

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

I issued a provisional decision on this complaint in February 2021. An extract from that provisional decision is set out below.

What I've provisionally 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.

Whilst I currently agree that this car has not been of satisfactory quality I don't currently agree with the redress that the investigator has suggested. 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. was the car of satisfactory quality?

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, mileage and price at the time the car was supplied to Mr M. The car here was around seven years old and had completed about 70,000 miles. So, I think a reasonable person would expect some wear and tear to be present.

But I don't think a reasonable person would consider a car, even of this age and mileage, to be of an acceptable quality if there was a fault with the gearbox developing that would be expensive to resolve.

The relevant legislation says that if a fault happens after more than six months it is to be assumed the fault wasn't present at the point the car was supplied, unless the consumer can demonstrate otherwise.

Mr M has referred us to a manufacturer's recall (34F7 and 34H5) but Moneybarn have explained there's nothing listed for this make and model of car on the government website. I think Mr M may be referring to a "non-code action" which is an issue registered with the Driver Vehicle Standards Agency (DVSA) that's outside of a recall but if not attended to could result in a safety issue. Having said that, I have reviewed the DVSA's non code action bulletin for 2013 when Mr M's car was first registered and there's no mention of any non-code actions for this make and model of car.

But the relevant legislation also asks us to consider if a car has proven to be suitably durable when we consider whether it has been of satisfactory quality and here I don't think this car has proven to be suitably durable. I think a reasonable person would expect a car's gearbox to last more than 84,000 miles.

So, I think it's likely this car was of unsatisfactory quality when supplied as it likely it had a known fault.

what do Moneybarn need to do to put things right?

I agree with some of the actions the investigator proposed.

The relevant legislation allows the business an opportunity to repair a fault present at the point of supply. So, I'd agree that Moneybarn will need to do that.

Mr M hasn't been able to use the car since September 2019 so it's not fair to expect him to pay finance instalments towards it. I'd therefore agree with the investigator that any instalments paid since the car failed in September 2019 should be refunded and, as Mr M has been deprived of that money, Moneybarn should add 8% to that refund.

It's clear Mr M has been inconvenienced by these issues. He's had to take his car to be repaired; uncover information about a recall; arrange an alternative vehicle when a courtesy car wasn't provided, and he's had to escalate his complaint to this service when I think it could have been dealt with earlier. In those circumstances I would agree with the investigator that Moneybarn should pay him £350 in compensation.

It's often the case that dealerships provide courtesy cars when consumers put their cars in for repair. When that happens, this service would usually tell the business to refund monthly payments made whilst the car is being repaired but may allow the business to retain some, or all, of that refund in return for keeping the consumer mobile.

But here Mr M has arranged a new finance deal for an alternative car. So, he should be refunded for the car he isn't able to use but not for the car he is using as a replacement. That would not be fair as he would be getting use of a car for free. So, I disagree with the investigator here and I'm expecting to ask the business to refund the finance instalments but not the money Mr M has paid towards his new car.

The investigator has suggested that Moneybarn should pay for a courtesy car whilst Mr M's is being repaired. This clearly won't be necessary as Mr M now has an alternative vehicle. But Moneybarn should continue to refund any finance instalments Mr M pays whilst he's waiting for his car to be repaired and returned to him.

Mr M has told us he is expecting to move home in March 2021. If he needs to move before this complaint is settled Moneybarn will need to refund any costs Mr M incurs transporting the car to his new home. They'll need to add 8% interest to that refund from the date Mr M paid it to the date of settlement.

It may well be that the cost to repair the car is prohibitive and Moneybarn may wish to allow Mr M to reject the car instead. If that's the case I would be asking them to:

- *end the finance agreement;*
- *collect the car at no cost to Mr M;*
- *refund any deposit Mr M may have paid and add 8% interest per year to that refund from the date of payment to the date of settlement;*
- *refund all finance instalments paid since September 2019 and add 8% interest per year to that refund from the date of payment to the date of settlement;*
- *pay Mr M £350 to compensate him for the distress and inconvenience he's experienced.*

My provisional decision

For the reasons I've given above I'm expecting to tell Moneybarn No. 1 Limited to either:

- *repair the car;*
- *refund all finance instalments paid from September 2019 until the car is fixed and add 8% interest per year to that refund from the date of payment to the date of settlement;*
- *pay Mr M £350 to compensate him for the distress and inconvenience he's experienced;*
- *refund any costs associated with transporting the car to Mr M's new address and add 8% interest per year to that refund from the date of payment to the date of settlement.*

Or:

- *end the finance agreement;*
- *collect the car at no cost to Mr M;*
- *refund any deposit Mr M may have paid and add 8% interest per year to that refund from the date of payment to the date of settlement;*
- *refund all finance instalments paid since September 2019 and add 8% interest per year to that refund from the date of payment to the date of settlement;*
- *pay Mr M £350 to compensate him for the distress and inconvenience he's experienced;*
- *refund any costs associated with transporting the car to Mr M's new address and add 8% interest per year to that refund from the date of payment to the date of settlement.*

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.

Moneybarn didn't provide any further evidence for me to look at within the deadline I set but Mr M did.

He accepted the provisional decision and he explained that, as he had another car now, his preference would be to not have two live agreements and to therefore have this agreement ended.

Putting things right

I've thought about what Mr M has said and I've thought about whether it would be fair to

allow Moneybarn to make the decision whether to repair or allow the rejection of the car.

Mr M has been waiting a long time to have his complaint resolved and I don't think it would be fair for him to have to wait any longer whilst Moneybarn reach a further decision on which of my provisional actions to adopt.

The car was supplied in December 2018 for a cash price of £7,599 and will have depreciated in value since then. The gearbox quote I have seen from January 2020 suggests the cost to repair the gearbox is in the region of £7,249 and I think that suggests a repair wouldn't be cost effective.

So, I think the fairest resolution would be to allow Mr M to reject the car.

My final decision

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

- end the finance agreement;
- collect the car at no cost to Mr M;
- refund any deposit Mr M may have paid and add 8% interest per year to that refund from the date of payment to the date of settlement;
- refund all finance instalments paid since September 2019 and add 8% interest per year to that refund from the date of payment to the date of settlement;
- pay Mr M £350 to compensate him for the distress and inconvenience he's experienced;
- refund any costs associated with transporting the car to Mr M's new address and add 8% interest per year to that refund from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 May 2021.

Phillip McMahon
Ombudsman