

The complaint

Mr S complains that the vehicle he acquired through a Conditional Sale Agreement (CSA) with Moneybarn No 1 Limited wasn't of satisfactory quality.

What happened

Mr S entered into a CSA with Moneybarn on 1 April 2021. He took delivery of the vehicle on 13 April 2021. He says he returned the vehicle to the garage the next day because it had an oil leak and was generally in poor condition. He didn't feel it was safe to drive the vehicle.

On 21 April 2021 Mr S wrote to the dealer stating that he was exercising his short term right to reject the vehicle. He said the vehicle had been mis-sold, was in a poor condition and falsely advertised. He said the vehicle was not as described and was not fit for purpose.

Moneybarn investigated the matter. It said the dealership was positive there was no oil leak and that what Mr S had reported was "simply oil residue" which had been steam cleaned and was no longer present. At this time Mr S told Moneybarn about a range of other problems with the vehicle. He said:

- the interior roof lining was loose;
- there was an ongoing oil leak;
- there was rust to the bodywork;
- shelving had been installed to the vehicle;
- there was a fuel smell in the cabin;
- there was a fuel leak;
- there was damage to the interior and exterior of the vehicle;
- the vehicle was filthy;
- the radio function was faulty; and
- the vehicle was not fit for purpose and was of unsatisfactory quality

Moneybarn appointed an independent expert to inspect the vehicle. The inspection took place on 14 June 2021. The expert said that the vehicle was in average condition commensurate with its age and recorded mileage. The expert also said that in his opinion there were no issues which required attention. There was no evidence of oil contamination or an oil leak and although there was evidence of corrosion to the underside of the vehicle this was in keeping with its age and mileage.

There were a number of fault codes reported on the diagnostic's report. Some of these had been present at the point when the vehicle was supplied to Mr S. But, the expert said, none of these fault codes related to the engine or impacted on the proper functioning of the vehicle.

The expert believed that the fuel filler cap was missing but subsequently confirmed that this was not the case because the fuel door flaps were lockable by the central locking system.

Moneybarn sent its final response letter to Mr S in July 2021. It said it was satisfied that the vehicle was of satisfactory quality at the point when it was delivered to Mr S. As a gesture of

goodwill it offered to pay him £75 by way of contribution to have the vehicle cleaned and a further £75 to have the fault codes cleared from the diagnostic report. Mr S didn't agree. He said he had returned the vehicle to the dealer and he hadn't been able to drive the vehicle since that date. In addition, the dealer had refused to give him back the vehicle he had given it in part exchange. He said he'd exercised his short term right to reject and he wanted the agreement to be unwound.

Mr S referred his complaint to our service. Our investigator looked into his complaint. She said the relevant legislation stated that a vehicle was of satisfactory quality if it met the standard that a reasonable person would consider to be satisfactory. She said the age and mileage of the vehicle were relevant considerations. In this case the vehicle was seven years old when Mr S acquired it and had travelled 98,900 miles. So, given the age and mileage there was a greater risk that the vehicle might need some repair or maintenance sooner than a younger vehicle would.

Our investigator considered the independent expert's report. She said it confirmed there was no evidence of an oil leak and the report didn't support the comments Mr S had made about the condition of the car. She thought the offer to pay £75 to clear the fault codes and £75 by way of contribution to clean the vehicle was fair and reasonable.

Mr S didn't agree. He said he'd provided photographs which showed there was an oil leak. He believed the leak was still present – but if it wasn't that was because the dealer had fixed it prior to the inspection. He said the vehicle was a "death trap".

Our investigator thought about what Mr S said but she didn't change her view. So, the complaint has been passed to me to decide.

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.

Mr S's complaint is about the vehicle not being of satisfactory quality at the point of supply.

Mr S acquired the vehicle through a CSA. Under the regulations, specifically the Consumer Rights Act 2015 (CRA) Moneybarn can be held liable if the vehicle wasn't of satisfactory quality at the point of supply.

Satisfactory quality is defined in the CRA. It says that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking account of the description of the goods, the price and all other relevant circumstances.

So, when considering whether the vehicle Mr S acquired was of satisfactory quality I can take into account a number of factors such as the price he paid, the age and the mileage of the vehicle when it was acquired.

The vehicle here was almost seven years old. It had approximately 100,000 miles on the clock and cost just under £13,500. So, in these circumstances, I'd expect a vehicle of this age and mileage to have much more wear and tear and serviceability issues than a new or younger model of the vehicle. I think it's also more likely that a vehicle of this age and mileage would need repair or maintenance sooner than a newer or younger model of the vehicle.

Mr S says he selected the car by looking at photographs online. He collected the car at 5.45pm on 13 April 2021. Because the garage was about to close he didn't carry out a close

inspection of the vehicle. But he returned the vehicle the next day after he noticed the oil leak, smelt fumes in the cabin of the vehicle and noticed the general poor condition of the vehicle. He's provided photographs which he says are evidence of the oil leak and the other points he's raised.

I've looked at the photographs provided by Mr S. I can see evidence of oil residue on the underside of the vehicle and around the engine. Moneybarn says there was no oil leak at the point of delivery. The independent expert has confirmed that. There is no dispute that there was oil residue. But the dealer says this was residue from a repair carried out prior to the sale and it has been steam cleaned.

