

The complaint

Mr F complains about the quality of a vehicle acquired on finance with Moneybarn No.1 Limited.

What happened

Mr F entered into a conditional sale agreement with Moneybarn for a car in May 2019. In July 2019 Mr F noticed the engine management light (EML) was illuminated and took the vehicle to a local garage.

They diagnosed a problem with the catalytic convertor, and this was replaced. Mr F claimed on a warranty product, separate to his agreement with Moneybarn, for the cost of these repairs.

In September 2019 the EML came on again, and Mr F took the vehicle to the same garage, who diagnosed a problem with the EGR valve. This was replaced with Mr F claiming the cost of this from his warranty product.

Mr F took the vehicle to a manufacturer approved dealership twice more in September 2019 due to the EML light being illuminated. The air filter was replaced, and Mr F paid £168 in labour and £29.99 in parts for repairs.

Mr F complained to Moneybarn in October 2019 because he was unhappy about the ongoing problems with the vehicle and the inconvenience of having multiple repairs completed.

Moneybarn arranged for an inspection of Mr F's vehicle and responded to his complaint in November 2019. They said that because Mr F hadn't contacted them or the dealership that supplied the vehicle, they hadn't had a chance to assess or repair the vehicle. They didn't think they were responsible for the fault now that unauthorised repairs had been attempted.

Unhappy with this, Mr F brought his complaint to this service. Our investigator looked into things for Mr F. They thought that the inspection carried out by Moneybarn showed that the fault was present at the point of sale, therefore Moneybarn were responsible for the fault. They recommended that Mr F should be allowed his final right to reject the vehicle.

Moneybarn didn't accept our investigators view. They say any fault now should lie with the garage that attempted repairs, and as they hadn't authorised these, they couldn't be held responsible for the fault.

Mr F asked if he could have the car repaired or swapped, rather than reject it. Our investigator put this to Moneybarn, but received no response, so the case has been passed to me for a 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 what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a conditional sale agreement – so we can consider a complaint relating to it. Moneybarn as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory"

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £14,000. It was four years old and had travelled approximately 90,000 miles at the time of supply. When a person acquires a used car like Mr F's, it's reasonable to say that the expectation of quality is lower than that of a new or younger/lower mileage second-hand car. The price for the vehicle is lower, and this is reflective of the fact that the car is more road worn. The chance of encountering a serious issue sooner, is higher.

Although Mr F purchased a second hand, higher mileage vehicle, I think a reasonable person would expect there to be no current or ongoing faults with a vehicle when they acquire it.

Moneybarn arranged for an inspection of the vehicle in November 2019. That inspection concluded that the EML was illuminated, and a fault code found which was related to the exhaust system. It says further investigation will be required to confirm the exact cause of the issues, but that it considers that the issues were present at the point of sale.

Mr F experienced problems with the EML being illuminated shortly after acquiring the vehicle, and a number of attempts to repair this fault have not been successful. The expert evidence in this case points to there being a fault with the vehicle before it was sold to Mr F, and I'm persuaded by that expert evidence. It seems more likely that there was a fault with the vehicle at the time that it was supplied to Mr F. So, I'm satisfied that the vehicle was not of satisfactory quality at the time it was supplied.

Having made that finding I need to decide what, if anything, Moneybarn should do to put things right.

Moneybarn say that Mr F had unauthorised repairs completed to the vehicle, and so they shouldn't now be responsible if these have failed.

Mr F had use of a warranty product to cover the cost of these repairs, and I don't think it was unreasonable for him to have made use of this when the EML first illuminated. It was only when the fault kept occurring that Mr F thought there might've been a problem with the vehicle at the time it was sold to him, and so this is when he contacted Moneybarn.

I haven't seen any evidence which suggests that the repairs undertaken by Mr F weren't necessary, or that Moneybarn wouldn't have agreed to these repairs had Mr F contacted them.

Moneybarn say that the inspection indicates that the repairs undertaken by the garage may have failed to adequately address the fault, and so the repairing garage should be responsible for the continuing issues.

I haven't seen any evidence that the continuing faults with the vehicle were caused by the repairs undertaken by Mr F. It seems more likely that the repairs have failed to identify the cause of, and therefore remedy, the fault that was already present in the vehicle.

So, although Mr F didn't contact Moneybarn at the outset, I find this doesn't remove their responsibility for the satisfactory quality of the vehicle at the time of supply.

Mr F has provided evidence of substantial repairs being required to the vehicle shortly after he acquired it, which started with the EML illuminating. Although various repairs have been completed, the EML remains illuminated. The inspection concludes that further investigation will be required to confirm the exact cause of the fault. It's not clear what repairs might be needed to fix the fault, whether any repairs will be successful, will be long lasting, or how long they might take to complete.

So, it's likely that Mr F will be put to significant inconvenience, in addition to that which he's already experienced, in arranging a repair when it's not clear that it will be successful and further work and time might then be required to return the car to a satisfactory state. It would also mean that Mr F has to wait for an unknown period of time before he is able to drive his car again.

Mr F has told us that he'd like Moneybarn to repair the vehicle, because he's not sure he'll be able to obtain finance for a new vehicle. I understand Mr F's feelings on the matter, and I've considered whether a repair is a fair direction to make in the circumstances.

If I were to direct a repair to Mr F's vehicle, I'm not persuaded this will provide him with a remedy under the Consumer Rights Act for the reasons set out above. Where the cause of the fault is as yet undetermined, it's also possible that it'd be disproportionate for Moneybarn to attempt to repair the vehicle. That is, it might cost them more to try and return the vehicle to a satisfactory condition than to allow Mr F to reject the vehicle.

All things considered, I think Mr F should be allowed his final right to reject the car. This means that the car is collected from Mr F, the finance agreement is brought to an end, and Mr F has his £1,284 deposit refunded (plus interest). The agreement and any adverse information should be removed from Mr F's credit file.

Mr F is free to decide whether to reject my decision, which might allow him the opportunity to negotiate repairs with Moneybarn instead of rejecting the car.

Finally, Mr F has been put to the inconvenience of having to arrange for diagnostics and multiple repairs to his car. Moneybarn should pay Mr D £100 compensation in recognition of this.

My final decision

My final decision is that I uphold this complaint and I require Moneybarn No.1 Limited to:

- End the finance agreement and collect the car at no further cost to Mr F
- Refund Mr F's deposit of £1248.
- Pay Mr F £100 compensation to reflect the distress and inconvenience caused.
- Remove the finance agreement and any adverse information from Mr F's credit file.

Moneybarn should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If Moneybarn considers that its required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr F how much it's taken off. It should also give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 19 August 2021.

Zoe Launder
Ombudsman