

The complaint

Mr B complains that Moneybarn No. 1 Limited refused to let him reject a faulty vehicle.

What happened

In February 2021, Mr B acquired a second-hand vehicle at a cost of £13,000. This was funded by a conditional sale agreement and a deposit of £400. It was a little over five years old and had covered some 80,647 miles.

Shortly after acquiring the vehicle Mr B encountered some issues. These included: the engine management light was illuminated, the vehicle rattled while travelling at a certain speed, there was minimal oil in the gearbox, the offside driveshaft and air flow sensor had to be replaced and oil had to be put in the gearbox. He contacted Moneybarn in April 2021 and it agreed to pay him £1,026.42 towards the repairs as well as a further £200 compensation for the distress and inconvenience Mr B may have experienced as a result of the time taken to investigate and conclude the complaint.

Mr B accepted this offer. However, further problems arose not long after. He says the engine management light had again become illuminated in January 2022 and the vehicle broke down and was unable to be used from March 2022 onwards.

Mr B took the vehicle to a local MOT Centre on 14 March 2022 and they diagnosed a misfiring engine due to a cracked piston which was caused as a result of excessive oil pressure within the engine.

Mr B has been unable to use the vehicle since that point and he raised a further complaint against Moneybarn due to these further issues. In his complaint, he told Moneybarn about the MOT Centre's diagnosis and said he also asked for a mobile diesel specialist to look into the matter. The specialist concluded the vehicle would require a new engine.

Moneybarn was slow to respond and Mr B brought his complaint to this service. He said he had been paying for a vehicle he's been unable to use since March 2022. Moneybarn had offered to instruct an independent expert to inspect the van, but despite Mr B's cooperation it had failed to do so.

As a result of the numerous issues he experienced with the vehicle shortly after it was supplied and the subsequent issues which made it undrivable, Mr B says he's now lost confidence in the vehicle and wants to be able to reject it.

Our investigator issued his opinion that Mr B should be allowed to reject the vehicle. Moneybarn asked for further information, which was supplied, but it has not responded beyond that.

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.

Our investigator has set out in some detail why he considers this complaint should be upheld and I agree. I will explain why briefly.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the conditional sale agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law 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.

It is clear the vehicle was defective and Moneybarn accepted that when Mr B initially complained. It responded by covering the cost of repairs and further compensation. However, the car has suffered a major incident and is no longer usable without a replacement engine.

I accept the vehicle wasn't new and had covered a reasonable mileage, but I consider it reasonable to expect it to have lasted longer than it has done. A vehicle of that age and mileage should not suffer such a catastrophic fault.

I can only conclude that the faults were present at the point of sale. An independent report would have been of assistance, but I have noted the various reports from third party garages and the AA and I am satisfied that it is fair to conclude that it was faulty at the point of sale.

I have concluded that only fair way to resolve this complaint is to allow Mr B to reject the vehicle.

Putting things right

Mr B should be allowed to reject the vehicle and be compensated.

My final decision

My final decision is that I uphold this complaint and direct Moneybarn to:

- end the agreement with nothing further for Mr B to pay;
- collect the vehicle at no further cost to Mr B;
- refund Mr B's deposit contribution of £400;

- pay a refund of the monthly payments from 2 March 2022 to the date of settlement as Mr B reasonably stopped using the vehicle at this point;
- refund Mr B £419.90 for the additional expenses he's incurred;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay a further amount of £300 for any trouble and upset that's been caused due to the faulty goods;
- remove any adverse information from Mr B's credit file in relation to the agreement (if any)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 January 2023.

Ivor Graham
Ombudsman