

## **The complaint**

Mr M complains about the quality of a car he has been financing through an agreement with Moneybarn No. 1 Limited ("Moneybarn").

## **What happened**

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.

I know it will disappoint Moneybarn, but I agree with the investigator's opinion. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr M acquired his car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then Moneybarn, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would likely include things like the age and mileage at the time the car was supplied to Mr M. The car here was already eight years old and had completed about 89,000 so I think a reasonable person would expect it to have some wear and tear.

But I don't think they'd think the car to be of satisfactory quality if it developed a significant fault such as this with the gearbox having only completed about 1,000 miles.

The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply, when Moneybarn were responsible for its quality, unless they can demonstrate otherwise. This fault was reported within two months and I've not seen evidence that persuades me it wasn't present at the point of supply.

In those circumstances the relevant legislation gives the business one opportunity to repair the fault. But if that repair fails they should allow the consumer to reject the car.

The car failed again in November 2019, eight months after inception of the finance and about 4,000 miles since the car was repaired. The independent inspector didn't think the fault was present at the point the car was supplied to Mr M, but he couldn't view the mechatronic unit in situ and explained it would need removing to complete the investigation, so I don't think his findings are particularly persuasive. I think the evidence suggests it was the same fault that was repaired in May 2019. I say that because:

- the garage Mr M took the car to have explained the faulty part is a valve body and that appears to be exactly the same part that failed in May 2019;
- the supplying dealership explained that the "*valve body was prone to cracking due to a manufacturing fault*" and, by their nature, manufacturing faults are present from the beginning;
- Mr M has provided an email he sent to the warranty company in which he explains that one of their operators told him there had been a claim under warranty for the gearbox on the car before he took receipt of it. It appears he was told nothing was ever done about the claim. Whilst I don't think this is conclusive evidence of a fault with the gearbox at inception I do think it adds a little more weight to Mr M's argument;

And, as it seems it was the same fault repaired in May 2019, I don't think that repair can be considered successful as it only lasted for six months and a few thousand miles. So, I think there is evidence that this car was not of satisfactory quality.

### **Putting things right**

Moneybarn should collect the car at no cost to Mr M (if they haven't done so already) and they should end the finance agreement.

They'll need to refund any deposit Mr M has paid and, as he's been deprived of that money, they will need to add interest to that refund.

Mr M has had to commission a report on the car's condition in order to support his claim. There appear to also be costs associated with storage fees that may have been added to the balance of Mr M's agreement. I think those costs have been incurred as a consequence of the car being of unsatisfactory quality. So, Moneybarn should refund the cost of the report on provision of receipts from Mr M and they should refund or waive any storage fees that have been incurred. They should add interest to any refund.

Mr M has been inconvenienced by these issues. He's had to take the car back to the dealership on several occasions and he's also had to escalate his complaint to this service when I think it could have been resolved earlier. He's explained that the whole process has been stressful for him and, in the circumstances, Moneybarn should pay him £225 compensation for the distress and inconvenience he's experienced.

Mr M appears to have had reasonable use of the car up until November 2019 when he's explained the fault prevented him driving the car anymore. When the car was being repaired he was kept mobile with a courtesy car. So, I think it was fair for him to pay for the car up to November 2019 but Moneybarn should refund or waive any payments made or due from that point. They should add interest to any refund as Mr M has been deprived of that money.

## **My final decision**

For the reasons I've given above I uphold this complaint and tell Moneybarn No. 1 Limited to:

- allow Mr M to reject the car and end the finance agreement with nothing more to pay;
- collect the car at no cost to Mr M if they haven't already done so;
- refund any deposit that has been paid and add 8% simple interest per year from the date of payment to the date of settlement;
- refund, or waive, any finance instalments made from, and including, 18 November 2019 the point at which Mr M reasonably stopped using the car. Add 8% simple interest per year from the date of payment to the date of settlement;
- refund the cost of the garage report, any storage costs or any repair costs Mr M incurred and can provide receipts for, as they were consequential losses. Add 8% simple interest per year to the refund from the date of payment to the date of settlement;
- pay Mr M £225 to compensate him for the distress and inconvenience he's experienced;
- remove any adverse reports they may have made to Mr M's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 May 2021.

Phillip McMahon  
**Ombudsman**