

The complaint

Mr W complains about a used car he acquired from Moneybarn No. 1 Limited. Mr W has referred to having a number of faults with the car and that these have not been successfully repaired.

To resolve the complaint Mr W would like the car repaired, or the ability to hand back the car.

What happened

Mr W acquired a used car in October 2021 and at that time the car was around six and half years old, had travelled almost 115,000 miles and cost £6,895. Mr W has referred to a number of problems or faults with the car but in particular, issues with the car's gearbox and clutch.

A number of repairs had been carried out to the car but issues with the gearbox persisted. Mr W complained to Moneybarn, who arranged for an independent inspection to be completed. This was done on 22 April 2022 and at that time the car's mileage had increased to 119,254. The report highlighted problems with the gears, which were *'tight to engage'* and 1st gear was *'baulking and not selecting correctly'*. The report refers to a previously unsuccessful repair to the gearbox.

Moneybarn upheld Mr W's complaint and arranged for the car to be repaired. It also agreed to pay Mr W £150 for the trouble and upset he had been caused and write off arrears on the account of £342 to reflect the loss of use he'd had of the car as a result of the faults. Mr W referred to further issues with the gearbox and Moneybarn arranged for a second independent inspection to look at Mr W's concerns. That inspection found that there were no issues with the gearbox, but did identify some issues with the bodywork of the car and panel alignment. Moneybarn explained that as there was insufficient evidence of ongoing issues with the gearbox it would not agree to any further work on the car. And highlighted that any cosmetic issues with the car's panelling should have been apparent at the time Mr W acquired the car. So it did not consider it was responsible for any related issues.

Mr W referred his complaint to our service, where it was considered by one of our investigators. In summary, they found that there were issues with the car that likely made it of unsatisfactory quality when it was supplied to Mr W. However, Moneybarn had accepted this, arranged repairs and sufficiently compensated Mr W for his loss of use and inconvenience. The investigator referred to the latest independent inspection report and that it had concluded there were no ongoing issues with the gearbox and they did not therefore consider Moneybarn should be required to do anything more than it already had.

The investigator also referred to the bodywork and panelling issues and noted Mr W had only raised this issue some months after he had acquired the car. The investigator couldn't therefore be certain these were issues from the time the car was supplied, or therefore that Moneybarn was responsible for them.

Mr W did not accept the investigator's conclusions and asked for the complaint to be

considered by an ombudsman. He maintained that the ongoing issues with the gearbox were a result of a previous failed repair and supplied further supporting evidence from a garage that indicates the gearbox is still faulty.

As the complaint could not be resolved informally it has been referred to me for final consideration.

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.

It is important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. I'm very aware that I have summarised in much less detail what has been submitted by the parties in this complaint. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr W or Moneybarn but reflects the informal nature of our service, its remit and my role in it.

Mr W acquired the used car through a conditional sale agreement with Moneybarn. The conditional sale agreement is a regulated consumer credit agreement and because of that our service is able to consider complaints about the agreement. As the provider of the conditional sale agreement Moneybarn is also the supplier of the car to Mr W. As the supplier of the car Moneybarn is responsible for the quality of the car and the Consumer Rights Act implies terms into to the conditional sale agreement requiring the car to be of satisfactory quality. Exactly what is satisfactory quality will depend on the specific circumstances of any given case. In this instance, where the complaint relates to a car, I think it reasonable that when considering whether the car is of satisfactory quality the car's age and mileage at the time it was supplied are all key considerations.

The requirement on Moneybarn is to ensure the car was of satisfactory quality at the time it was supplied. So Moneybarn would not be responsible for any wear and tear items that develop over time and might reasonably be expected on a used car with this age and mileage. The car that Mr W acquired cost £6,895, was around six and half years old and had travelled almost 115,000 miles. When considering a car of this age and mileage it would in my view not be unreasonable to expect it to be showing signs of wear and tear and not be in the same 'as new' condition that it would have been in when first manufactured. This will be in relation to the mechanical components and its cosmetic appearance. The price Mr W paid for the car was considerably cheaper than the cost of the car new, and this is to take into account the general condition, mileage and wear and tear the car had experienced since first being manufactured.

Although I would expect a car of this age and mileage to show signs of wear and tear and require some general maintenance and upkeep, it would not however be reasonable to supply the car to Mr W with existing defects that go beyond fair wear and tear, unless these were clearly pointed out before agreeing to acquire the car.

