

The complaint

Mr R complains that a car he acquired via a conditional sale agreement with Moneybarn Limited wasn't of satisfactory quality.

Mr R has been assisted in bringing his complaint to this service but for ease of reference I'm only going to refer to Mr R in my decision set out below.

What happened

In February 2021 Mr R saw an advert for a car and attended the dealership. He says that when he saw the car, he was disappointed about the condition of its bodywork so said he no longer wanted it. The dealership said it would undertake some repairs and asked him to return after four days.

Mr R says he then signed the conditional sale agreement and returned a few days later to the dealership. Mr R says that although most of the damage to the bodywork had been fixed there were still some scratches around the wing mirrors, however he decided to accept the car which came with a three-month warranty.

At the point of supply to Mr R the car was around eight years old and had a mileage of about 49,750. The conditional sale agreement was for 48 months.

Just over a week after acquiring the car Mr R returned it to the dealership as he said he was experiencing a burning smell and the gears were sticking when the car was driven long distances. The dealership took the car back and Mr R says he was informed it had found a fault following an extensive test drive. Repairs were carried out to the gearbox and clutch and the car returned to Mr R.

Mr R says the problem with the car's gearbox and clutch remained and that it was agreed with the broker who arranged the credit agreement for the car to undergo a diagnostic health check at another garage. This health check noted two ambers for the car, one for a nail in a tyre and the second that the exhaust brackets were broken.

Mr R says that he then returned to the dealership to complain that the gearbox fault was still present but was told by them they would not conduct further repairs under the warranty. Mr R says he believes this invalidated his warranty.

Mr R says that the broker who had arranged the credit agreement passed his complaint to Moneybarn and advised him to make no further payments under the agreement.

The broker advised Moneybarn that the dealer was happy to rectify the fault shown on the health check report but not replace the tyre. Mr R says he wasn't aware of this offer but by then his relationship with the dealer had broken down.

Mr R contacted Moneybarn in April 2021 and said that he wanted to reject the car due to its faults. Moneybarn offered to have the car inspected by an independent engineer and Mr R agreed to this.

The independent engineer inspected the car at the end of April 2021. At this point the car's mileage was 51,951. The engineer reported the car was in average condition and that the gearbox oil had been changed and the clutch fluid drained. The car was taken on a nine-mile road test with speeds up to 60mph. No judder or slipping of the gears was experienced nor was any burning smell or knocking noise noted. The independent engineer said they couldn't replicate any fault with the car but said that the knocking noise could've been linked to the exhaust bracket which had been repaired and the burning smell could have been caused by the paint that had been used on the bracket.

The independent engineer examined the exhaust bracket and found that it was welded and secure. However, they did note that the car's battery cover was missing, as was the puncture repair fluid which they said should be replaced at the expense of the supplying dealer.

Moneybarn didn't uphold Mr R's complaint. It said that no fault had been found with the car's gearbox or clutch. It also said that although there were cosmetic faults with the car's bodywork Mr R would have been aware of these at the time he had taken it. Moneybarn said that these cosmetic issues didn't affect the satisfactory quality of the car. However, it offered Mr R £75 compensation for the missing battery cover and tyre puncture repair fluid.

Mr R took the car to a third-party garage. This garage provided a letter to Mr R stating they had seen the car in May 2021 and confirmed there was a fault with the car being difficult to get into gear when hot. They said this would need to be investigated further and would entail the removal of the gearbox. The garage said it had advised Mr R to reject the car.

Mr R complained to this service about the quality of the car. He also said that in July 2021 he had made the decision to return the car and cancel the agreement. Mr R said he'd been distressed at the arrears' letters sent to him by Moneybarn.

Our investigator didn't recommend that Mr R's complaint should be upheld. She said that, looking at the evidence, she wasn't persuaded there was a current fault with the car's gearbox and clutch and that there hadn't been a failed repair to these parts. Our investigator said she didn't think the letter from the third-party garage outweighed the independent engineer's report who had provided an explanation for the smell and noise experienced by Mr R.

Our investigator said that as Mr R wasn't entitled to reject the car and had only made one payment under the agreement he was in breach of its terms and conditions. She said that although Moneybarn had taken the car back this didn't mean it had accepted it wasn't of satisfactory quality.

The investigator also said she thought the £75 compensation payment from Moneybarn for the missing items found by the independent engineer had been fair.

Mr R disagreed with our investigator's view. He says that he reported a fault with the car's gearbox within the first 30 days of the agreement coming into existence and that this repair failed. He says the independent engineer didn't investigate the actual fault because the test drive was too short, the issue arising after a journey of around 100 miles.

Mr R says that the actions of the dealership rendered his warranty void as he was told to leave its premises. He also says he returned the car as was his right under the Consumer Rights Act 2015 and that this should not have a detrimental impact on his

credit file and finances.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Mr R is a regulated consumer credit agreement this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here the car was around eight years old and had a mileage of about 49,750. So, some issues of maintenance and repair would have been expected over time. However, I'd seen that Mr R had raised issues with the car a short time after he'd acquired it. There were issues with the car's paintwork as well as the gearbox/clutch problem.

