

The complaint

Mr R complains that Moneybarn No. 1 Limited wouldn't agree to him rejecting a faulty car.

What happened

In June 2019 Mr R acquired a second-hand car costing £12,240 funded by a conditional sale agreement. The car was some seven years old and had a recorded mileage of 75,377.

Shortly afterwards Mr R received an advisory from the manufacturer about the cambelt. He complained to Moneybarn that the cambelt hadn't been serviced before the sale and he thought the car had been in an accident as there were cracks showing on the boot.

Moneybarn rejected the complaint and said the cambelt was a serviceable item and there was no evidence it had failed. It said it had carried out a HPI check and there was nothing to show the car had been in an accident. It said that if it had been in a minor accident this wouldn't show on the check. It added that it was open to Mr R to have been satisfied with the condition of the bodywork prior to sale, though given the age of the car some marks were to be expected.

Mr R brought his complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. Mr R said he hadn't been offered a full service history by the dealer and every so often smoke comes out of the exhaust. He only discovered the damage to the bodywork when he cleaned the car and he believed it had been in an accident.

He said he had asked the dealer about the cambelt and he had been told that it had been replaced. He believed it should be replaced after 100,000 miles or five years. He added that in August the dealer had offered to let him reject the car. He supplied the manufacturer's record of the service history which only included work done by authorised garages.

Our investigator spoke to the dealer. She was told that if it was aware the car had been involved in an accident it would have been sold at auction. The dealer said that the salesman wouldn't have commented on the cambelt as he would have had no way of knowing if it had been replaced. Often this was done at a non-approved garage and so wouldn't be recorded. He said that the cambelt should be replaced at 120,000 miles or five years. It had no knowledge of the boot damage which was to do with the removal of a tow bar. This would have been done by a previous owner.

Our investigator said there was no evidence that would allow her to conclude the dealer had said the cambelt had been replaced. It was possible that it had been done by a third party garage and not recorded on the manufacturer's system. Mr R had been able to drive the car for some 2,500 miles before raising the issue with Moneybarn and had not encountered a problem with the cambelt.

She referred to the photo Mr R had submitted showing scratches to the car which he said hadn't been apparent at the point of sale as dealer had buffed the car thereby hiding the marks. These only became apparent later. Our investigator said that this was seven-year-

old car and minor defect would be expected as covered by the Consumer Credit Rights Act 2015. She also thought the scratch where the tow bar had been removed would have been apparent at the point of sale.

She had not been able to obtain a recording of the call during which Mr R said he had been told he could reject the car. However, she didn't believe there were grounds for rejection.

Mr R didn't agree and said his complaint had been misunderstood. He said he hadn't said anything about a tow bar being removed. He said the filler had blown due to it being repaired badly.

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 what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

I appreciate that Mr R was disappointed with his car and while I have every sympathy with him, I do not believe I can uphold his complaint. I will explain why.

Mr R has said that our investigator has misunderstood his complaint and I asked him to clarify his concerns in writing to avoid any further misunderstanding. He suggested a phone call but given the alleged misunderstanding that had arisen during previous calls I requested his comments in writing, even if he asked a friend or family member to assist. No further information has been supplied.

It seems that there are two main issues, the cambelt and the damage to the bodywork. On the matter of the cambelt the manufacturer recommends that it is changed after 120,000 miles or five years. That means the cambelt should have been changed before the point of sale. The manufacturer's service record is not complete which suggests that the car has been serviced by non-authorised garages. This is not unusual, especially in a car of this age.

There is no record which shows whether the cambelt has been changed or not. Mr R has said a friend of his says it hasn't been, but I have no independent evidence to say one way

or another. I cannot say if the car was advertised as having had the cambelt changed, but I would be very surprised if that level of detail was mentioned.

Nor can I say what was said by the salesman during the course of the sale. Mr R, after his initial complaint was made, said that he had asked specifically about the cambelt and had been told it had been done. The dealer says it wouldn't have said this. On balance, I don't believe I have enough evidence to say that Mr R was misled. I can see that the car passed its MOT in November 2020 having done 84,728 miles so I believe Mr R has been able to make use of it. His recent emails suggest he hasn't had the cambelt replaced.

On the matter of the damage to the bodywork I have noted the photos provided by Mr R. These show several cracks close to the number plate. It is possible they were polished at the time of sale and that Mr R didn't notice them. If that is the case then it suggests that they are not substantive. If they are significant then I consider it more likely than not that they would have been visible at the point of sale.

In any event, as the car was some seven years old and scratches and marks are to be expected. Mr R has suggested the marks are getting worse but hasn't provided further evidence. I believe he doesn't want to risk any further damage.

So, while there is some damage I don't consider it such that rejection is merited. Nor can I say that there is sufficient evidence to allow me to conclude the car was mis-sold.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 March 2021.

Ivor Graham
Ombudsman