

## **The complaint**

Mr L complains about the quality of a car he acquired through a conditional sale agreement financed by Moneybarn No.1 Limited (Moneybarn).

## **What happened**

In April 2020 Mr L acquired a used car through a conditional sale agreement.

In October 2020 Mr L experienced problems with the engine management light being illuminated, and various warnings on the dashboard. He paid £80 for a local manufacturer approved garage to inspect the vehicle at his home address. The engineer recommended the vehicle be taken to another local garage for further review as a number of fault codes were found.

In December 2020 the vehicle was taken to a local manufacturer approved garage, and Mr L paid £175 for an inspection to take place. The garage found a loud knocking noise from the engine, and metal particles in the oil. They said a new engine would be required. They thought the fault would have been present or developing at the point of supply.

Mr L complained to Moneybarn in December 2020 about the quality of the car. He asked for it to be repaired.

Moneybarn asked Mr L for evidence that the fault was present or developing at the point of supply, and he provided the diagnostic details from the two garages that had inspected the car. Moneybarn said they'd arrange for an independent inspection of the vehicle, and Mr L queried why this was needed after the evidence he'd supplied.

Moneybarn issued their final response to Mr L's complaint in March 2021. They said the faults Mr L had reported could be as a result of normal wear and tear to the vehicle and, as he hadn't accepted their offer of an independent inspection, they couldn't confirm they were responsible for the faults. They didn't uphold Mr L's complaint.

Unhappy with this, Mr L brought his complaint to us for investigation. He also told Moneybarn he'd accept the inspection that they'd suggested.

In June 2021 Moneybarn apologised that they hadn't responded to Mr L's queries around the inspection, or his subsequent request for this to go ahead. They offered to refund Mr L £80 for the initial diagnostic he'd had carried out, pay him £200 compensation for the distress and inconvenience caused, and to carry out the inspection.

The inspection was attempted in June 2021, but the inspector wasn't provided with a key for the vehicle and so it didn't go ahead.

Another inspection was completed in November 2021. The inspector noted there were faults displayed which indicated an issue with the timing chain. They didn't think the fault would've been present at the point of supply and noted that full dismantling of the engine would be needed to determine the cause of the fault.

Mr L told us he wanted to reject the car, and he'd been unable to use it since December 2020, so he'd like his monthly payments to be refunded. Mr L explained the impact the situation had on his health and finances, and explained he'd faced costs like insurance for the car up until he'd cancelled it in April 2021, and storage costs for the car being kept at the garage.

Our investigator said he was persuaded by the opinion of the garage that had completed their investigations soon after the fault occurred, and thought the car likely wasn't of satisfactory quality at the time it was supplied to Mr L.

He recommended that Mr L be allowed his final right to reject the vehicle, and that Moneybarn refund Mr L's deposit, his monthly payments from the date he was unable to use the vehicle, waive any arrears, refund the diagnostic costs that Mr L paid, refund the cost of storing the car, and pay £200 compensation.

Mr L replied to our investigator to say he felt the compensation amount was low as he'd been put to a significant amount of distress and inconvenience during the process of trying to get the car fixed. He also questioned the other costs he'd had to pay, such as the insurance for the car whilst he was unable to use it, up to when he cancelled it in April 2021.

Moneybarn didn't reply to our investigator's view. So, the case has been passed to me for a decision.

### **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.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated conditional sale agreement – so we can consider a complaint relating to it. Moneybarn as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory"

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £17,000. It was around seven years old and had travelled approximately 67,000 miles at the time of supply. When a person acquires a used car like Mr L's, it's reasonable to say that the expectation of quality is lower than that of a new or younger/lower mileage second-hand car. The price for the vehicle is lower, and this is reflective of the fact that the car is more road worn.

I've seen evidence that Mr L experienced some fault warnings in the vehicle around June and September 2020. He says he tried to contact Moneybarn at the time but was unable to reach them on the phone. When Mr L had his car inspected in October 2020, the engineer says he switched it off straight away due to the number of faults.

The inspection completed in December 2020 determined that a new engine would be required, and the inspection completed in November 2021 suggested that the engine would need to be fully dismantled to determine the cause of the fault.

Both reports are inconclusive on what has caused the damage to the engine. The inspection arranged by Moneybarn concludes that the fault wouldn't have been present or developing at the point of supply due to the mileage driven since the finance inception.

At the time of the fault, Mr L had been able to drive the car around 5,000 miles. So, it had covered around 72,000 miles overall.

There has been some suggestion that the fault might have occurred as a result of poor servicing of the vehicle by the first engineer that inspected it at Mr L's home address. I haven't seen any persuasive evidence that this is the case, and I've seen evidence that the car was serviced regularly and in line with the recommended intervals.