In regard to the car's paintwork, I'd also seen that Mr R accepted he had taken the car knowing about this. I thought a car of that age would be expected to have some cosmetic damage and this wasn't something that would have affected its satisfactory quality. Complaints about scratches on the paintwork wouldn't have entitled Mr R to be able to reject the car.

Mr R said that he had raised his right to reject the car within the first 30 days after inception of the credit agreement. I accepted from the timelines I'd seen that Mr R had raised an issue with the gearbox sticking within the first few days of acquiring the car. However, Mr R had also accepted the dealership carrying out repairs to the car which appeared, from the independent engineer's report, to have been replacing the gearbox oil and bleeding the clutch fluid. He took the car back following these repairs.

Mr R said these repairs hadn't fixed the problem and that the dealership had refused to help him further. The dealership didn't agree with that. Mr R then took the car for a health check at a third-party garage.

I'd seen that Mr R had said that this health check had revealed an issue with the clutch, and it fell under an amber marking. But I'm afraid Mr R was mistaken in that. Looking at this health check report no issue with the clutch was found and it was marked as green. The issues found related to a nail in a tyre and the exhaust bracket. I understood that the dealership had agreed to look at the exhaust bracket issue.

Mr R said that the dealership's refusal to assist him invalidated the warranty he had with the car. But I'd also seen that the warranty wasn't a stand-alone product purchased separately under the credit agreement, it had come with the car. This would have meant

the warranty wasn't supplied by Moneybarn and so it wouldn't be responsible for it. A complaint about whether or not the warranty covered a repair would have to be made to the company that had provided it.

However, as set out above, the dealership disputed that it had refused to assist Mr R and said it had been willing to look at the exhaust bracket issue after it had received the health check report. I thought the supplying dealer would have been entitled to say it wouldn't assist with the tyre since this appeared to be a wear and tear issue and I wouldn't have expected that to fall under any warranty.

While I appreciated Mr R considered that his relationship had broken down with the supplying dealer and it had invalidated the warranty, on the evidence I'd seen, that wouldn't have entitled Mr R to cancel the credit agreement with Moneybarn.

Mr R also said he had been advised by the broker to stop paying the monthly payments under the credit agreement. I was surprised by this advice because this would be a breach of the agreement's terms and conditions. I couldn't reasonably say that if the broker had given that advice to Mr R that Moneybarn was in any way bound by it.

Moneybarn arranged for the car to be independently inspected at the end of April 2021. This engineer was unable to replicate any fault with the car's gearbox or clutch following a test drive. They provided a possible explanation for the burning smell and knocking noise Mr R said he had been experiencing.

Mr R disagreed with the conclusion of the independent engineer as he said the issue with the gearbox only arose after journeys of around 100 miles and when the engine was warm. He had provided a letter from a third-party garage which confirmed the fault as described by him. Although I appreciated this would be of disappointment to Mr R, I wasn't persuaded by the letter from the third-party garage. Unlike the findings set out in the independent engineer's report it gave little detail and didn't set out how far any test drive, if any, had been undertaken. And, since the test drive according to Mr R would have had to have been for some considerable time/distance, I would also have expected that there would have been a cost associated with this particular inspection by the third-party garage. I hadn't seen that there was such a cost to Mr R. Weighing up these two reports, I therefore preferred the independent engineer's report.

As I thought there was no fault present with the car when inspected by the independent engineer then I didn't think the earlier repair to the car's gearbox and clutch had failed. I thought the car was of satisfactory quality. This means that I didn't agree Mr R had been entitled to reject the car and hand it back in July 2021.

I appreciated Moneybarn had collected the car but as it was its property, then I wasn't surprised it had done so. And I didn't agree that by doing so, that this in way suggested that Moneybarn had considered Mr R had been entitled to reject the car and cancel the agreement. I thought Moneybarn was entitled to consider that Mr R was in breach of the conditional sale agreement.

Mr R had raised concern that he was unaware whether the car had now been sold and if so, what price it had fetched. But as Mr R was in breach of the agreement then Moneybarn was under no obligation to inform him as to any sales price fetched for the car and/or offset that amount from the balance owed by him. Moneybarn was entitled to enforce the terms contained in the agreement as to the amount owed when it had been terminated early.

Moneybarn was also be entitled to report adverse information about this agreement to

Mr R's credit file if arrears accrued on this account.

So, on the evidence I'd seen and for the reasons given above I wasn't intending to uphold Mr R's complaint.

Moneybarn has agreed with my provisional view and Mr R hasn't asked me to reconsider any parts of my 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.

Although neither party has asked me to look again at my provisional decision, I have reviewed the evidence that was provided and considered whether my conclusions were fair and reasonable. I haven't changed my view.

I'm still satisfied that the repairs carried out on the clutch by the dealership hadn't failed and that the independent engineer's report was accurate in regard to the quality of the car. So, Mr R hadn't been entitled to reject the car.

And as Mr R has chosen to terminate the agreement early, then he will be liable, as set out in the terms and conditions of the agreement, for the balance that is outstanding. Moneybarn will also be entitled to report any adverse information about this account to the credit reference agencies should arrears accrue.

My final decision

For the reasons given, and although I appreciate this will be of disappointment to Mr R, I'm not upholding his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 6 June 2022.

Jocelyn Griffith
Ombudsman