

The complaint

Mr B complains that a car he got with a conditional sale agreement (CSA) from Moneybarn No. 1 Limited is of unsatisfactory quality.

Mr B was assisted in bringing his complaint by a friend but I'll refer to everything that's been said on his behalf as if Mr B had said it himself – to keep things simple.

What happened

Mr B got this car in mid-December 2018. He saw an engine management light (EML) was on the day he viewed the car and he noticed more issues in the week or so after collection. The supplying dealer (that I'll call E) checked the car in late December 2018 but found nothing wrong.

Mr B reported more problems over the next few months and E looked at the car again in April 2019 but couldn't identify a fault. E replaced the battery in May 2019, at no cost to Mr B but he found this didn't resolve things. About a month later Mr B received a safety recall notice from the manufacturer about a battery cable. The car was taken to a main dealership in July 2019 where the recalled part was replaced at no cost to Mr B. And, after undertaking diagnostic checks, the main dealer found three faults relating to the DPF and two sensors. The manufacturer wouldn't cover the cost of repairing these (nearly £1,000) and Mr B complained to Moneybarn and E.

Amongst other things, Mr B was unhappy that the car was supplied with the safety recall outstanding - he says he would never have accepted it if he'd known about that. He thinks the car was faulty from the start because of the recalled part. He considers issues identified by the main dealer as signs of this faulty part were present when he got this car - given the trouble he had from the outset. He reported problems with functions such as stop/start and the tyre pressure monitoring system (TPMS) - which he thinks caused tyres to wear prematurely. He believes other issues present in December 2018 suggest the DPF was already clogged at that stage - and it deteriorated further because his use of the car was impaired due to these ongoing issues.

Moneybarn said a safety recall doesn't mean a car is inherently of unsatisfactory quality - as vehicles are recalled for all sorts of reasons and sometimes this is just a precaution. E offered to cover the cost of a tyre and regenerating the DPF and pay Mr B £150 compensation, as a goodwill gesture – and Moneybarn didn't think it should have to do anything else. Moneybarn considered the recall issue was the manufacturer's responsibility, it was resolved at no cost to Mr B and any outstanding issues were wear and tear related and weren't present when the car was supplied.

Mr B referred the matter to our service. He said the recall was issued months before he got the car so it should have been actioned pre-sale and the car was faulty at the point of supply. He was also unhappy that a two year warranty he discussed with the salesman was never provided. He wanted to reject the car and receive a full refund along with compensation for distress, inconvenience and financial losses.

One of our investigators considered the evidence. He wasn't inclined to uphold the complaint at first. He said a recall notice doesn't, in itself, mean a particular vehicle is unsafe or unsatisfactory and goods aren't necessarily of unsatisfactory quality at the point of supply just because something goes wrong later. He acknowledged a DPF needs maintenance and is sensitive to usage – so it's more likely to become blocked if a vehicle is used mainly for short stop/start journeys and not allowed to regenerate. He thought the DPF and sensor problems identified in July 2019 were probably wear and tear related and unlikely to have been present at the outset. And he was satisfied the warranty wasn't included in the finance agreement so he couldn't fairly say Moneybarn did anything wrong in this regard.

After Mr B supplied more evidence, the investigator accepted some of the issues reported early on sounded similar to symptoms identified by the manufacturer as early signs of the presence of the faulty recalled part. He wasn't persuaded that pre-sale checks are likely to have been comprehensive enough to show if this fault was present. And, on balance, he thought it likely this car had an inherent manufacturing defect - a faulty battery cable – and was of unsatisfactory quality at the point of supply. He was satisfied the dealer was unable to fix things – despite several attempts – and Mr B probably wouldn't have accepted the car if he'd known about the outstanding recall. He considered Mr B should have been allowed to reject the car in August 2019 and recommended the complaint should be upheld. He said Moneybarn should:-

- end the agreement and collect the car with nothing further for Mr B to pay;
- refund any deposit paid plus 8% interest;
- refund monthly payments from August 2019;
- remove any adverse information from Mr B's credit file; and
- pay Mr B compensation of £150 for trouble and upset.

