

## **The complaint**

Mrs F complains that a used car she got with a conditional sale agreement (CSA) provided by Moneybarn No. 1 Limited was of unsatisfactory quality and misrepresentations were made during the sale process.

## **What happened**

Mrs F got this car in January 2020. The alternator had to be replaced within the first month - at a cost of over £500. Then she discovered the air conditioning (AC) wasn't working in July the same year. Mrs F contacted the supplying dealer but it considered this was wear and tear related. The car started to make a noise in December 2020 and a third party garage (TPG) told Mrs F that the cambelt probably needed replacing. It said this was overdue according to the manufacturer's recommendations which invalidated the warranty and repairs would cost about £400.

Mrs F says the car only had about 75,000 miles on the clock when she got it. And the salesperson told her the cambelt should last for 130,000 miles - so she didn't think it would need to be replaced for some time. Mrs F feels she was misled at the point of sale and the car was of unsatisfactory quality at the outset so she complained to Moneybarn.

Moneybarn says the relevant manufacturer recommends the cambelt should be replaced between 60,000 – 100,000 miles. And the problems Mrs F reported were likely wear and tear related – given the car's mileage at the outset. Moneybarn offered to pay Mrs F £75 compensation for delay in responding to her complaint but didn't think it should have to do anything further.

Mrs F thinks that's unfair. The TPG told her she shouldn't drive the car until it's repaired so she declared it SORN in Dec 2020 and hasn't used it since – which is inconvenient and costly, as she has to use public transport. She thinks Moneybarn should pay for repairs to the AC and the cambelt or allow her to reject the car.

One of our investigators looked at the evidence and she thinks the complaint should be upheld. She's satisfied the problem with the AC was raised with the supplying dealer in July 2020, within six months. She thinks it more likely than not this was present when Mrs F got the car so Moneybarn should pay for repairs. She acknowledges the cambelt issue didn't appear until December 2020 - after Mrs F had the car for over ten months and covered over 4,000 miles. But, she's satisfied the relevant manufacturer recommends a cambelt should be replaced after 72 months or 100,000 miles – whichever is soonest. And this car was six years old in November 2019 - so the cambelt was due to be replaced at the service carried out in December 2019 - just before the car was supplied to Mrs F.

The investigator thinks it would have been reasonable to replace this part before the car was supplied and it's unfair to expect Mrs F to pay for the related repairs. She recommends Moneybarn should arrange for the AC and cambelt to be repaired at no cost to Mrs F, refund the cost of diagnostic reports and any monthly instalments made since 15 December 2020 (to compensate Mrs F for loss of use - provided Mrs F supplies a screenshot to confirm the current mileage) and increase the compensation for inconvenience and distress to £100.

Moneybarn agreed to pay £100 compensation and fund the repairs to the AC. But, it says the cambelt is a wear and tear item that comes under general maintenance and Mrs F is responsible for that. Moneybarn acknowledges it may be good practice to replace parts in line with the manufacturer's recommendations. But, it considers the supplying dealer wasn't *obligated* to do so – and the sale price would have increased if the cambelt was replaced before sale. Moneybarn doesn't think it should have to pay for the cambelt repairs or provide a refund of monthly payments – as these go towards the purchase of the car – not hire or rent. It asked for an ombudsman to review the matter.

Having considered the available evidence, I was minded to uphold the complaint. My reasons weren't quite the same as the investigator's and I was inclined to reach a slightly different outcome overall. I issued a provisional decision on 3 September 2021 to let the parties see my provisional findings and respond (if they wanted to) before I made my final decision. I've set out what I decided provisionally - and why - below 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 the 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 Mrs F under a finance agreement. This means Moneybarn was required 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, but it is generally considered reasonable to take the age, cost and mileage at the point of supply into account in the case of a used car.

The car Mrs F got here was seven years old with about 75,000 miles on the clock and cost nearly £7,000. I think a reasonable person would accept that a car like this 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.

Mrs F had the car for a few weeks when the alternator needed to be replaced. This seems to have been covered under a two year warranty she got with the car - and the supplying dealer paid a shortfall - so I don't need to address the issue any further here. Moneybarn has agreed to pay for repairs to the AC and I think that sounds fair in the circumstances. This leaves the matter of the cambelt. There doesn't seem to be any dispute that this needs to be replaced and the question for me to determine is who's responsible for that.