Mr W has supplied copies of repair invoices that I understand have been provided by the supplying dealership and indicate what work has been carried out since Mr W acquired the car. Some of these items are in my view simply wear and tear items that would not be unexpected on a car that had travelled 115,000. This is not an insignificant amount of miles, even if at six and half years old the car was not particularly old. However, Moneybarn appears to have already accepted the car was defective when it was supplied in relation to the gearbox. Moneybarn has referred to the first independent inspection, which highlights the gearbox issues and points to a failed previous repair attempt. As Moneybarn has already

accepted the car was not of satisfactory quality I see little need to refer again in detail to that here. I will however simply say that having considered the circumstances of the case, noting in particular the independent inspection conclusions, I agree the car was unlikely to have been of satisfactory quality when supplied to Mr W.

Moneybarn arranged for the car to be repaired and compensated Mr W with almost £500 for the loss of use and inconvenience he had experienced. Considering the likely impact of the gearbox problems, I'm satisfied this is a reasonable sum in the circumstances here, alongside arranging for the car to be repaired.

Mr W however disputes that the car's gearbox has been repaired and refers to ongoing issues with the gearbox and/or transmission. The second inspection report at the end of May 2022 took the car on a ten-mile trip and found that there were no issues with the gearbox. The inspection concluded that, '*...all gears selected readily and smoothly...*' The report does refer to the bodywork and panel alignment, but I'll come back to this later.

While noting what Mr W says about the ongoing problems with the gearbox, this is not supported by the independent inspection report. Mr W has provided some further details from a later inspection that I understand was carried out towards the end of September 2022 and this does refer to issues with the transmission. In particular, it notes that the '*...release bearing rattling slightly...*'

The mileage of the car at the time of the 30 May 2022 inspection was recorded as 121,043. The mileage of the car towards the end of September 2022, when the slight rattle to the release bearing was identified is not known. I note however that when the car was MOT'd on 26 October 2022 the mileage was 125,866.

Having very carefully considered the evidence that has been presented in this case I am not persuaded that the repairs to the gearbox were unsuccessful at that time. Nor am I persuaded that the current issue with the release bearing has originated from the previous repairs. The 30 May 2022 inspection report found no issues with the gearbox during the 10 mile road test and had the repairs been unsuccessful I think it more likely than not that issues would have been identified.

As already highlighted, the mileage on the car was considerable and in May 2022 had already exceeded 121,000 miles. A car's transmission is a complicated piece of engineering and consists of a significant number of parts and components. All of which must work correctly to ensure smooth and effective gear changes and efficient running of the car. It is very possible that even though some repairs were completed to the car's gearbox, other components related to the broader transmission, have subsequently failed because of their age and use over the 121,000 plus miles the car had travelled.

Ultimately, from the evidence presented in this case I am not persuaded the car continues to have ongoing problems with the gearbox that Moneybarn is responsible for. I think it more likely than not that if there are now issues with a slight rattling to the release bearing, these are as a result of wear and tear. I do not therefore consider there to be grounds to instruct Moneybarn to carry out any further repairs to the car.

As referred to above, the second independent inspection at the end of May 2022 referred to issues with the car's bodywork and panelling. In particular issues with alignment. Mr W believes the car has been in an accident and has been written off. The supplying dealership disputes this and has supplied a copy of a HPI check that shows the car was not an insurance write off.

While I do not doubt there are some issues with the car's bodywork and panelling, I again

refer to the mileage of the car and that it had travelled around 115,000 miles before it was supplied to Mr W. The evidence in this case appears to indicate that the car was not an insurance write off as Mr W believes. But I accept it is possible the car has had some bodywork repairs that have resulted in the poor finish or alignment of panels. I cannot say however when these possible bodywork repairs were completed and whether these were before or after Mr W acquired the car. However, when acquiring a car that is over six years old and had travelled around 115,000 miles I think it is reasonable that the condition and appearance of the car would have been considered prior to agreeing to buy the car. It would not be reasonable to expect a car of this age and mileage to be in a 'showroom perfect' condition, like when it was first supplied at new. I think it is also unlikely that a car would have travelled as far as this car has without picking up some bodywork damage.

It would be reasonable in my view for Mr W to have inspected the car before agreeing to acquire it and I must assume that Mr W was happy with the appearance and condition of the bodywork when considering the price asked for the car. I don't think it would now be reasonable to expect Moneybarn to be responsible for any repairs to the bodywork, even if there were some issues from before Mr W acquired the car.

In summary, I accept that Mr W has had some problems with the car and that Moneybarn is responsible for certain issues. I'm satisfied however that Moneybarn has acted reasonably in arranging for repairs and for the level of compensation it has awarded Mr W. I'm not satisfied from the evidence presented that there are ongoing issues or faults that Moneybarn are responsible for.

My final decision

For the reasons set out in this final decision, I do not uphold Mr W's complaint against Moneybarn No. 1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 February 2023.

Mark Hollands
Ombudsman