The parties didn't agree so the matter was referred to an ombudsman for decision. Both parties provided detailed responses and I've summarised these below.

Moneybarn says

- Mr B referred the car to E in December 2018 because lights came on for the TPMS and/or a service, but that's not enough to render the car of unsatisfactory quality;
- the fact that Mr B wanted the clutch to be checked doesn't confirm an issue was present;
- the car went back to E in April/May 2019 in relation to the stop/start function and E replaced the battery, which is a wear and tear item, nearly 6 months after supply;
- recall issues are the responsibility of the manufacturer not the finance provider; and
- it's for Mr B to show that the issues identified by the main dealer in August 2019 were present at the point of supply, he hasn't done so, they're probably wear and tear related and Moneybarn shouldn't be held responsible.

Mr B thinks he should receive a bigger refund and more compensation for time spent dealing with the matter as well as the considerable distress and potential injury/loss of life caused to him and his family. He also wants to be reimbursed for lost earnings of about £15,000, because he was unable to use the car.

My provisional findings

Having considered all the available evidence I was minded to uphold this complaint. My reasons weren't the same as the investigator's and I was minded to reach a different outcome overall so I thought it was fair to let the parties see my provisional findings and respond, if they wanted to. I issued a provisional decision on 7 May 2021. A copy of this decision is set out below (in italics) and this forms part of my final decision.

Where evidence is incomplete, inconclusive or contradictory – as some of it is here- I reach my decision on the balance of probabilities. This means I consider what's most likely to have happened in light of the available evidence and the wider circumstances.

I want to assure the parties that I've taken everything that's been said and sent to us into account. If I don't address every point that's been made it's not because I haven't considered it. In this decision I've focused on what I think are the key issues. I'm satisfied that I don't need to comment on every single argument to be able to reach what I think is a fair and reasonable outcome. The rules of the Financial Ombudsman Service allow me to do this – and it reflects the informal nature of our dispute resolution service which is a free alternative to the courts.

Mr B brings this complaint about Moneybarn to the Financial Ombudsman Service because Moneybarn supplied the car under a CSA. I should make it clear at the outset that I am not a regulator. I don't have the power to tell Moneybarn (or any other lender) how to operate its business on a day to day basis. I'm looking at the individual circumstances of Mr B's complaint. And I am unable to hold Moneybarn responsible for the dealer's after sales service – or the actions of other third parties, such as the manufacturer.

I make my decision based on what I consider to be fair and reasonable overall. But, I must have regard to relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) good industry practice, at the relevant time. I'm satisfied the Consumer Rights Act 2015 (CRA) is relevant here. Moneybarn supplied the car under a finance agreement and, under the CRA, there's an implied term that it would be of satisfactory quality at the point of supply.

Quality of goods includes their general state and condition as well as fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. And what amounts to "satisfactory" quality will vary according to individual circumstances. I'm satisfied this car needed to meet the standard a reasonable person would expect – taking into account its age, price and mileage at the point of supply.

The car was around seven years old with about 73,000 miles on the clock and cost approximately £5,700 when Mr B got it. I think a reasonable person would accept a car like this wouldn't meet the same standards as a brand new vehicle – in that some parts were likely to be worn and might need to be repaired or replaced sooner or later. This is reflected in the lower price paid for a used car.

what went wrong with this car ?

There seems to be no dispute that Mr B noticed an EML in respect of the TPMS on the day he viewed the car. He says he was assured this would be fixed before collection and I'm satisfied that E agreed to check this. Mr B says he reported more issues when the car was booked in for investigation in late December. He had difficulty with the clutch release and he felt the engine idle was higher than expected and the car wanted to move quicker than it should. I think that's supported by notes on the relevant job card which say 'investigate 2 warning lights appeared on dashboard possibly tyre pressure light and service light (?)' and

Mr B asked for the clutch to be checked.

It's not clear to me what the outcome of E's investigations were exactly. It seems no fault was found and Mr B took the car back but he says issues persisted. He told us he thought this might be due to his inexperience with this type of clutch and he persevered because he'd been assured by E in December that nothing was wrong. I think that sounds plausible.

