

The complaint

Mr J complains that the vehicle he acquired through a conditional sale agreement financed by Moneybarn No 1 Limited wasn't of satisfactory quality. He wants to reject the vehicle or for the cost of repairs to be covered.

What happened

Mr J tells us that he acquired the vehicle in April 2019 from a dealer I'll refer to as "AP". At the time he says the vehicle was eight years old with around 90,000 miles on the odometer. He states that as the dealership was not local to him, he was sent a text with a picture of the vehicle which he says looked immaculate. Mr J explains that the vehicle was delivered at night and so it was difficult to inspect at the time. But he says he notified AP the next day after he'd seen numerous faults. A few weeks later he said the vehicle started to pull dramatically. And he says he's also reported that the vehicle shuddered and more recently that the convertible roof stopped working.

Mr J says that AP had initially agreed to rectify the problems when he'd first reported them. But when he took up the further issues, he'd been told that these were wear and tear. Mr J says he obtained an independent engineer's report from E, a qualified vehicle technician. And that this report had identified numerous faults with the vehicle. And that an estimate of the cost of repairs at £4,510 has also been provided by a business I'll refer to as "K".

Moneybarn said it considered the issues raised to be cosmetic and due to fair wear and tear. Which was to be expected with a vehicle of this age and mileage.

I issued a provisional decision on this complaint on 16 February 2021. I said that I was minded to partly uphold the complaint. I found that whilst some of the faults could be fairly considered to be cosmetic – including some scratches and dents – others could not. This included a defective fog lamp; misalignment of panels; missing suspension cover; and the vehicle pulling in the manner described in the independent report. I provisionally found that a price reduction of £2,000 should be applied.

Both parties have replied to my provisional view. Mr J said he didn't think the suggested level of award was fair as the vehicle would cost more than this to repair. Moneybarn expressed its disappointment that I intended to uphold the complaint. But it said that if the award was upheld it should be credited against the arrears which had accrued and which amounted to over £2,500.

I thank both parties for their responses, but in the absence of any new material information I'm not minded to change my provisional decision in terms of partly upholding the complaint. This is largely repeated in my final decision set out below. But I do acknowledge that it would be fair and reasonable to apply any compensation award to reducing the arrears.

If Mr J had put the monthly instalments that haven't been paid towards the repairs, I could have seen the justification for directly refunding those costs to him. But in these circumstances, I think it's fairer to apply them so as to reduce the outstanding balance owed.

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 understand that Mr J would be disappointed with the issues he found with this vehicle. With high mileage, used vehicles such as this it wouldn't be expected that it would be supplied in the same condition as a brand new vehicle. So some bodywork wear and tear might reasonably be expected.

Mr J's conditional sale agreement is a regulated consumer credit agreement and our service is able to consider complaints relating to it. Moneybarn supplied the vehicle so it's responsible for complaints about the quality of the vehicle.

I don't apply the law - directly - but I do take it into account. Relevant law here includes the Consumer Rights Act 2015 (CRA). And the Consumer Protection from Unfair Trading Regulations of 2008 (CPUTR).

The CRA states that in order to conform to contract goods must be of satisfactory quality when supplied. Satisfactory quality is defined as being what a reasonable person would consider to be satisfactory. And this would include aspects of price, previous use and durability. Goods must also be as described or match any sample used. So where a photograph is used this must accurately depict a fair image of the goods and not create a false impression.

The CRA contains a presumption that where goods don't conform to contract within six months of the date of supply that they didn't do so at that time. This presumption applies unless it's shown that the goods did conform to contract at that time.

The CPUTR requires the consumer to be provided with sufficient information about the goods which the average consumer would wish to know in order to reach an informed decision.

I've seen a Pre-sales inspection document prepared by AP which purports to show a list of components that were inspected immediately prior to supply and which are reported to be in "OK" condition.

Mr J states that he saw the vehicle advertised and was sent a photograph by text prior to his agreeing to acquire the vehicle. I've not seen this photograph within the text but I've seen photographs of the vehicle's condition which I understand were taken at the time of the inspection by E.

I've read the inspection report from E. The report was dated 19 May 2019 so was within four weeks of the date of supply.

The findings were as follows:

- *The Nearside front inner arch guard is out of alignment;*
- *The Nearside front wing is misaligned against the bonnet, the Nearside front door and front bumper;*
- *The nearside sill panel is damaged;*
- *There is severe stone lashing to the bonnet and front bumper;*

- *There is evidence of poor finish to the front bumper;*
- *The front grill is broken on the nearside;*
- *The Nearside front fog/driving lamp is defective;*
- *The Nearside front suspension top mounting cover is missing;*
- *The offside rear quarter panel is dented and scratched in 2 places;*
- *The rear bumper is scratched on both corners and in the centre section;*
- *The Nearside rear quarter panel has small sinkage type holes present;*
- *All 4 alloy wheels damaged;*
- *Vehicle pulling to the right-hand side of the road.*

I can see that E's report also identifies issues with a defective fog light and suspension cover, both of which were said to be "OK" on the pre- sale inspection list.

