

The complaint

Mr G complains that a used car he got with a conditional sale agreement (CSA) provided by Moneybarn No. 1 Limited was of unsatisfactory quality.

What happened

Mr G got this car in June 2019. A few months later he had trouble with the diesel particulate filter (DPF) and the supplying dealer paid for some repairs. About seven months after that the clutch, flywheel and DPF had to be replaced. Mr G was concerned about the condition of the car so he complained to Moneybarn and an independent expert was instructed to provide an opinion.

The expert didn't see the car but he thought the issues complained of were probably due to normal wear and likely developed during Mr G's ownership. He based these findings on the car's age and mileage at the point of supply and the distance Mr G was able to travel after that. He concluded that the car was probably of satisfactory quality when Mr G got it and Moneybarn didn't think it should have to do anything further so Mr G referred the matter to our service.

One of our investigators looked at the evidence. He didn't think Moneybarn had done anything wrong initially but he revised his opinion after Mr G supplied further information from several third party garages (TPGs). The investigator thought the new evidence showed the clutch had already been replaced once and the car was badly remapped before Mr G got it - causing parts to deteriorate prematurely. He considered the expert might have reached a different conclusion if he'd known about this – as parts that had already been replaced were unlikely to be approaching the end of their natural lifespan. He asked the expert to comment but received nothing further.

The investigator thought it was more likely than not the remap had caused the clutch and flywheel to fail prematurely and the poor quality of the remap could lead to further issues in the future. He was satisfied the car probably wasn't of satisfactory quality when it was supplied and it wasn't reasonably durable. He didn't think Mr G should have to keep the car and he recommended Moneybarn should cancel the finance and refund the deposit paid with interest along with the cost of repairs – provided Mr G supplied receipts.

Moneybarn didn't agree and asked for the matter to be considered by an ombudsman. In summary, Moneybarn says:-

- Mr G hasn't shown that any faults present were there at the point of supply;
- he hasn't proved when the car was remapped – this could have happened when it was in his possession;
- Mr G was able to travel about 20,000 miles in the car after supply so it's sufficiently durable - given it was eight years old and had 84,000 miles on the clock at the outset;

- it's not unreasonable to expect some parts to have been replaced in a car of this age and the clutch, flywheel and the DPF are all wear and tear items.

Having considered the relevant information about this complaint I was minded to uphold it. My reasons for doing weren't quite the same as the investigator's and I was minded to reach a slightly different outcome. So, I issued a provisional decision on 6 August 2021 to let the parties see my provisional conclusions and make further submissions (if they wanted to) before I made my final decision. I've set out below what I decided provisionally - and why - and this forms part of my final decision.

My provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Moneybarn supplied this car to Mr G under a finance agreement and it was obliged, under the Consumer Rights Act 2015 (CRA), to ensure (amongst other things) that the car was of satisfactory quality at the point of supply. What amounts to "satisfactory" quality will vary depending on individual circumstances. The quality of goods includes their general state and condition as well as other things like fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. And goods need to meet the standard that a reasonable person would consider "satisfactory".

In the case of a used car, it is generally considered reasonable to take the age, cost and mileage at the point of supply into account. The car Mr G got here was around eight years old, cost about £7,000 and had around 84,000 miles on the clock. As such I think a reasonable person would accept that it was likely to have some parts that were worn and would need replacing or repairing sooner or later – which is reflected in the lower price paid compared to the price of a brand new vehicle.

was the car remapped and when ?

There's no dispute that this car needed some repairs to the clutch and flywheel in March 2020. The TPG that replaced these parts found the ones they removed were not original so it looks as if they'd already been replaced (at least once) before Mr G got the car. Like the investigator, I think this throws some doubt on the expert's reasons for concluding that these parts probably failed as a result of wear and tear.

The TPG also found the engine was producing more power than expected for the specification of this car and the turbo kicks in early when revving. The TPG thought the car had been remapped in the past which resulted in damage to the clutch and could cause more problems in the future. When he was told this Mr G also took the car to another TPG that specialises in remapping. The specialist TPG carried out additional tests and Mr G has sent us evidence of the results which show the additional power output and early boost. The specialist TPG says the remap was poor and this can cause issues such as those Mr G experienced - as well as turbo problems and engine failure.

From the evidence I've seen, I'm satisfied the car was probably remapped at some point so the power output is higher than the manufacturer's specification – and not the same as the description of the vehicle in the finance agreement. I can't be certain when the remap took place – Mr G says he asked the specialist TPG and it couldn't say. But I think Mr G has been fairly clear and consistent in his evidence that the car wasn't remapped after it was supplied

to him. Everything he's done – in terms of investigating what was wrong with the car, taking it to several different garages for diagnostics and checks and obtaining additional evidence when we asked for it - has been consistent with someone who was supplied with a car that isn't what he was expecting. On balance, I am minded to find it more likely than not that this car was remapped before Mr G got it.

repairs to the clutch and flywheel and the DPF

In light of the evidence from the TPGs, I'm satisfied it's more likely than not the remap was sub-standard and caused undue strain on the clutch and premature wear of this part. So, I am minded to find it fair that Moneybarn should refund the £920 cost of the related repairs. It looks as if Mr G also paid £45 for investigations/ diagnostics in relation to the remap and I think it is fair he should be reimbursed for that cost as well in the circumstances.

