

The complaint

Mr M complains that a used car that he acquired from Moneybarn No.1 Limited ("Moneybarn") under a conditional sale agreement wasn't of satisfactory quality or fit for purpose, contrary to the requirements of the Consumer Rights Act 2015 ("the CRA").

What happened

Mr M entered into a conditional sale agreement for the car with Moneybarn in May 2017. The car was then some six years old with a recorded mileage of 71,620 miles. The car had a cash price of £8,483; Mr M paid an advance payment of £500 and agreed to pay the balance plus finance charges (£15,824.98) by 59 monthly instalments of £268.22 each.

Mr M says he had problems with the engine from the outset – it would rattle, shake and bang constantly when stationary. In June 2017 he took the car back to the supplying dealer ("SD") who arranged for a repairer ("the repairer") to investigate. The repairer replaced two injectors and returned the car to Mr M.

Mr M says he told SD that he wanted to reject the car, but SD wouldn't agree. Within two or three weeks of getting the car back the same problems returned. He took the car back to SD. The repairer looked at the car again and carried out further work. The same problems persisted, so in August 2017 Mr M had the car inspected by an independent garage ("IG"), who reported:

"Appears to be misfiring during cold start – engine shaking visible – engine strip required to find fault".

Mr M went back to SD. It blamed the repairer for not curing the problem and refused to help. Mr M had the car checked again by IG in April 2018, who reported:

"Re-examined vehicle – engine is still shaking intermittently – unable to diagnose root cause without stripping engine".

In April 2019, Mr M complained to the repairer that it hadn't cured the fault. The repairer replaced the electronic steering lock, but this didn't fix the problem. In May 2019 Mr M complained to Moneybarn, who arranged for an independent engineer ("IE") to examine the car.

When IE inspected the car, the engine was slightly warm. It started the car and conducted a 22 mile road test. It reported that the car performed as would be expected with no abnormal noises or vibrations. It said that no faults were present at the time of its inspection, and concluded that the previous repairs had been successful.

In the light of this report, Moneybarn thought the problems Mr M had experienced were due to normal wear and tear, rather than any fault existing or developing at delivery. So it didn't accept Mr M's complaint.

Our investigator's view

Our investigator recommended that this complaint should be upheld. He said SD had recognised a fault was present in 2017 by arranging for the repairer to carry out repairs. However, he accepted the faults had persisted. Moneybarn had been given the opportunity to resolve the fault but had failed to do so. So he thought it was reasonable now to allow Mr M to reject the car.

He recommended that Moneybarn should:

1. cancel the conditional sale agreement with Mr M paying nothing more;
2. collect the car at no cost to Mr M;
3. refund the £500 advance payment to Mr M plus yearly interest at the rate of 8% simple from the date of payment by Mr M until settlement; and
4. pay Mr M compensation of £200 for the distress and inconvenience caused to him.

Moneybarn responded to say that although it didn't agree with the outcome of the investigator's findings, it would accept his recommendations to bring the matter to a close.

Mr M had a number of discussions by phone with the investigator. He said that in view of all the problems he had experienced with the car, he didn't think it was fair for him simply to hand the car back, and for Moneybarn to keep all the money he had paid – nearly £7,000. As the car had been faulty from the outset, he thought most, if not all, of his payments should be returned to him.

The investigator said it was open to Mr M to ask for an ombudsman to review his complaint, or to bring an action against Moneybarn in the courts. However, either course would mean a delay of several more months before the issue was resolved. He also indicated to Mr M that in neither case would he get back any of what he had paid.

Mr M felt he couldn't continue with the car as it was any longer, and so agreed to the termination of the agreement on the basis suggested, which Moneybarn duly carried out in July 2019. However, in January 2020 Mr M complained to this service that the way the investigator had acted meant his complaint hadn't been resolved fairly. So his complaint has been passed to me to issue a decision.

