I'd expect to see some 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. There's no dispute that there were some issues with the car. But what I need to consider is whether those faults, and the repairs Mr S's car needed, were typical of a high mileage car. And therefore something Mr S should've reasonably expected.

I've seen a copy of the independent engineer's report carried out on 17 July 2019. This report said that the suspension had been successfully repaired. But it also said there were fault codes and a possible blocked air vent (causing cabin pressure and issues with the doors closing) that required further investigation.

In conclusion, the engineer said *"faults were found at the time of our inspection and {I} consider them to have been present or developing at the point of finance inception and should be returned to the selling agent for rectification. The selling agent is responsible for the cost of repairs."*

Where goods are faulty, the Consumer Right Act 2015 says the consumer has the right to reject them within 30 days. They also have a further right to reject the goods later on if any repairs are unsuccessful.

Mr S says he reported the faults to Moneybarn within 30-days. And the dealership had the right to attempt to repair the car. But they only have one opportunity to complete the repairs. The independent engineer has said that the faults were present at the time Mr S took possession of the car. And the dealership had already repaired the suspension. But they didn't deal with the fault codes or the blocked air vent.

The fault codes relate to the glow plugs, which is part of the ignition circuit. And Mr S has had problems starting the car – when the independent engineer inspected the car, the report said that the car wouldn't start. And, regardless of the age and mileage, any reasonable person would expect to be able to start their car and to be able to close the doors (for safety and security purposes) without issue.

Mr S has also explained that the problems with the car starting are ongoing. So the car is unusable and isn't being driven. Because of this, he stopped paying Moneybarn.

I'm satisfied that the faults with the car are significant; that the dealership have had an opportunity to repair the faults; and that the faults remain. While the dealership has offered to repair the faults, Mr S doesn't want this. Mr S has the right to reject the car, and I think he should be allowed to do so.

my provisional decision

For the reasons explained above I intend to uphold Mr S's complaint. So Moneybarn No.1 Limited should

- collect the car at no cost to Mr S and at a time convenient to him;
- cancel the finance agreement with nothing further to pay;
- refund the £400 deposit Mr S paid for the car, along with 8% annual simple interest from the date the deposit was paid to the date it's refunded;
- remove the agreement, and any associated adverse information, from Mr S's credit file.

Moneybarn doesn't need to refund the monthly repayments already made as Mr S stopped paying once he no longer had use of the car.

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.

For clarity, when the independent engineer inspected Mr S's car on 17 July 2019, they said that the faults that were present when the car was supplied were:

- The doors didn't close correctly

- There were problems starting the car
- There were fault codes associated with the glow plugs

The engineer also said that the suspension had been repaired by swapping the suspension unit with that from another car – new suspension components weren't used.

I've also seen the email Mr S sent to the dealership on 11 June 2019, a few weeks after he took possession of the car. In addition to the issue with the suspension, Mr S also said the air conditioning wasn't working, he was having problems starting the car, he felt the front brake discs may have been warped and the bonnet latch kept getting stuck.

Not all of these were faults identified by the independent engineer. But, as I said in my provisional decision, the fault codes identified related to the glow plugs - which is part of the ignition circuit and would've impacted whether the car started. Mr S told the dealership that he was having problems starting the car, and this wasn't dealt with by the dealership. So I'm satisfied that the dealership had an opportunity to fix this fault. And they didn't.

With regards to the doors not closing properly, this was due to a blocked air vent causing increased cabin pressure. While Mr S didn't specifically tell the dealership about the doors, he did complain about the air-conditioning not working properly. And the air-conditioning circuit is intrinsically linked with the air-vents. What's more, if the dealership were moving Mr S's car on and off a ramp to do the work on the suspension unit, as well as any other moving of the car they may have needed to have done, I'd expect them to notice there were problems with shutting the door. And to have fixed this as well. Again they didn't.

In conclusion, I'm satisfied that the issues Mr S raised with the dealership in June 2019 are the same as (or very closely linked to) the faults the independent engineer identified in July 2019 and said were present when Mr S took possession of the car.

So, while the comments made by Moneybarn are noted, they don't change my provisional decision.

Putting things right

Because Mr S was supplied with a car that wasn't of a satisfactory quality, and because the dealership has already had an opportunity to fix the faults, Moneybarn should:

- collect the car at no cost to Mr S and at a time convenient to him;
- cancel the finance agreement with nothing further to pay;
- refund the £400 deposit Mr S paid for the car, along with 8% annual simple interest from the date the deposit was paid to the date it's refunded;
- remove the agreement, and any associated adverse information, from Mr S's credit file.

Moneybarn doesn't need to refund the monthly repayments already made as Mr S stopped paying when he could no longer use the car because of the identified faults.

My final decision

For the reasons explained above I uphold Mr S's complaint. And Moneybarn No. 1 Limited must follow my directions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 6 October 2020.

Andrew Burford
Ombudsman