

## **The complaint**

Ms M complains that a used car she acquired with a finance agreement from Moneybarn No. 1 Limited was of unsatisfactory quality.

## **What happened**

In January 2019, Ms M acquired this car under a conditional sale agreement (CSA) she took out with Moneybarn. About six months later the car broke down. Ms M was told that a coolant pipe had overheated and damaged the engine. She found the supplying dealer was unhelpful so she contacted Moneybarn.

Moneybarn liaised with the dealer and the supplying broker and an independent expert was instructed to check the car. Moneybarn acknowledged the issue came to light within six months of supply but Moneybarn didn't accept it was liable. Based on the expert's findings, Moneybarn considered the car was of satisfactory quality at the point of supply.

The manufacturer agreed subsequently to pay for engine repairs but this left Ms M without a car for some time. She struggled to maintain her monthly finance payments and pay for a hire car at the same time - she had to borrow from friends and family in order to do so. She's unhappy that Moneybarn didn't provide a courtesy vehicle. She found the whole experience very stressful and inconvenient. And she thinks Moneybarn should reimburse her out of pocket expenses and pay compensation.

Based on the evidence available, our investigator thought the car probably was of unsatisfactory quality at the point of supply. She was satisfied the manufacturer had paid for repairs but she thought Moneybarn should do more to put things right. She recommended Moneybarn should refund (with interest) 20% of any monthly instalments paid from January 2019 until the vehicle was repaired – for impaired use when the coolant system wasn't working properly - and car hire costs of £1,800 (12 weeks at £150 per week) while the car was off the road for repairs. She thought Moneybarn should also pay Ms M £200 compensation for trouble and upset and remove any adverse information from her credit file.

Ms M accepted the investigator's recommendations but Moneybarn didn't respond and the matter was referred to me for a decision.

Having considered the available evidence, I was minded to reach a different outcome to the investigator. In the interests of fairness, I issued a provisional decision - to let the parties see my provisional findings (and comment if they wanted to) before I made my final decision. I have set out what I decided provisionally - and why - below. 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 - as some of it is here - I make my decision on the balance of probabilities. In other words, I consider what is most likely to have happened, in the light of the available evidence and the wider

circumstances.

This service provides informal dispute resolution and I must take account of the relevant law (amongst other things). I'm satisfied that includes the Consumer Rights Act 2015 (CRA) here. It's not my role to apply the law - only a court can do that. I make my decision based on what I think is fair and reasonable - in all of the circumstances of this complaint.

Moneybarn supplied this car to Ms M under a CSA and it was obliged to ensure that the car was of satisfactory quality when she got it, under the CRA. The quality of goods includes things like fitness for purpose, appearance and finish, freedom from minor defects and safety and durability. And goods are of satisfactory quality if they meet the standard that a reasonable person would expect taking all of the relevant circumstances into account - such as the price paid as well as the age and mileage (amongst other things), in the case of a used car.

This car was about four years old, cost just over £9,000 and had about 36,000 miles on the clock at the point of supply. I think a reasonable person would accept that a car of this age and mileage wasn't going to meet the same standards as a brand new car - as some parts would be worn and need to be replaced sooner or later - which is reflected in the lower price paid for a used vehicle.

There appears to be no dispute that a coolant pipe failed in June 2019 causing damage to the engine. I can see the expert found a coolant pipe was broken - this had melted at the cylinder head fitment end – albeit he thought it was unlikely the coolant pipe was in this condition when the car was supplied. I'm satisfied, from paperwork I've seen, that the relevant manufacturer acknowledged there is a coolant hose issue in some of its engines - like the one in this car. I accept this doesn't mean every breakdown involving this sort of engine must have been caused by this defect. But, I don't think cars of this age and mileage usually need the engine replacing as the result of wear and tear.

I've considered the expert's report carefully. I think his recorded observations about the part that failed seem consistent with the presence of the recalled faulty part. I appreciate the expert acknowledged that the relevant manufacturer had recalled some vehicles to modify this particular part but he didn't think the pipe in Ms M's car was subject to this recall - because the pipe in her car hadn't been modified. I note however the expert also suggested that contact should be made with the manufacturer about this. And I think he probably made this suggestion because he wasn't *certain* if this car had the faulty part or not - based on the evidence he had at that time.