My provisional findings

I issued my provisional decision to Mr M and to Moneybarn on 27 August 2020. In it I said that on the evidence available, I agreed with the investigator that the car was clearly faulty at delivery, and in spite of a number of repair attempts the faults were still present when Mr M complained to Moneybarn in 2019.

I noted that IE was unable to replicate the faults when it inspected the car – possibly because the engine had already been warmed up. But this didn't alter my view.

So I thought it was fair and reasonable that Mr M should have been allowed to reject the car and terminate the agreement. This had happened, and Moneybarn had refunded Mr M's advance payment of £500 (with interest) and paid him compensation of £200 for the distress and inconvenience he suffered.

However, I disagreed with what the investigator also told Mr M – that in these circumstances he wasn't entitled to be refunded anything else he had paid. I thought he should have asked Mr M for more information about his expenditure, and the time he was without the car, and should have considered whether it was fair for any further payment to be made by Moneybarn to Mr M.

I said that when this complaint was passed to me, I'd asked Mr M to provide evidence of what he had spent in respect of the car, and why he thought it should be refunded to him. This fell under the following headings:

Instalment payments under the conditional sale agreement

Mr M had consistently complained that while he was pleased to be rid of the faulty car, he was unhappy that after all the monthly instalments he had paid towards owning the car under the conditional sale agreement he was now left with nothing for his "investment". He thought a monthly instalment of £268.22 was too much to have paid for the use of a troublesome car.

Under the conditional sale agreement, Mr M had paid an advance payment of £500, and a further 24 monthly instalments totalling £6,437.28 up till and including May 2019. The agreement was to run for 5 years. So if it had continued for its full term, Mr M would have had to pay a further £9,387.70 until he owned the car. (Mr M said it was his intention to pay off the agreement sooner which, if he had done so, would have reduced this payment to some extent.)

The recorded mileage of the car was 71,620 when Mr M acquired it in 2017. At the date of the IE report in May 2019 it was 95,573. When Mr M returned it in July 2019 it was 97,000. So over the two years Mr M had the car it covered a total of 15,380 miles.

I said that when a car the subject of a hire purchase or conditional sale agreement was rejected under the CRA, and the agreement was brought to an end, we thought it was fair that the consumer paid for the use he had had of the car until then.

We based this payment on the monthly instalment the consumer was paying under the agreement because this was the contractual payment under the agreement while they were using the car, and they weren't committed to continuing payments until the end of the agreement – they had various rights to terminate the agreement sooner.

Mr M complained that he was paying a high interest rate under the agreement, and so had ended up paying a high monthly figure for the use of the car. However, this was the effect of the agreement he had entered into. It wasn't our practice to substitute a commercial hiring rate for the contractual monthly payments.

Mr M said the car was troublesome from the time he acquired it. It didn't give him the enjoyment he was expecting, and he was always fearful that it would break down. While I accepted that the car wasn't satisfactory, he was able to use the car, and did cover a significant mileage in it.

I also had to bear in mind that a lot of the conduct he complained about was that of SD and the repairer, businesses for which Moneybarn wasn't responsible. It seemed Mr M wasn't aware he could complain to Moneybarn until he did so in May 2019.

However, I did think it was fair that Mr M was compensated for periods when, because of the underlying faults, he was unable to use the car, and for any extra costs he suffered because of the faults. So I had asked him to provide details of when he couldn't use the car, and any additional costs he had to pay because of the faults.

Periods for which Mr M was without the car

Mr M said the car was taken in for repairs on two dates in June and July 2017, and one date

in May 2018. Each time he was without the car for between ten and fourteen days, and wasn't provided with a courtesy car.

He said the car went in for inspections on three dates in June, July and August 2017, and two dates in April and May 2018. He hadn't said how long this took, but I assumed it wouldn't have been more than two days each time.

Mr M paid the last monthly instalment in May 2019. He said that after his complaint to Moneybarn he made little use of the car, although he added 1,427 miles between the car being inspected by IE and being returned to Moneybarn.

