

The complaint

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

What happened

In April 2019, Mr I was supplied with a used car through a conditional sale agreement with Moneybarn. Mr I paid a £550 deposit and the agreement was for £12,977 over 60 months; with monthly repayments of £509.72. At the time, the car was five years old and had done 18,270 miles.

Mr I collected the car from a dealership in Glasgow and drove it back to his home in London. He said that he started to experience problems with the gearbox on the car within a few weeks of taking possession of it. He took the car to a manufacturer's dealership close to his home on 13 June 2019, and they said that, although there were no faults relating to the gearbox issue, the mechatronic unit needed replacement. At the time, the car had done 24,568 miles.

Mr I said that the problems with the car got worse, but it took him some time to arrange for the car to be inspected by a manufacturer's dealership again – there was no local availability, he was offered an inspection in the Birmingham area (which he had no means of returning home from without a courtesy car), and when a local inspection was finally arranged he was offered an unsuitable courtesy car (it was too small with a manual, not automatic, gearbox). So a further inspection didn't happen until 17 September 2019, when the car had done 35,556 miles. The inspection report said there were faults with the gearbox and a new mechatronic unit was required.

Mr I complained to Moneybarn on 26 September 2019. Moneybarn arranged for an independent engineer to inspect the car. This inspection took place on 10 October 2019, when the car had done 39,123 miles. The independent inspector said that the mechatronic unit needed replacing. But the inspector also said, because the car had travelled 20,853 since it was supplied to Mr I, *"on the balance of probability, the vehicle would not have been in this condition at finance inception."* Based on this report, Moneybarn didn't agree to cover the costs of the replacement mechatronic unit.

Mr I wasn't happy with Moneybarn's response, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said it wasn't disputed there was a problem with the gearbox, or that the mechatronic unit needed replacing. But, because Mr I had reported this problem within a few weeks of taking possession of the car, and because the car had done around 6,000 miles when the fault was first identified (not the almost 21,000 miles the independent inspector relied upon); she said it was more likely than not that the fault was present when the finance started. And she didn't think the car was of a satisfactory quality as a result.

The investigator said that Moneybarn should arrange to repair the car, or refund Mr I the cost of repair plus interest if he'd already had the car repaired. And because Mr I had stopped

using the car, and paying Moneybarn, because of the fault, she thought Moneybarn should remove any adverse information from Mr I's credit file.

Mr I agreed with the investigator, but Moneybarn didn't. While Moneybarn said "*we accept your findings that it is likely there was an issue with the vehicle at the point of sale*" they didn't agree with the investigator's recommendations.

Moneybarn have said that Mr I continued to use the car for some time and, if he didn't have the car repaired himself, "*then this continued use could well have resulted in additional damage to the vehicle.*" And Moneybarn didn't think it was fair they should be responsible for this additional damage. They also said that, because Mr I was continuing to use the car without paying for it, they didn't think it was fair to remove any adverse information from his credit file.

Because Moneybarn didn't agree with the investigator, this has been passed to me to make a final 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.

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 I was supplied with a 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 – the Consumer Rights Act 2015 (CRA) - says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by things such as durability, and what a reasonable person would consider satisfactory given the price, description and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale; and the vehicle's history. Durability means that the components within the car must last a reasonable amount of time.

The CRA also says that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed that the fault was present when the car was supplied, unless Moneybarn can show otherwise. So, if I thought the car was faulty when Mr I took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

The basic facts of this case aren't in dispute. Mr I was supplied with a car that had a fault with the gearbox. And this meant the mechatronic unit needed replacement. No reasonable person would expect a well maintained and serviced car to have a gearbox failure after less than 25,000 miles, so I agree this was an issue of durability – the engine on the car wasn't sufficiently durable, and this made the car of an unsatisfactory quality. The CRA gives Moneybarn a chance to repair the car, and Mr I wants the car repaired.

Given these facts, my decision will focus on what I consider to be a fair remedy.

Mr I did almost 21,000 miles in the car between taking possession of it in April 2019, and the independent assessment in October 2019. I can see that Moneybarn are concerned that Mr I's use of the car with the gearbox fault may've caused additional damage. But I haven't seen anything to show me that's the case or that any additional damage has been done. All the reports say that the mechatronic unit needed replacement, and this has been the case since Mr I took possession of the car. And he hasn't had this work done. So, given this, I consider it only fair that Moneybox arrange for this repair.

I've seen the MOT history for the car, and I've seen that it passed an MOT on 21 January 2020, with a recorded mileage of 50,621. However, this MOT expired in January 2021, and hasn't been renewed. Mr I's said that he hasn't used the car in the last few months and the battery is now flat. The non-renewal of the MOT would indicate this is the case.

Looking at the difference in the mileage from when Mr I took possession of the car and the January 2020 MOT, this shows me that he did an average of 4,621 miles a month in this period. And I've seen nothing that indicates Mr I's usage of the car changed after this point.

Mr I has been asked for photographic evidence of the current mileage on the car, but he's refused to provide this. So I can't work out, given his average usage, when he was most likely to have stopped using the car. So the most likely date that Mr I stopped using the car, given the current evidence, was when the MOT expired in late January 2021. And, because Mr I had use of the car up to this point, it's only fair that he pays for this usage.

I've seen a statement of Mr I's account. And this shows he paid regular monthly payments until January 2020. After this point, payments stopped being made by direct debit, and Mr I paid these manually. He made two payments in February 2020, paid nothing in March or April 2020, made a partial payment in May 2020 (when Moneybarn had agreed a payment holiday), paid slightly more than one payment in June 2020, paid full payments in July and August 2020, and paid a partial payment and a lump sum overpayment in September 2020. I haven't seen any evidence of any payments made from October 2020 onwards.

Because Mr I had use of the car until late January 2021, and it's not clear that he stopped making payments only because the car was faulty (he asked for, and was granted, a payment holiday); it's only fair that his credit file should reflect his payment history up until this point. But, because Mr I didn't use the car after January 2021, and the car was faulty, I don't think that any additional adverse credit should be recorded from February 2021 until the car has been repaired.

Because this differs from the recommendation made by the investigator, I asked both parties for any comments they had on this. Neither party made any comments or objected to this change. So I'm able to make a final decision about this complaint.

Putting things right

Moneybarn should now arrange to do the following:

- arrange for the mechatronic unit to be replaced on the car, at no cost to Mr I, and within a reasonable timescale.
- remove any new negative information, added after February 2021, from Mr I's credit file.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 18 May 2021.

Andrew Burford
Ombudsman