

The complaint

Mr S complains that a car acquired with finance from Moneybarn No 1 Limited wasn't of satisfactory quality.

What happened

In June 2018 Mr S was supplied with a car and entered into a conditional sale agreement with Moneybarn. At the point of supply the car was around 4 years old and had covered 73,907 miles.

Mr S experienced issues with the engine management light illuminating. He took the car to the garage to have the issue fixed but every time he got the car back the light illuminated again. Eventually he had some repairs carried out which resolved the issue.

Mr S complained to Moneybarn in February 2019 and asked for the cost of repairs to be refunded. In response, Moneybarn said that because more than 6 months had elapsed since the point of supply, it was up to Mr S to show that the fault was present or developing at the point of supply.

Mr S wasn't happy with the response and complained to this service.

Our investigator upheld the complaint. He thought the car had a fault which was present or developing at the point of supply and said Moneybarn should refund the cost of repairs.

Moneybarn didn't agree. It said it wasn't aware that Mr S had reported any issues to the supplying dealer within the first 6 months and said that if he'd provided evidence that he had done so, it would have arranged an independent inspection.

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.

Because Moneybarn supplied the car under a conditional sale agreement, there's an implied term that it is of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid.

I would expect a second-hand car – such as that supplied to Mr S – to have a degree of wear and tear and to require repairs more often than a brand-new car. So, in order to uphold the complaint, I would need to be satisfied that the car had an inherent fault, as opposed to a fault caused by general wear and tear.

Under the Consumer Rights Act 2015, where a fault occurs in the first 6 months, it's presumed that it was present or developing at the point of supply and it's generally up to the business to put things right. The business is allowed one opportunity to repair the car. If the repair isn't successful, the consumer can reject the car. After 6 months the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality when

supplied.

Mr S has explained that he experienced a fault in November 2018 and reported issues with the engine management light illuminating to the supplying dealer within the first 6 months. Moneybarn has said that that Mr S didn't report the fault within the first 6 months, but this isn't supported by Moneybarn's own final response in which it states that after contacting the dealership, they advised that they had previously arranged for repairs to the vehicle as was the obligation.

Based on this, I'm satisfied that Mr S reported the fault to the supplying dealer within the first 6 months and that repairs were carried out.

Mr S has said that the repairs arranged by the dealer didn't resolve the issue and that the engine management light continued to illuminate and the car kept going into limp mode. He says that in May 2020 a third-party garage diagnosed a leak causing antifreeze to go through the exhaust system and causing the NOx sensors to fail. It was at this point that successful repairs were carried out at Mr S's expense.

Taking the available information into account, and because the fault occurred within the first 6 months, I'm of the view that Moneybarn should have done more when Mr S reported the issue in February 2019. It should have arranged to have the car independently inspected to determine whether the fault was a point of supply fault.

Moneybarn has since offered to arrange an inspection. However, I don't think this would help to resolve things now, because the car has already been repaired.

Because Moneybarn didn't arrange to have the car inspected when it should have done, Mr S has been placed in a position where he had to arrange for an inspection and pay for repairs himself.

I've looked at the available information regarding the diagnostics and repairs which have taken place. These show that when Mr S first reported the fault to the dealer, it told him to take the car to another garage for inspection. The garage told Mr S that there was a fault with the NOx sensor. Mr S says that when he reported this back to the dealer it didn't believe that this was the issue and told him to go to a different garage, who diagnose an issue with the DPF and regenerated it.

Mr S has said that the day after he collected the car it went into limp mode again. I've no reason to disbelieve Mr S. So it appears that the repairs carried out in November 2018 weren't successful.

Since then, the car has had further diagnostic tests. The diagnostic carried out in August 2020 found that there was a leak of antifreeze which was running through the exhaust and affecting the NOx sensors.

Based on the job sheets and taking into account all of the other information, I'm of the view that it was more likely than not that this antifreeze leak – and the consequences of it – was present or developing at the point of supply. I say this because the issues reported by Mr S have been the same throughout and the first diagnostic identified an issue with the NOx sensor.

Putting things right

The supplying dealer has already had one opportunity to repair the car. I've explained why I don't think the repairs were successful. Under the relevant legislation, Mr S would be entitled

to reject the car. however, Mr S has said that now he's paid to have the car repaired, he wants to keep it. So I think the fairest way to resolve the complaint is for Moneybarn to refund the cost of the repairs.

My final decision

My final decision is that I uphold the complaint. Moneybarn Number 1 Limited must:

Refund repair costs of £2,219.42 plus 8% simple interest from the date of payment to the date of settlement

Pay compensation of £200 for trouble and upset

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 July 2021.

Emma Davy
Ombudsman