Nothing I've seen suggests however that the remap would impact adversely on the DPF. None of the TPGs have referred to the issues with the DPF being due to the remap and I can't see why that would be likely - given the nature of this particular part. On balance, taking into account the age and mileage of the car at the point of supply – as well as the use Mr G had of the car before the DPF unit was replaced in March 2020 - I think it's likely this issue was the result of normal wear and tear. I'm satisfied that Mr G was able to drive the car some distance after the DPF was replaced. And, taking everything into account, I'm not persuaded it would be fair to require Moneybarn to reimburse the cost of the DPF related repairs.

should Mr G be entitled to reject the car

I understand the current mileage is under 106,000. As far as I can tell Mr G seems to have had no problems since March 2020 but I can see why he's worried about the future. He thinks the remap is likely to cause premature wear of some other significant parts meaning the car's probably not as durable as he expected when he got it. I can't be certain if the remap will adversely affect the car going forward but I find it understandable that Mr G is concerned about the long term impact. And, given the evidence from the TPGs, I'm minded to find it is fair that Mr G should be allowed to reject the car.

Even if I'd reached a different conclusion about that, I think there are other grounds for Mr G to be allowed to reject the car. I say this because I'm satisfied the current break horse power is 195 or thereabouts whereas the CSA describes the car as having 170ps. I acknowledge these two units of measurement aren't identical but, for our purposes here, I think it's reasonable to conclude that this car was probably described inaccurately at the point of supply. And I'm minded to find it's unlikely Mr G would have accepted the car if it wasn't mis-described - as the power increase would have highlighted something out of the ordinary had been done to the vehicle in the past. I think that would probably put off the average purchaser - as, amongst other things, any significant vehicle modification such as a remap (even undertaken to a proper standard) would generally have to be declared to insurers and lead to increased cost.

For the reasons I've explained, I'm satisfied that the poor quality remap means this car wasn't of satisfactory quality when it was supplied to Mr G. But, even if I'm wrong about that, I think the car was mis-described and it's unlikely Mr G would have accepted it and taken out the finance if that hadn't happened. On the evidence I have, I'm inclined to find it fair and reasonable for Mr G to be allowed to reject the car.

I think Moneybarn should end the CSA and arrange for the car to be collected from Mr G – at no additional cost to him. A deposit of £1,000 was paid by way of part exchange - according to the CSA and the sale invoice – and I consider Moneybarn should refund that. I think it

would also be fair for Moneybarn to reimburse Mr G for the cost of repairs to the clutch and flywheel and diagnostic checks, for the reasons I've set out above.

I think it is reasonable for Moneybarn to retain the monthly payments made while Mr G had the use of the car. I understand the current mileage is under 106,000 - so he was able to drive it most of the time. I understand Mr G hasn't travelled far since the MOT in November 2020 but he told us this was due to the pandemic and I can't fairly hold Moneybarn responsible for that. However it looks as if the car was off the road for two months in or about March 2020 due to problems with the clutch and flywheel. And, in light of my findings about these repairs above, I'm inclined to find Moneybarn should refund two months finance payments for the associated loss of use.

I consider Moneybarn should pay interest on all refunds and, if it has recorded any adverse information about the CSA against Mr G's credit file, that should be removed. I think Mr G has probably experienced a good deal of distress and inconvenience as a result of being supplied with this car. I can see it broke down and had to be recovered and Mr G was put to some time and trouble taking it to various garages for investigations and repairs. I am minded to find it fair for Moneybarn to pay Mr G £250 compensation to reflect that.

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 invited both parties to consider my provisional findings and let me have any further evidence or comments (that we hadn't seen before) by 20 August 2021. I explained I would consider all the available evidence after that and make my final decision.

Moneybarn hasn't objected to my provisional conclusions or provided any further submissions. Mr G accepts my provisional decision overall but he thinks he should have more than two months finance payments refunded. He has supplied further evidence and set out his reasons over several emails. I hope he'll understand that I've had to summarise what he told us below.

Mr G says he would usually cover between 8,000 and 9,000 miles a year but he's only driven about 1,000 miles in this car since last November. He's avoided using the car when possible because he's concerned it might break down again and he didn't want to put more miles on it – he has access to some alternative transport so he only uses this car if that's unavailable.

I understand Mr G feels strongly that he should have an additional refund here because he didn't use the car as much as he otherwise would. But, I'm afraid that nothing he's said or sent has persuaded me to change my mind and I'll explain why.

Mr G acquired the car in June 2019 with 84,000 miles on the clock and I'm satisfied he was able to drive it over 20,000 miles after that. I appreciate Mr G says he only covered about 1,000 miles over the past year or so. I can see the mileage at the MOT in November 2020 was around 104,000 miles and the mileage in August was about 105,000. So it looks as if Mr G has driven the car less in the last 12 months that he did previously.

But, I've seen nothing to show that Mr G was told the car was unsafe or otherwise shouldn't be driven. He's told us already that he drove the car less due to the pandemic. And, whilst I appreciate Mr G may have been reluctant to put more miles on the car because of what happened before, I think he seems to have been able to use it when needed over the past year – if his alternative transport wasn't available. On balance, I'm not persuaded there are

sufficient fair and reasonable grounds to require Moneybarn to refund more than two months instalments.

For the reasons I've explained, I remain of the view Mr G to be allowed to reject the car and Moneybarn should take the steps set out to put things right. I realise this decision may come as a disappointment to Mr G but he's not obliged to accept what I've said – in which case it remains open to him to pursue the matter by any other means available.

My final decision

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

1. cancel the CSA and arrange to take the car back at no additional cost to Mr G;
2. refund the deposit paid of £1,000;
3. refund two monthly finance payments for the time Mr G was without the use of the car;
4. refund £965 for repairs to the clutch and flywheel and diagnostic checks (as detailed above);
5. pay interest on any refunds at 8% simple a year from the date of payment to the date of settlement;
6. remove any adverse information recorded on Mr G's credit file about the CSA; and
7. pay Mr G £250 compensation for associated distress and inconvenience.

If Moneybarn considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr G 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 G to accept or reject my decision before 18 November 2021.

Claire Jackson
Ombudsman