

The complaint

Mr B complains that the car he acquired through a conditional sale agreement with Moneybarn No. 1 Limited wasn't of satisfactory quality. The car broke down within the first six months and hasn't been able to be used since. Mr B wants to either have the car repaired at no cost to him or to reject the car.

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my 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.

Having done so, I agree with the conclusions reached by the investigator for these reasons:

- Mr B acquired a car through a conditional sale agreement with Moneybarn. Under the regulations, specifically the Consumer Rights Act 2015 (CRA 2015), Moneybarn can be held liable if the car wasn't of satisfactory quality at the point of supply. Satisfactory quality takes into account factors such as the age and mileage of the car and what a reasonable person would expect taking into account all the circumstances.
- The car Mr B acquired was over nine years old and had been driven over 97,000 miles at acquisition. Therefore, it would be reasonable to accept that it would have suffered some wear and tear. It is also possible that parts could fail on a car of this age and mileage shortly after acquisition even if the faults weren't present at the point of supply. Mr B was able to drive the car for over three months and 7,000 miles before the issue arose and this needs to be taken into account.
- Mr B's car failed in early March 2020. Under the regulations it would be generally expected that when faults arise within the first six months the onus is on the supplier to show that the car was of satisfactory quality at the point of supply. The dealer inspected the car and suggested the failure was due to low oil level and therefore negligence by Mr B. However, two other independent inspections took place which both said the oil levels and coolants levels were correct and I have placed more weight on these and so I do not accept the findings of the dealer.
- The independent inspection arranged by Moneybarn took place in June 2020. This said that the oil and coolant levels were correct. It noted visible oil contamination throughout the engine bay which it said appeared to be longstanding and from multiple sources. It said the engine needed to be stripped down to determine the exact cause of the fault and extent of the damage but said that the engine appeared to have suffered internal damage. Given the time Mr B had the car and the mileage covered it didn't conclude on the balance of probability that the issues causing the car to fail were present at the point of supply.

- While I note the conclusions of the June report, as it says that further investigation is needed to identify the cause of the fault there is uncertainty about the reason for failure. Given the cause of failure hasn't been determined for certain then it follows there must be some uncertainty about whether the failure was due to a faulty part or if the car wasn't sufficiently durable. I also note that the inspection report says that there was evidence of long standing oil contamination. As Mr B had only had the car for just over three months, this suggests there were issues present or developing at the point of supply.
- The inspection report carried out in August 2020 concluded that the engine had failed prematurely. It said that the issues wouldn't have developed solely in the period of Mr B's use and considered the issues were developing at the point of supply. It didn't consider the issues were caused by any fault on the part of Mr B and believed the car shouldn't have failed at that time. It said the car wasn't fit for purpose.
- While the reports are conflicting, there are common themes. First, that there was no suggestion of Mr B not maintaining the car or the issue being due to his fault. There was also the comment about the longstanding issue with the oil and the second report's comments about issues having been developing at the point of supply. There was also the need for further investigation noted in order to determine the exact cause and issue. Given the information in the reports I find it more likely than not that there were issues that were present or developing at the point of supply which resulted in the engine failing after around three months. I note the comment that the engine failed prematurely, and this suggests the car wasn't sufficiently durable at acquisition. Because of this, I do not find the car was of satisfactory quality at the point of supply.

As, on balance, I do not find that the car was of satisfactory quality at supply, I find that Moneybarn is required to provide a reasonable remedy. In this case the cost of repair is unknown, and I accept it could be possible that the repair is uneconomical. Therefore, I find it reasonable that the car is collected from Mr B at no cost and that Moneybarn either have the car repaired at no cost to Mr B, or if this isn't reasonable, then it accepts the rejection of the car.

Mr B hasn't been able to use the car since March 2020. Therefore, he should have any payments he made refunded and any other payments not made but due for this period waived. Mr B's credit file should also be amended so that there is no adverse information recorded regarding this agreement. He should also be refunded the cost of the recovery of the car (£180) along with interest.

If it is decided that the car will be rejected Mr B's agreement should be cancelled with nothing further owing. If Mr B had paid a deposit I would expect this to be refunded along with interest however as the sales invoice and agreement show there was no deposit paid no further action is required regarding that.

Putting things right

As Moneybarn hasn't had an opportunity to repair the vehicle, I'm recommending that Moneybarn:

- collect and repair the vehicle at no cost to Mr B;
- refund Mr B £180 along with 8% simple interest from the date of payment to the date of settlement for recovery costs;

- refund Mr B any monthly payments made from 5 March 2020 to the date of settlement along with 8% simple interest from the date of payment to the date of settlement and waive any outstanding payments for this period; and
- remove any adverse information relating to this agreement from Mr B's credit file.

As the repair will likely mean the replacement of the engine, Moneybarn can decide whether it considers the repair reasonable and if not it can allow rejection of the vehicle also. If Moneybarn accepts rejection it should:

- collect the vehicle at no cost to Mr B;
- end Mr B's agreement with nothing further to pay;
- refund Mr B £180 along with 8% simple interest from the date of payment to the date of settlement for recovery costs;
- refund Mr B his monthly payments from the 5 March 2020 to the date of settlement along with 8% simple interest from the date of payment to the date of settlement; and
- remove any adverse information from Mr B's credit file in relation to this agreement.

My final decision

My final decision is that I uphold this complaint. Moneybarn No. 1 Limited should take the actions set out above to remedy this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 May 2021.

Jane Archer
Ombudsman