Mr B says more warning lights appeared intermittently and then became more frequent so the car went back to E for more checks in April 2019. I've seen a job card dated 25 April 2019 which says E was asked to investigate intermittent stop/start issues that were increasing and a brake light symbol had illuminated. It looks as if E checked the car again but still couldn't identify a specific fault.

I can see that E replaced the battery in May. I think that was probably done in an effort to resolve the stop/start issue - a battery that's low on charge can impair this function. Mr B found this didn't help. When he received the recall notice a month later that said there might be an inherent problem with a battery cable in some cars, he felt certain this defect was present in his vehicle and explained the trouble he'd been having.

the recall issue

I've seen the manufacturer's recall notice which says (insofar as it's relevant here) the plug in battery cable on the front power distribution box can become damaged by vehicle vibrations and frictional corrosion together with a high load current. As a result damage to the plug-in contact on the positive battery cable can impair the power supply". The notice goes on to say possible early symptoms include:-

- vehicle central locking symptoms failing sporadically*
- problems starting the engine*
- flickering of the instrument panel*
- jerking or momentary power loss whilst driving.*

The manufacturer also states that loss of electrical power and cutting out of the engine is possible if any of these symptoms are ignored and the car should not be driven if they're experienced.

did Mr B's car have the faulty recalled part ?

I have no doubt it was upsetting for Mr B to find out about the manufacturer's safety recall in June 2019, in the way that he did. I can see why he linked this immediately to the problems he experienced over the previous seven months. But, I can't reasonably conclude that his car contained the defective part solely on the grounds the manufacturer issued a recall notice for this particular model. I say this because manufacturers will sometimes issue a blanket recall when it's been established that some cars may have an inherent manufacturing issue. But that doesn't mean every single vehicle made subject a recall definitely has the defective part.

I've considered the available evidence about Mr B's car in order to decide, on the balance of probabilities, if it's likely that his vehicle was fitted with the recalled faulty battery cable. I understand Mr B considers this part must have been defective in his car because some of the relevant symptoms described by the manufacturer in the recall notice were present. He thinks issues that he put down to the clutch amount to jerking/loss of power and, whilst he

didn't have a problem with central locking, he says the intermittent EMLs were "flickering" on the instrument panel.

I accept several EMLs illuminated over the first six or seven months after Mr B got the car. But, for reasons I'll explain below, I think the evidence suggests these probably had a legitimate cause – in that they came on because there were issues present with the TPMS, brakes and the stop/start function, amongst other things. I'm not persuaded that these lights are likely to have been the sort of "flickering" which was symptomatic of the faulty battery cable.

I think it's reasonable to note the paperwork supplied by the main dealer doesn't mention any signs of corrosion or malfunction in the part that was removed when the battery cable was replaced. And, having checked the job cards E supplied, I'm satisfied these don't mention any of the other symptoms – such problems starting the car, momentary loss of power, jerking or issues with central locking - specifically. I think the various job cards would have been contemporaneous and they seem to document Mr B's concerns in a fair amount of detail. I find it unlikely that issues such as the symptoms described by the manufacturer would not have been listed if Mr B had reported these at the time.

On balance, from the evidence I've seen so far, I am not persuaded that the problems Mr B experienced were likely to be symptoms of the presence of a defective battery cable. For the reasons I've set out below, I think it's more likely than not these were caused by other faults.

was the car of satisfactory quality when it was supplied?

I'm satisfied that Mr B reported several issues with this car within the first week of supply. I realise Moneybarn considers these weren't sufficient to mean that this car was of unsatisfactory quality. But, I think it's reasonable to bear in mind that Mr B reported these problems within the first 30 days - when he still had the short term right to reject under the CRA. I don't think the issues in question were insignificant – a faulty TPMS, for example, can cause undue and premature tyre wear and stop/start has an impact on fuel consumption and emissions. I'm not persuaded it was unreasonable for Mr B to expect E to put things right. And I think he probably only agreed to keep the car on that basis.

