

## **The complaint**

Mr U complains that a car acquired with finance from Moneybarn No 1 Limited wasn't of satisfactory quality.

## **What happened**

In November 2018 Mr U was supplied with a car and entered into a conditional sale agreement with Moneybarn. At the point of supply the car was around 6 years old and had covered around 52,000 miles.

In February 2020 Mr U experienced issues with the gearbox. The reverse gear wouldn't engage. Mr U took the car to a third-party garage who diagnosed that the automatic gearbox wouldn't reverse, the oil pressure wasn't reaching the desired level and there was an internal gearbox fault. The garage advised Mr U that he needed a new gearbox.

Mr U tried to contact the supplying dealer, but it had closed down. He complained to Moneybarn and sent it a copy of the diagnostic report.

Moneybarn arranged an independent inspection of the car in March 2020. The report concluded that there was a transmission fault which would not have been present at the point of supply.

Based on the findings of the inspection, Moneybarn rejected Mr U's complaint. It said there was no evidence to suggest that the issues were present or developing at the point of supply.

Mr U was unhappy with Moneybarn's response and complained to this service.

Our investigator didn't uphold the complaint. He said there wasn't enough evidence to say that there was a fault with the car at the point of supply.

Mr U didn't agree. He said he didn't think the fault with the gearbox was due to wear and tear. He said a car with 62,000 miles on it shouldn't need a new gearbox and that he expected the car to last the duration of the finance agreement.

## **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.

Because Moneybarn supplied the car under a conditional sale agreement, there's an implied term that the car is of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. Satisfactory quality includes things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

I'd expect a second hand car such as that supplied to Mr U to have a degree of wear and tear and to require more repairs and maintenance than a brand new car. So, in order to uphold this complaint, I would need to be satisfied that there was a fault with the car at the point of supply, as opposed to fault which occurred due to general wear and tear.

Under the Consumer Rights Act 2015, where a fault occurs in the first 6 months, there's a presumption that the fault was present or developing at the point of supply and it's up to the business to put things right. After 6 months, the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality at the point of supply.

An engineers report can help to determine whether a fault would have been present at the point of supply. I've looked at the diagnostic report provided by Mr U. Based on what I've seen, I'm satisfied that there's a fault with the car.

The diagnostic report provided by Mr U doesn't say anything about whether the fault was likely to have been present at the point of supply. The independent inspection report, by contrast, states that the fault with the gearbox wouldn't have been present at the point of supply.

As I've already said, it's up to Mr U to show that the car wasn't of satisfactory quality at the point of supply. I've taken the age and mileage of the car into account. I can see that the fault with the gearbox occurred around 15 months into the agreement, by which time Mr U had covered around 80000 miles in the car since the point of supply.

Taking into account the nature of the fault, which affects a major component part of the car, I'm of the view that if the fault had been present at the point of supply, it would've presented itself much sooner. The time and mileage elapsed since the point of supply until the fault occurred suggest that the fault is more likely to be due to wear and tear.

I've taken Mr U's comments into account and I understand how frustrating it must be to have experienced a major fault with the car. I've thought about whether the car was sufficiently durable. Whilst the fault is serious, on balance, taking into account the age and mileage of the car and the time and mileage elapsed between the point of supply and the occurrence of the fault, I don't think I can say that the car wasn't durable.

Based on everything I've seen, there isn't enough evidence for me to say that the car wasn't of satisfactory quality. So I won't be asking Moneybarn to do anything further.

### **My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 3 January 2022.

Emma Davy  
**Ombudsman**