As Mr J acquired the car without having first examined it at first hand, it's reasonable that he didn't observe all the issues with the vehicle until after it had been delivered. Unfortunately, neither party has been able to supply an advertisement so I'm unable to say in what terms the vehicle was described. But I infer that the numerous defects identified by E were not fully depicted in the advertisement photograph – not least as some were beneath the bonnet. And others would not have been apparent unless the vehicle was photographed from several angles.

Where information is incomplete or unclear - as some of it is here - I reach my conclusions on the balance of probabilities. That is, what I think is most likely to have happened in light of the available evidence and the wider surrounding circumstances.

I've reached the view that some aspects of the damage can, viewed separately, fairly be described as cosmetic. This includes scratches and dents which don't compromise safety. But that's not a phrase which overall sits easily with a vehicle costing £8,000, requiring more than half that amount in repairs so soon after supply.

Some of the other faults were, in my opinion, sufficiently serious as to render the vehicle not to conform to contract at the point of supply. This includes defective fog lamp; suspension cover missing; misalignment of panels; vehicle pulling as described by the independent report. And the overall condition of the vehicle is not one which the reasonable person would consider to be of satisfactory quality.

I've also concluded that Mr J wasn't given all the information – about the general condition of the vehicle - that the average customer would require to make an informed decision on whether to acquire goods as is required by the CPUTR.

The estimate for repairs is split into two elements which consist of £2,160 labour and £1,599 parts and materials (plus VAT in both cases). Not all the individual components which need attention are individually priced.

Where goods which aren't of satisfactory quality are not rejected within the first 30 days of supply the dealer / supplier has the opportunity to repair them. And to restore them to a condition so that they do comply to contract, before a further right to reject arises.

Usually, I'd expect any repairs to be arranged through the dealers. But I'm told that AP is no longer trading so it can't do the repairs. That is also likely to impact the cost of repairs. AP, as the original dealer, would have been expected to make good the defects without cost to Mr J or Moneybarn. Whereas any party undertaking the repairs now would presumably do so on commercial terms.

I infer that the parts quoted in K's estimate would be new and that the standard of paintwork after repairs would actually restore the vehicle to a better condition than the average vehicle of this age and mileage.

Where repairs are the appropriate remedy for goods that were in used condition at the time of supply, the supplier is only required to return the goods to a condition so that they conform to contract. In other words, satisfactory quality would be assessed on the same basis as when the goods were acquired. The supplier is not required to restore them back to new or to factory standard. So I think the proposed standard and cost of repairs would lead to betterment. Given this was a used, high mileage vehicle, I don't think it would be reasonable to expect the vehicle to be repaired to the high standard proposed.

Assessing a fair award in these circumstances is not an exercise in precision. But taking into account the cost of materials and labour, I think that a contribution of £2,000 is fair and reasonable. The amount reflects my findings that not all the quoted repairs were for items which would have made the vehicle not conform to contract at the time of supply.

I've now to consider what is a fair and reasonable means by which the redress should be put into effect. And as AP isn't trading any longer that creates an additional problem.

The vehicle passed an MOT in November 2020 with an odometer reading of 97,303 miles. And Mr J has supplied a more recent photograph of the mileage which shows an odometer reading of 97,532 miles in February 2021. So there are seemingly no longer any safety issues with the vehicle, and Mr J is able to use it.

But I've become aware that there are substantial arrears on the agreement. Although I'm not sure why these have accrued. Moneybarn is entitled to receive payments for fair use – even if goods don't fully conform to contract. And rather than ask Moneybarn to pay directly for the quoted repairs I think the fairest outcome is to apply the amount I intend to award to reduce the arrears.

This also might have some additional benefit to Mr J in that the arrears figure recorded on his credit file will be substantially reduced.

It doesn't form part of this complaint but I'd encourage Mr J to contact Moneybarn to see what arrangements might be appropriate to deal with the remaining arrears and ongoing payments.

Putting things right

Moneybarn No.1 Limited should take the following action:

1. Credit Mr J's account in respect of the financial agreement with £2,000 to reflect the cost of repairs;
2. Pay £100 to Mr J for distress and inconvenience;

My final decision

For the reasons given above, my final decision is I'm upholding the complaint in part. I require Moneybarn No.1 Limited to take the action stipulated in the preceding section.

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

Stephen Ross
Ombudsman