

The complaint

Mr E complains about the quality of a vehicle he acquired under a conditional sale agreement with Moneybarn No. 1 Limited.

What happened

In February 2022 Mr E entered into a conditional sale agreement with Moneybarn for a used vehicle costing £13,194.00. The vehicle was approximately five years old and had an odometer reading in the region of 73,000 miles.

Under the terms of the conditional sale agreement, everything else being equal, Mr E undertook to make an advance payment of £2,199.00 followed by 41 monthly payments of £438.38 – making a total repayable of £20,172.58 at an APR of 35.9%.

Mr E says:

- On taking delivery of the vehicle, he noticed a headlight wasn't working and the vehicle had been fitted with a speed limiter.
- Shortly after taking delivery of the vehicle, it went into limp mode, the check engine light illuminated, black smoke was being emitted from the exhaust and the coolant was leaking.
- The vehicle was returned to the supplying dealership who then returned it back to him some two weeks later. Mr E says the supplying dealership confirmed to him that it was unable to remove the speed limiter, but all the other issues had been fixed.
- Shortly after the vehicle had been returned to him he noticed the headlight hadn't been fixed, black smoke was still being emitted from the exhaust and the coolant was still leaking.
- In early May 2022 the vehicle went into limp mode, the exhaust temperature sensor failed, black smoke was being emitted from the exhaust and the coolant was leaking.
- In mid to late May 2022 the vehicle was returned to the supplying dealership.
- In early June 2022 the vehicle was returned to him, but black smoke was still being emitted from the exhaust and the coolant was still leaking.
- In late July 2022 the vehicle broke down.
- In early August 2022 the vehicle was taken to a third party garage approved by his vehicle warranty company.
- The third party garage carried out various works, some of which was covered under warranty and some which wasn't.

- In early November 2022 the vehicle broke down and was uplifted to a garage. The recovery agent identified a possible blown head gasket, loss of oil pressure and a lack of coolant.

In November 2022 Mr E complained to Moneybarn about the quality of the vehicle and to say that he should be able to reject it and that he should be financially compensated.

In March 2023 Moneybarn arranged for an independent inspection of the vehicle to be carried out. At this point in time the vehicle had a recorded mileage of approximately 94,000.

For various reasons the report produced following the above inspection is limited, but it does say that: *"The vehicle has been in service for approximately 9 months and covered a total of approximately 21,000 miles. As the vehicle has covered sufficient enough mileage for the faults to have developed within that period. As such, we would not consider any reported faults with the vehicle to be present or developing at the point of inception and the selling agents have no further responsibilities."*

Following receipt of the above report Moneybarn wrote to Mr E to say that it considered the (quality) issues he had raised to be the result of wear and tear and therefore it wasn't upholding his complaint.

Mr E's complaint was considered by one of our investigators who came to the view that there was insufficient evidence that the (quality) issues raised by Mr E were down to anything other than wear and tear.

Mr E didn't agree and so his complaint has been passed to me for review and 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.

It's clear that Mr E has very strong feelings about this complaint. He has provided detailed submissions in support of his view which I can confirm I've read and considered in their entirety. However, I trust that Mr E will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

I would also point out that where the information I've got is incomplete, unclear, or contradictory, I've to base my decision on the balance of probabilities.

Mr E acquired a used vehicle through the conditional sale agreement with Moneybarn.

Moneybarn is the owner of the vehicle, until such time as Mr E makes all the repayments under the conditional sale agreement. As owner, Moneybarn is also the supplier of the vehicle and as such it's responsible for the quality of the vehicle at the point it was supplied. This is because the Consumer Rights Act ("CRA") implies a term around satisfactory quality into the conditional sale agreement and the vehicle should therefore be of satisfactory quality when supplied to Mr E.

I think it's important to note that Moneybarn's obligations around the quality of the vehicle apply to the time of supply. They don't apply to the general upkeep and maintenance, servicing or more general faults and repairs that are often required with vehicles as they age and increase in mileage. When considering whether goods are of satisfactory quality a number of things would usually be considered. In this instance, when considering the quality of a vehicle, the age and mileage of the vehicle at the time it was supplied are in my view key considerations. So, for example, a brand new vehicle would have different expectations to a used and considerably cheaper vehicle. Those expectations would therefore be lower in a used or older higher mileage vehicle, when compared to a new vehicle.

In this instance Mr E was acquiring a used vehicle that was around five years old and had travelled in the region of 73,000 miles. As already mentioned above, a vehicle of this age and mileage wouldn't be expected to be in the same condition as a brand new vehicle, which would have cost considerably more than the price Mr E paid. Considering the age and mileage here it wouldn't be unreasonable to expect the vehicle to be showing some signs of wear and tear. This would be in relation to its general overall appearance but also the underlying components, such as (but not restricted to, the head and exhaust system.

Mr E says he experienced a number of issues with the vehicle resulting in him having to take it to the supplying dealership on two occasions and to a third party garage approved by his vehicle warranty company on an another. But unfortunately for Mr E there is simply insufficient evidence for me to be able to conclude that the issues he says he was experiencing with the vehicle, and which resulted in him taking it to the original supplying dealership (on two occasions) and to a third party garage (on an another), made the vehicle of unsatisfactory quality when supplied, or that the issues weren't successfully repaired. I've also seen nothing that would suggest that Mr E didn't agree to an inspection of the vehicle and repairs to it on each of these three occasions.

However, the most significant issues here are the ones that occurred in November 2022, which according to the recovery agent was a possible blown head gasket, loss of oil pressure and a lack of coolant. Now I don't dispute the existence of these issues, but these need to be considered against the inspection (and report) commissioned by Moneybarn and the fact that that these issues manifested themselves nine months or so after Mr E acquired the vehicle and after he had added in the region of 21,000 miles to the odometer.

And having considered everything that as been said and submitted by both parties I can confirm that I'm satisfied that the November 2022 issues with the vehicle are, more likely than not, as a result of Mr E adding 21,000 miles to the odometer over a nine month period rather than as a result of the vehicle being of unsatisfactory quality when supplied.

Finally, I can see that Mr E says he was never advised the vehicle came fitted with a speed limiter. But equally Mr E has provided no evidence that he was advised that it came without one. So, unfortunately, I can't reasonably conclude the vehicle was misrepresented to Mr E. Furthermore, the vehicle being fitted with a speed limiter wouldn't, in my view, have made it of unsatisfactory quality so the fact that Mr E says the supplying dealership was unable to remove it isn't something I can hold Moneybarn liable for.

While I can appreciate it will be disappointing that things have gone wrong with the vehicle and Mr E faces a potentially significant repair bill to fix it (assuming of course a repair is economical), this isn't something that I consider Moneybarn to be responsible for.

My final decision

My final decision is I don't uphold this complaint.

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

Peter Cook
Ombudsman