I appreciate E was unable to identify specific issues when the car was checked in December 2018 and April 2019. But, it looks as if E acknowledged there was something wrong (with the stop/start function at least) when the battery was replaced at no charge to Mr B - even though this was outside the three month warranty E says he got with the car. In July 2019, the main dealer found start/stop was inoperative (due to vacuum sensor fault) so I'm satisfied replacing the battery didn't resolve that.

The main dealer also identified a low fuel pressure sensor fault and a problem with DPF which would not regenerate. I appreciate Moneybarn considers all three issues were new and unrelated to the problems reported previously. But, I'm satisfied Mr B specifically referred to problems with stop/start in April 2019. I think the issues he had within a week of supply suggest the stop/start issue was probably present then. And, looking at some of the other issues he reported December 2018 – such as rough idling and service lights – I consider these could be an early indication that the DPF was already clogged at that point.

Moneybarn has highlighted the importance of usage on maintenance of the DPF. Mr B told us he was reluctant to drive the car and drove it less than he otherwise would because of the ongoing problems. It looks as if Mr B travelled about 3,500 miles over the first seven months after supply. That's a bit less than the national average and Mr B says it's much less than he would usually cover over this time period. I think it's understandable Mr B would be reluctant to take the car on longer journeys in this situation. I can't reasonably exclude the fact that

impaired use may have exacerbated an existing DPF issue. And I think E may have recognised that, because it offered to cover the cost of a forced regeneration in August 2019.

On balance overall, I think there's enough evidence to show that this car had faults present when it was supplied. I think a fair minded person would consider these to mean the car was of unsatisfactory quality at that point. I'm satisfied that Mr B reported these issues to E very soon after supply and I don't think he would have accepted the car at that stage if he had not been told these would be fixed. I'm satisfied that E did try and fix some things but these repairs were unsuccessful. It's clear that Mr B wanted to reject the car by August 2019. And I don't think it's reasonable to expect him to wait any longer for the car to be fixed in these circumstances. I'm minded to agree with our investigator that Moneybarn should end the CSA and arrange to collect the car from Mr B at no cost to him.

redress

We would usually say any deposit or advance payment should be refunded in this situation but no deposit was paid here, according to the CSA. If that's not right the parties should let me know in response to this provisional decision.

Working out what's fair in these circumstances isn't an exact science. I'm not certain when Mr B stopped driving the car exactly. He told us Moneybarn agreed he shouldn't use it during a telephone conversation in August 2019. I've listened to a recording of the relevant call. I think the call handler was sympathetic and understanding. I accept he told Mr B he shouldn't drive the car for the time being if he had safety concerns and I don't think that was unreasonable. I'm satisfied the call handler also made it clear that this depended on the outcome of Moneybarn's investigation of Mr B's complaint and Moneybarn rejected the complaint a few weeks later.

From the information I have I think Mr B must have carried on using the car after that. I'm satisfied he'd covered about 3,500 miles by the time the main dealer checked the car in July 2019 and the most recent odometer reading (from early 2020) was over 80,000 miles. This suggests he was able to drive the car another 3,000 miles or so. And, based on his previous use, I think Mr B probably carried on using the car until the end of 2019 or thereabouts - which seems consistent with the time he made his last finance payment, in January 2020.

I'm minded to find it is fair that Moneybarn should waive any payments due from (and including) February 2020 when Mr B stopped using the car. I realise Mr B would like a refund of all his finance payments from the start of the CSA but I am not persuaded that's fair. I'm satisfied he had some use of this car and I think it is reasonable he should pay for that. I accept it's likely Mr B's use of this car was impaired somewhat and I'm minded to find Moneybarn should refund 20% of each monthly payment Mr B made to reflect that.

I've seen some reference in the paperwork to Mr B being charged for investigations and diagnostic tests. In view of my findings above, I think it is fair that cost should be refunded if Mr B was required to meet these charges. Mr B should provide evidence of any costs incurred and/or relevant proof of payment if he wants me to include these in my final decision.