Moneybarn says this is a service item and, given the mileage accrued, not a fault – it's something that Mrs F is responsible for as part of general maintenance. I accept a cambelt is something that will wear over time and need to be replaced. And I can't fairly hold Moneybarn liable for issues that arise as the result of normal wear and tear. But, I'm satisfied I can consider representations made during the course of pre-sale negotiations - in this complaint against Moneybarn - under section 56 of the Consumer Credit Act 1974.

Mrs F says the salesperson told her the cambelt should last for another 50,000 miles or so. I can't be certain what was said at the time but I find Mrs F's evidence about this to be consistent and credible. I can see the car had about 75,000 miles on the clock at the point of sale. So, if the salesperson thought the car still had the original cambelt fitted and said it should last another 50,000 miles or so, that would seem optimistic - to say the least. This

statement would make sense however if the salesperson thought the cambelt was changed – in line with the manufacturer's recommendations - at the major service which took place a few weeks before.

I accept dealers aren't *required* to service cars in strict accordance to manufacturer's recommendations - a manufacturer will often recommend, for example, that only the manufacturer's parts should be used. And I can't reasonably say *any* failure to service a vehicle in line with the manufacturer's recommendations must mean it's of unsatisfactory quality. But, I'm satisfied the cambelt is an essential component of the engine - it can cause catastrophic damage if it fails. I consider the dealer here should reasonably have known that the manufacturer recommended the cambelt should be replaced by the time this car was serviced in December 2019. And I think the salesperson probably thought that's what happened.

I say this because I can see Mrs F got a two year warranty with this car. I haven't seen the relevant paperwork but I have checked the warranty provider's terms and conditions. It looks as if the cambelt would be covered if a vehicle has been serviced in line with the manufacturer's requirements. I think it's unlikely the dealer here would have provided Mrs F with a warranty that it knew was invalid – even in part. And I'm minded to find it's more likely than not she was led to believe this car was serviced according to the manufacturer's recommendations.

I think this is likely to have influenced Mrs F's decision to accept this particular car – which is older and had covered relatively significant distance before it was supplied. On balance, I find it unlikely she would have accepted this car at the price she paid if she'd known it wasn't serviced in line with the manufacturer's recommendations and that would invalidate (parts of) the two year warranty. So, taking everything I've seen so far into account, I am minded to find it's reasonable and proportionate for Moneybarn to pay for the cambelt repairs.

I've seen a report from the TPG that says the car shouldn't be driven in the condition it's in at the moment. I don't think it was unreasonable for Mrs F to stop using the car in this situation. And I'm minded to find it is fair and reasonable for Moneybarn to refund any monthly payments made from 15 December 2020 (plus interest) – until the AC and cambelt repairs are completed. To be clear, this refund is intended to compensate Mrs F for loss of use of the car and I find it to be reasonable, in light of the award I'm making overall.

I can see that Mrs F had to go to some trouble taking the car for diagnostic checks and so forth. I think she probably experienced some significant inconvenience as a result of the car being off the road. And, mindful of the refund I've referred to above for loss of use, I am inclined to find it is reasonable for Moneybarn to pay Mrs F £100 compensation for distress and inconvenience. I'm not aware if Mrs F has continued to maintain her monthly payments towards the car. In the event that she hasn't - and Moneybarn has recorded adverse information on her credit file - this should be removed.

### **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 the parties to consider my provisional findings and let me have any further submissions by 30 September 2021 and explained that I would look at all the evidence available after that and make my final decision.

Mrs F has accepted my provisional findings and Moneybarn hasn't objected or made any further submissions. I see no reasonable grounds to depart from my provisional conclusions

above, in the circumstances. For the reasons I've given, I remain of the view this complaint should be upheld and it's fair and reasonable for Moneybarn to take the steps set out to put things right.

### **My final decision**

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

1. arrange for the AC and cambelt to be repaired at no cost to Mrs F;
2. refund the cost of the diagnostic reports obtained in relation to the AC and cambelt – in the sum of £78 and £35.40 respectively;
3. refund any monthly instalments made since 15 December 2020 to compensate Mrs F for loss of use (on confirmation of the relevant mileage);
4. pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement;
5. pay Mrs F £100 compensation for associated inconvenience and distress; and
6. remove any adverse information recorded on her credit file.

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 Mrs F how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 4 November 2021.

Claire Jackson  
**Ombudsman**