I'm satisfied that the manufacturer subsequently agreed to pay for relevant repairs to Ms M's car. I think the manufacturer is unlikely to have done so if it didn't think her car had an inherent manufacturing defect. And, on balance, I'm minded to find it's more likely than not this car was of unsatisfactory quality when it was supplied.

### **Putting things right**

Broadly speaking, under the CRA, a supplier is entitled to one chance to repair goods in this situation. And I realise Moneybarn may say this car was repaired at no cost to Ms M so it shouldn't have to do more. But, I don't think that's fair in these particular circumstances and I'll explain why below.

I can't see when the car broke down exactly. The expert records the failure date as 8 July 2019. But I can see (from Moneybarn's customer contact notes) that Ms M contacted Moneybarn a few days before that to report this issue - and she told Moneybarn then that she hadn't been able to drive the car for about four weeks. If Ms M was deprived of the use

of the car because of this inherent issue before she contacted Moneybarn in July, I would probably find it fair for Moneybarn to refund a proportion of the relevant monthly finance payment. But I'd need more evidence – including details of when the car broke down - in order to be able to consider that further.

On the current evidence, I'm satisfied that Ms M seems to have been without the car for about three months while repairs were undertaken. I think it was open to Moneybarn to take some steps to try and assist her during this time - it could, for example, have tried to speed up the repairs or offered to arrange a courtesy vehicle or reduced or suspended finance payments.

As far as I can see, Ms M maintained her repayments towards the finance agreement throughout. I find it understandable she needed alternative transport while her car was off the road for repairs. I can see why she hired a replacement in these circumstances. I don't think Ms M would have had to incur this cost if she hadn't been supplied with a faulty car at the outset. I don't think it is fair she should be out of pocket in this situation. And I am inclined to find it is fair for Moneybarn to refund reasonable hire costs, plus interest.

We asked Ms M for evidence of the hire costs she incurred. I've seen 12 invoices she supplied for hire charges from 5 July 2019 until 4 October 2019, not including the week of 12 July 2019. It's not clear to me if Ms M didn't hire a car that week for some reason. If she did, then she should supply the missing invoice in response to this provisional decision - and I will take this into account when I make my final decision. As things stand, the evidence I have suggests that Ms M paid for 12 weeks hire at a cost of £150 a week. I am minded therefore to find Moneybarn should refund £1,800 for hire charges, plus interest.

Ms M has now confirmed that she was unaware there was a problem with the coolant system until the car broke down. It looks therefore as if she was able to use the car from January 2019 until the breakdown without any issue or impaired use arising from this faulty part. And I'm not persuaded Moneybarn should have to refund any monthly payments made during this time.

I'm satisfied that Ms M is likely to have experienced stress and inconvenience as a result of being supplied with this faulty car. And I'm minded to find it is reasonable for Moneybarn to pay her £200 compensation to reflect that. In the event that Moneybarn recorded any adverse information on Ms M's credit file, I consider it is fair 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 comments or information by 11 January 2022, after which time I would make my final decision. Moneybarn didn't respond and Ms M hasn't supplied any new information or raised any objection to my provisional decision. I see no reasonable grounds to depart from my provisional conclusions, in the circumstances.

For the reasons set out above, I remain of the view that it's more likely than not this car was of unsatisfactory quality when it was supplied and Moneybarn should take the steps set out, to put things right.

### **My final decision**

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

1. refund the cost of 12 weeks car hire at £150 a week, in the total sum of £1,800 (subject to Ms M providing proof of payment);
2. pay interest on the above refund at 8% simple a year from the date of payment to the date of settlement;
3. pay Ms M £200 for distress and inconvenience; and
4. remove any adverse information from 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 Ms M 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 Ms M to accept or reject my decision before 24 February 2022.

Claire Jackson

**Ombudsman**