Mr M had said that his monthly insurance cost for the car during the agreement was approximately £113, although I hadn't seen any evidence for this. He thought this should be reimbursed to him for the times he wasn't able to use the car.

I said that, all in all, I thought it was reasonable that Moneybarn should refund Mr M a further 3 months instalments totalling £804.66, plus three months insurance premiums, to compensate him for the times he was without the car and his poor experience with it during the agreement.

This was in addition to what Moneybarn had already paid him, and was subject in the case of the insurance premiums to Mr M producing satisfactory evidence of what he had paid.

Insurance costs following the ending of the agreement

Mr M said that the ending of the agreement in July 2019 meant that he had to cancel his insurance on the car and pay £350. He has produced some correspondence with his insurer and its agents, but nothing which explained this figure or why it arose as a result of the ending of the agreement.

I said that this might be a cost which it would be reasonable for Moneybarn to reimburse. But until Mr M produced evidence explaining how it arose, I couldn't comment further.

Inspection and repair costs

Mr M said he had to pay £70 on each occasion he took the car to IG for inspection. However, he hasn't produced any evidence of these payments. I thought it was reasonable that Moneybarn should reimburse those payments, subject to Mr M producing satisfactory evidence of them having been paid by Mr M.

Mr M said he had to pay £300 towards the replacement of the electronic steering lock in May 2019, and thought Moneybarn should reimburse this amount. However, I said there wasn't any evidence to suggest this was connected to the shaking/rattling/banging fault, and as it occurred more than 6 months after delivery the presumption under the CRA would be that it wasn't present or developing at delivery. On this basis, I said I couldn't reasonably require Moneybarn to refund this.

I said that, for the reasons I'd explained, but subject to any further comments or evidence that I received from either Mr M or from Moneybarn by 26 September 2020, I intended to uphold this complaint, and to order Moneybarn No.1 Limited, in addition to the actions it had already taken and the sums it had already paid Mr M, to:

1. refund Mr M a further 3 months instalments totalling £804.66, plus three months insurance premiums, to compensate him for the times he was without the car and his

- poor experience with it during the agreement, subject in the case of the insurance premiums to Mr M producing satisfactory evidence of what he paid; and
2. pay Mr M the costs of having the car inspected by IG in 2017 and 2018, subject in each case to his producing satisfactory evidence of what he paid.

Responses to my provisional decision

Moneybarn didn't respond to my provisional decision.

Mr M responded to say, in summary, that he accepted my provisional decision, although he still felt cheated out of all the money he had paid.

He also said that in relation to the £300 he paid in May 2019 towards the replacement of the electronic steering lock, he hadn't asked for this work to be done. He had taken the car back to the repairer complaining about the same symptoms as before. The repairer did this work and said it would cure the problem, but it didn't. So he thought he should be reimbursed this amount too.

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 relation to the replacement of the electronic steering lock, I still think this seems unrelated to the other symptoms Mr M has described, and didn't cure them. I note what he has said about how the work came to be done, but on the evidence available I'm not persuaded it would be reasonable for me to require Moneybarn to refund this amount.

All in all, I remain of the view that it's fair and reasonable that Moneybarn should pay Mr M the further compensation I proposed in my provisional decision.

Putting things right

I think Moneybarn should pay Mr M the further compensation 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, in addition to the actions it's already taken and the sums it's already paid Mr M, to:

1. refund Mr M a further 3 months instalments totalling £804.66, plus three months insurance premiums, to compensate him for the times he was without the car and his poor experience with it during the agreement, subject in the case of the insurance premiums to Mr M producing satisfactory evidence of what he paid; and
2. pay Mr M the costs of having the car inspected by IG in 2017 and 2018, subject in each case to his producing satisfactory evidence of what he paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 October 2020.

Lennox Towers

Ombudsman