I have considered what Mr B says (and the paperwork he submitted) about lost income. If I understand Mr B correctly, I think he says he was unable to use the car, and had to turn down work, because it was faulty. Amongst other things, he refers to using the car for work as a taxi driver. I'm satisfied that's prohibited specifically under the CSA (at paragraph 6.14 so I'm not persuaded it's relevant here.

I think a range of factors probably affected Mr B's ability to work during the relevant time – including the impact of the Covid 19 pandemic. I'm satisfied he had some use of the car, in spite of the issues present. From the evidence I've seen, I'm not persuaded that any income lost can reasonably be attributed directly to the fact the car had some faults. And, I can't fairly require Moneybarn to provide a refund in this respect.

I appreciate it must have been unsettling for Mr B to find the recall work hadn't been attended to pre-sale. I can see he feels aggrieved and upset about the very possibility that he - or a family member - could have been injured as a result. I'm unable to order Moneybarn to compensate third parties (such as family members) for distress and inconvenience - because they're not Moneybarn's customers. For the reasons I've set out, I am not persuaded that this car contained a faulty battery cable. And, whilst I don't doubt Mr B's strength of feeling on this point, I can't reasonably require Moneybarn to pay compensation for events that haven't actually occurred.

I understand Mr B feels he should be paid compensation at the more severe end of our award scale for distress and inconvenience. I accept he experienced some inconvenience - in that he had to take the car back several times for checks and repairs due to faults. And I think it's understandable he was worried and distressed when he realised the car had an outstanding safety recall. But, taking everything I've seen into account, and considering the award I'm inclined to make overall, I'm minded to find it is fair for Moneybarn to pay Mr B £250 compensation for his distress and inconvenience.

I invited both parties to consider my provisional findings and let me have any further comments or evidence by 21 May 2021.

The responses received from the parties

Both parties were disappointed by my provisional findings. Moneybarn accepts what I've said but queries the use Mr B may have had of the car after February 2020. It asked for the current mileage and evidence the car hasn't been used since that time.

Mr B provided very detailed submissions. And I hope he'll understand I've had to summarise those here - but that doesn't mean I haven't taken what he said into account. I have read and considered this carefully.

Mr B feels that some key issues and facts - which he went to some time and trouble to highlight - have not been addressed. He says his main complaint is that the car was sold with an outstanding safety recall. He considers this fact alone means the car was of unsatisfactory quality and unsafe to drive when it was supplied. He's unhappy that I focused on the individual faults he reported in my provisional decision - rather than the safety recall and the question of whether the car should have been sold in the first place.

Mr B acknowledges I was minded to find the car was of unsatisfactory quality at the point of sale for reasons other than the safety recall. But, he thinks these were almost side issues and he's unhappy that I didn't concentrate on the outstanding recall. Mr B refers to comments made by trading standards and the DVSA and he's also unhappy with the redress proposed. He says I accepted Moneybarn said he shouldn't drive the car due to safety concerns in August 2019 but I didn't consider the fact that Moneybarn then closed his complaint without undertaking a proper investigation. He thinks I misunderstood his loss of earnings claim – in particular, he says he was engaged as a security operative in March 2020 not a taxi driver. And I failed to address his ongoing transport problems and loss of earnings properly.

Mr B considers a more reasonable outcome (insofar as this differs from my provisional

conclusions) would be for Moneybarn to refund 80% of each monthly payment from the point of supply and reimburse his lost earnings.

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'd like to thank the parties for their responses. I can see that Mr B, in particular, has gone to some trouble to provide very detailed replies. I understand he's disappointed that I haven't made more specific findings about Moneybarn's obligations in respect of the outstanding safety recall. Ideally, I think Mr B would like me to answer every question and respond to every point he raised. But, as I explained, in my provisional decision that's not my job here.

This service provides informal dispute resolution between financial businesses and their customers. And my role is to look at what I consider is relevant and material to reaching a fair and reasonable outcome - in all of the circumstances of this individual complaint. Whilst I must take relevant law (amongst other things) into account – and I have done so here - this isn't a court. And it's not for me to make legal pronouncements – or penalise any financial organisation or its employees.