I can see that the day before the vehicle was delivered to Mr S it was subject to an MOT. It passed the MOT but there was an advisory which stated

"monitor and repair if necessary. Oil leak but not excessive."

The dealer said it carried out the repair prior to the sale. And, the dealer said that in these circumstances it wasn't unusual for there to be oil residue.

The independent expert examined the vehicle. And, although this was some weeks after Mr S had taken delivery of the vehicle, he said he couldn't find any evidence of an oil leak. He noted the engine oil and coolant were satisfactory and there was no fault showing on the diagnostics to indicate any fault with the engine.

Having considered the independent expert report, I'm satisfied the vehicle did not have an oil leak present or developing at the point of supply. I'm persuaded, on balance, that what Mr S had seen was oil residue from a repair carried out prior to the time when he took delivery of the vehicle.

I've also considered the various points Mr S raised about the general condition of the vehicle. The independent report deals with most of the issues Mr S has raised:

- *the interior roof lining was loose*
the report states that although the lining was dirty it was not hanging down.
- *there was rust to the bodywork*
the report states that an underbody examination was carried out and there was no corrosion to an excess degree albeit some of the underside was masked by the dirt build up.
- *shelving had been installed to the vehicle*
the report doesn't comment on this. But, I can see, from the photographs provided by Mr S that shelving had been installed in the boot of the vehicle. I'll comment about this further below.
- *there was a fuel smell in the cabin*
the independent expert said there was no evidence, at the date of inspection, to support what Mr S said.
- *there was a fuel leak*
the independent expert said there was no evidence, at the date of inspection, to support what Mr S said. The expert also concluded, after examination of further evidence, that the fuel cap was not missing.
- *there was damage to the interior and exterior of the vehicle;*

the independent expert said there was evidence the vehicle had scratches and a minor dent to the tailgate and driver's rear door. But, the expert said these were consistent with general in service wear and deterioration and as expected for the vehicle's age and mileage.

- *the vehicle was filthy*

I've looked at the photographs Mr S provided. These do show that the vehicle was dirty both inside and outside. The expert also said the underside of the vehicle was masked by dirt build up. I'll comment further below about what Moneybarn offered to do to contribute to having the vehicle cleaned.

- *the radio function was faulty*

The independent expert checked the radio and confirmed it was functioning in all its options.

- *the vehicle was not fit for purpose and was of unsatisfactory quality*

The independent expert's opinion was that there were no issues which required attention. The vehicle started first time from the ignition key. The independent expert carried out a road test and concluded that the vehicle was operating generally in a condition commensurate with its age and mileage.

The independent expert's report did refer to several fault codes that were present on the diagnostic report. But, he said none of these fault codes related to the engine and it wasn't clear if they were historical fault codes that hadn't been cleared. I'll comment further below about what Moneybarn offered to do regarding these fault codes.

Having read the independent expert's report, examined the photographs Mr S provided and considered the MOT result dated 12 April 2021, I'm not persuaded the vehicle was of unsatisfactory quality at the point it was supplied. I'm satisfied, on balance, that there wasn't an oil leak present or developing at the point of delivery. I'm also satisfied that none of the issues he's mentioned were such that a reasonable person would've considered the vehicle to be of unsatisfactory quality taking into account all relevant circumstances, including the age and mileage of the vehicle.

Because I've decided that the vehicle was of satisfactory quality at the point of supply, the right to reject the goods does not arise.

Mr S also said the vehicle had been misdescribed. He's referred to shelving in the boot area of the vehicle and the general appearance of the vehicle – both inside and outside. I asked him to provide evidence about the online advertisement for the vehicle. He hasn't been able to provide a copy of the advertisement. He says the pictures have been taken down from the online website and he didn't keep a copy of this at the time. So, he hasn't been able to provide any evidence to support what he says.

Mr S says he collected the vehicle without carrying out a detailed inspection. He says it was late in the evening and it was only the next day he had the opportunity to look at everything in more detail. But, despite collecting the vehicle late in the evening, I think it would be reasonable for Mr S to have carried out some inspection of the vehicle prior to taking delivery as some of the things he's mentioned would've been readily visible to him – such as the shelving in the boot area, and the condition and appearance of the exterior and interior of the vehicle. So, I would've expected him to have raised some comments at the time and, if he had concerns, to have delayed the delivery of the vehicle until a later time. He didn't do that. In these circumstances, I'm not persuaded there's sufficient evidence to support what he's told us about the vehicle having been misdescribed.

There is evidence to support what Mr S said about the vehicle being dirty. And, although I can understand why Mr S found this unacceptable, I'm not persuaded it meant the vehicle was of unsatisfactory quality. I've noted that Moneybarn has agreed to pay £75 towards having the vehicle cleaned. It's also agreed to pay £75 towards having the historical fault codes cleared from the diagnostic report. I think that's fair and reasonable. I don't require it to have to do anything else to resolve this complaint.

My final decision

For the reasons given above, I uphold this complaint, in part, about Moneybarn No 1 Limited.

Moneybarn No 1 Limited has already made an offer to settle this complaint. Its offered to pay Mr S £75 by way of contribution to have the vehicle cleaned and £75 to have the historical fault codes cleared. I think that is fair in all the circumstances.

So, my decision is that Moneybarn No 1 Limited should pay Mr S £75 by way of contribution to have the vehicle cleaned and £75 to have the historical fault codes cleared.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 May 2022.

Irene Martin
Ombudsman