

The complaint

Mr M complains that a car supplied by Moneybarn No. 1 Limited was not of satisfactory quality.

What happened

In September 2020 Mr M entered into a conditional sale agreement with Moneybarn. He paid a deposit of £800; the balance of £6,050 was to be paid over five years at £189.88 a month. The car was around six years old and had recorded some 85,000 miles.

Mr M says that he very soon started experiencing problems with the car. There were knocking noises from the engine and its performance was not what he expected. He had some difficulty finding a garage able to look at the car, in part because of Covid-19 measures, but in November 2020 he did arrange an inspection. This showed that the engine's oil pressure was low and that there was an issue with one of the cylinders.

Mr M says that he then tried unsuccessfully to contact the dealership which provided the car and so raised a complaint with Moneybarn.

Moneybarn arranged for an expert to inspect the car and prepare a report. Having received the report, however, Moneybarn did not uphold Mr M's complaint. It said that, as Mr M had continued to use the car after the problems came to light, it could not properly be held responsible for the damage.

Mr M referred the case to this service, where one of our investigators considered what had happened. She noted that the inspection report concluded that the engine damage had probably been present at delivery. She recommended that Moneybarn agree to end the finance agreement, refund payments made from November 2020, refund the £800 deposit, reimburse payments Mr M had made to third parties and pay Mr £200 in recognition of the trouble to which he had been put.

Mr M indicated that he would accept the investigator's recommendation but Moneybarn did not reply. The case has therefore been passed to me for further consideration.

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.

Under the Consumer Rights Act 2015 the conditional sale agreement was to be read as including a term that the car would be of satisfactory quality at delivery. That means of the quality that a reasonable person would expect in the circumstances. Those circumstances include the age, price and mileage of the car.

The car had a relatively high mileage and was priced accordingly. I would not have expected it to be perfect in every respect. However, it was diagnosed within a few months of delivery as needing a complete engine rebuild.

There is no dispute that the car was not of satisfactory quality by November 2020. The inspection report suggested however that there was “*an element of drive on damage*” – meaning that Mr M might have exacerbated damage by continuing to use the car. But the report also concluded that the fault was probably present at delivery and that the selling agent was responsible for repairs.

In the circumstances, it is a little surprising in my view that Moneybarn did not accept that the car was not of satisfactory quality and take steps to remedy the situation. The inspection report suggested an element of drive on damage, but not that Mr M was entirely responsible for the faults.

I accept that the car would have shown warning messages and that Mr M probably continued to drive it despite them – at least while he was able to do. That may have made matters worse and certainly won’t have made things any better. There is however no indication of the real effect of Mr M’s actions, and the inspection report concluded nevertheless that the car was not satisfactory at delivery. I think it more likely than not therefore that it would have needed a replacement engine even if Mr M had stopped driving it as soon as it showed signs of a fault.

Moneybarn suggested that the car should be repaired, but I note that Mr M has not been able to use it for nearly a year. He has said too that he cannot afford repairs. So, whilst that might have been a fair resolution when the problems came to light, I don’t believe it would be fair now. I agree with the investigator that Mr M should be able to reject the car and end the finance agreement.

Putting things right

Mr M has also provided evidence that he has had and paid for a diagnostic test and that he has had the car recovered on three occasions at his expense. The total cost of the test and recovery is £253.99, and he should have that sum refunded. In addition, he has been put to some inconvenience, and I agree with the investigator that he should be compensated for that.

My final decision

My final decision is that, to resolve Mr M’s complaint, Moneybarn No. 1 Limited should:

- end the conditional sale agreement with nothing further to pay;
- collect the car at no further cost to Mr M;
- refund the deposit of £800;
- refund all monthly payments made on or after 14 November 2020;
- refund Mr M £253.99 in respect of payments made to third parties, as discussed above;
- pay interest at 8% a year simple on all refunds from the date of payment until the date of the refund;
- pay Mr M a further £200 in recognition of the inconvenience to which Mr M has been put and the distress caused to him; and
- remove any adverse credit information which may have been registered against Mr M’s name as a result of the conditional sale agreement.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 29 November 2021.

Mike Ingram

Ombudsman