For the reasons I've set out already, I'm not persuaded it's likely this car had the faulty part that was recalled by the manufacturer. But I'm satisfied, on balance, that it's more likely than not the car was of unsatisfactory quality when it was supplied. Nothing the parties have said has changed my mind about this and I remain of the view Mr B should be allowed to reject the car and receive a refund and compensation.

Putting things right

I find it fair that that Moneybarn should end the CSA and arrange to take this car back at no additional cost to Mr B. There was no deposit paid so there's no refund due in that respect. But, I understand Mr B feels Moneybarn should have to provide a larger refund of monthly payments.

As I've explained already, I think it is fair that Mr B should pay for the use he had of this car. I'm satisfied he was able to drive it several thousand miles after supply. I accept this use was impaired to some extent, but I'm not persuaded it's reasonable to require Moneybarn to refund as much as 80% of each monthly payment - taking into account the award I'm making overall.

Mr B says Moneybarn agreed that he should stop driving the car in August 2019 for safety reasons. But, as I've already explained, I can't reasonably find Moneybarn told Mr B he shouldn't drive the car from that point. I have some sympathy for Mr B's argument that Moneybarn should perhaps have done more to investigate what was wrong with the car then – in which case it might have agreed he should be entitled to reject at that stage. But, this doesn't take away from the fact Mr B was able to drive the car about another 3,000 miles or so after August 2019 – and the recalled part had been replaced by this time so that should no longer have reasonably been a concern for Mr B.

Moneybarn asked for evidence of the use Mr B had of the car and Mr B sent us a screenshot of the odometer that shows the current mileage is about the same as it was in early 2020 – just over 80,000 miles. I think this supports my provisional finding that Mr B probably stopped using the car by February 2020. I remain of the view that it's fair for any payments due after January 2020 to be waived (or – for the avoidance of any doubt if any payments were made after that time - refunded) in full. And, for the reasons I've given, I find it is

reasonable for Moneybarn to refund 20% of each monthly payment Mr B made before that - to reflect his impaired use, from the start of the agreement until February 2020.

I have given some thought to what Mr B says about lost income. He's told us that he was offered work but couldn't take it due to lack of transport – and that work, in security, would have continued throughout the pandemic and any lockdowns. I still think there are many factors that are likely to have affected Mr B's ability to work during the relevant time. From the evidence I've seen, I can't reasonably conclude that the issues he had with this car were the sole cause of the income loss he describes – or that Moneybarn should reasonably have known such a loss of income was likely.

I'm satisfied Mr B was obliged to mitigate his losses in this situation. It looks as if he was still driving the car until early 2020 and I think it would have been open to him to take public transport after that, in these particular circumstances. Taking everything into account, I'm not satisfied there are sufficient fair and reasonable grounds to require Moneybarn to provide an additional refund in this respect.

Having considered all the information and evidence available, including the submissions made by the parties in response to my provisional decision, I see no reason to depart from my provisional conclusions. I realise this decision is likely to come as a disappointment to Mr B. But he doesn't have to accept what I've said, in which case it remains open to him to pursue the matter by other means, should he wish to do so.

My final decision

For the reasons I've explained, my decision is I uphold this complaint and require Moneybarn No.1 Limited to:-

1. end the CSA and collect the car from Mr B, at no additional cost to him;
2. waive (or refund) any monthly payments due from (and including) February 2020 - when Mr B stopped using the car
3. refund 20% of any monthly payments Mr B made before that, for impaired use;
4. refund the cost of relevant investigations and diagnostic checks - upon provision of proof of payment or appropriate evidence that this cost was incurred by Mr B;
5. pay interest on the refunds above at 8% simple a year from the date of payment to the date of settlement;
6. pay Mr B £250 compensation for distress and inconvenience; and
7. remove any adverse information recorded about the CSA from Mr B's credit file.

If Moneybarn considers that it's required by HM Revenue & Customs to deduct income tax from the interest, it should tell Mr B how much it's taken off. It should also give him 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 B to accept or reject my decision before 29 July 2021.

Claire Jackson

Ombudsman