None of the reports conclude that the damage was caused by reasonably expected wear and tear, or third-party damage. So, I'm not persuaded that these reports evidence that the vehicle was of satisfactory quality at the time it was supplied to Mr L

Mr L's car has suffered catastrophic engine failure. The exact cause of this hasn't been determined by the engineers employed by Mr L or Moneybarn, but both reports confirm that the car is not driveable, and that substantial damage has been caused within the engine.

In considering durability I have had regard to the age of the car and the mileage Mr L travelled in it before he encountered an issue. All things considered, I don't think the reasonable person would expect a car of this age and mileage to have suffered such catastrophic engine failure that results in the need for a new engine. It seems that there was likely an overall issue with the vehicle which has led to a premature failure of parts. The issue doesn't appear to be one of normal wear and tear, nor have I seen any evidence that it was caused by misuse, driving style or third-party damage.

On the balance of probabilities, I'm persuaded that the car was not reasonably durable, and therefore was not of satisfactory quality at the time of supply.

Having made that finding, I need to decide what, if anything, Moneybarn should do to put things right.

The Consumer Rights Act sets out the remedies available where goods are considered not to be of satisfactory quality and one of the remedies is to allow an opportunity to repair the goods. That repair should be done in a reasonable time, and without significant inconvenience to the consumer.

Mr L has not had use of his vehicle since December 2020. Neither inspection has been able to identify the cause of the problem with the car, they are not clear on what is required in order to affect a repair and suggest that dismantling of the engine would be required to reach a conclusion. It's not clear if a repair will be successful, will be long lasting, or how long it might take to complete. So, it's likely that Mr L will be put to significant inconvenience, in addition to that which he's already experienced, in arranging a repair when it's not clear that it will be successful and further work and time might then be required to return the car to a satisfactory state. It would also mean that Mr L has to wait for an unknown period of time before he is able to drive his car again.

All things considered; I think Mr L should be allowed his final right to reject the car. This means that the car is collected from Mr L, the finance agreement is brought to an end, and Mr L has his £1500 deposit refunded (plus interest). The agreement and any adverse information should be removed from Mr L's credit file.

Mr L has been unable to drive the car at all since December 2020 and hasn't had use of any replacement or courtesy car in the interim. So, I think it's fair that Moneybarn refund 100% of his monthly payments relating to use of the car from 1 December 2020. Mr L appears to have stopped making his monthly payments some time after he was unable to use the car. Any arrears accrued after 1 December 2020 should be waived.

Mr L has paid to have the car inspected at his own cost, and I think these costs should be refunded plus interest. Mr L has provided evidence that he paid £80 for the first diagnostic, and £175 for the second one.

Mr L said he's been charged storage costs by the garage for his car remaining there. Mr L was unable to remove the vehicle from the garage due to his financial situation. He also had no address at which to store the car. So, I don't think he's acted unreasonably in leaving the car at the garage, and Moneybarn should refund these storage costs plus interest, if Mr L has already paid them. Mr L will need to provide evidence of the charge, or payment of these costs, to Moneybarn.

Mr L said he's faced other costs in respect of the car, like insurance for it, and taxi costs to keep mobile. Mr L would've needed to insure the vehicle in order to protect it against things like theft, so I don't think Moneybarn are responsible for this cost. I haven't seen any evidence of costs Mr L has paid for keeping himself mobile, So I don't think Moneybarn are responsible for this.

Our investigator recommended that Moneybarn pay Mr L £200 compensation for the distress and inconvenience the situation has caused. Mr L has explained the impact the situation has had on him, and I'm sorry to hear about how it's affected him.

Mr L has been put to distress and inconvenience in having to arrange for the car to be inspected, trying to resolve the situation and as a result of poor communication by Moneybarn in arranging for inspections.

Overall, I'm satisfied that £200 compensation reflects the distress and inconvenience experienced by Mr L.

### **My final decision**

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

- End the finance agreement and collect the car at no further cost to Mr L
- Refund Mr L's deposit of £1,500 plus 8% simple yearly interest, calculated from the date of payment to the date of settlement.
- Refund 100% of Mr L's monthly rental payments that relate to use of the car from 1 December 2020 plus 8% simple yearly interest, calculated from the date of payment to the date of settlement.
- Waive any arrears that have accrued since 1 December 2020.
- Refund Mr L £255 for the cost of diagnostic reports plus 8% simple yearly interest, calculated from the date of payment to the date of settlement.

- Refund the cost of storing the vehicle, upon receipt of evidence of these costs from Mr L. If Mr L has already paid these fees, add 8% simple yearly interest, calculated from the date of payment to the date of settlement.
- Pay Mr L £200 compensation to reflect the distress and inconvenience caused.
- Remove the finance agreement and any adverse information from Mr L's 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 Mr L how much it's taken off. It should also give Mr L 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 L to accept or reject my decision before 14 April 2022.

Zoe Merriman  
**Ombudsman**