

The complaint

Mr F has complained about the quality of a car he acquired under a conditional sale agreement with Moneybarn No.1 Ltd.

What happened

In March 2022 Mr F acquired a used car under a conditional sale agreement with Moneybarn. The car was nine years old and had covered around 102,000 miles. The cash price was around £15,500. The agreement was to be paid back over five years with monthly payments of around £370.

Mr F complained to Moneybarn in July 2022 about issues he was having with the car. He says there was a warning light on the dash which he found when he took the car in for a service. He says the garage told him they found the filter to which the code relates. He said someone had gone into the car's computer system before he collected it and bypassed the error code to hide the fault (or service requirement) from future keepers. He said the repair would cost around £2,500. He said he wouldn't have acquired the car had he known.

Moneybarn said it wanted to arrange an inspection. Mr F said he would try to stop using the car, but he needed it for work. He highlighted something had been done to the car to manipulate the warning lights, and that it would be an automatic MOT failure. He also mentioned both washer jets had come loose from the car.

Moneybarn arranged for an independent report on the car in October 2022. At this point the car had covered around 104,600 miles. In summary, the inspection set out the issue with the washer jets most likely developed during the time Mr F had the car, and that it was unlikely to be the responsibility of the trader. It also highlighted an engine management light was illuminated and there was a fault code relating to the EGR. But the inspector said he didn't consider this to be confirmed as being present at the point of supply or the responsibility of the trader. The report noted the other warning light Mr F was concerned about but said there were no messages relating to the fault. He said there may be an underlying issue, but it wasn't related to the EGR. He said it's not the responsibility of the trader and it could be a minor issue that requires investigation by a manufacturer dealership.

Mr F wanted to reject the car. He also mentioned he'd noticed a drop in the ride height in the right-hand rear of the car.

Moneybarn sent a final response. It didn't uphold the complaint about the quality of the car based on the independent inspection, but it offered Mr F £50 for the delays in responding to his complaint.

Moving on to December 2022, Mr F obtained an estimate for works on the car. This was for replacing the timing chain; carrying out repairs as required in relation to juddering and manoeuvring on full lock; investigating and rectifying the possible cause of a LIN bus fault. The estimate came to about £5,000 and it said there'd be an additional cost if glow plugs needed replacing. The car had covered around 105,500 miles by this point.

Mr F referred his complaint to our service. He said he was unhappy the car was unusable, and he was still having to pay for it. He said he was keen to reject it.

Our investigator looked into things but said he didn't think there was sufficient evidence the faults initially complained about were inherent or that they made the car of unsatisfactory quality. He highlighted the inspector's findings on the independent report that said he didn't think the conditions to have been present at the point of supply. Our investigator also noted the repairs estimate of £5,000. But he said this didn't give details of any faults with the car or provide any opinion about when the potential issues occurred. So he didn't make any further recommendations.

Mr F wasn't happy with the outcome. He supplied another vehicle check from a garage that, in summary, highlighted a recommendation to replace the timing chains; a recommendation to remove the transfer box to carry out repairs as required; and that the vehicle had been manipulated to switch off the passenger seat occupancy mat. The check said the car had been modified in a way not permitted by the manufacturer. It said it could impact the passenger air bag and so is a safety issue.

Our investigator sent the vehicle health check to Moneybarn. Moneybarn said the evidence was from an independent specialist and not a main dealer. It said the issues appeared to be down to wear and tear. And that the airbag issue had only been noted around April 2023. So Mr F would need to show this was an inherent issue given the time he'd been in possession of the car. It also highlighted the independent report hadn't mentioned the airbag issue indicating it wasn't present.

As things couldn't be resolved, the complaint has been passed to me to make a 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.

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr F and Moneybarn that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr F acquired the car under a conditional sale agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements. The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr F entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. Moneybarn is the "trader" for the purposes of the CRA and is therefore responsible for dealing with a complaint about their quality.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of supply.

In Mr F's case, the car supplied was used and had covered around 102,000 miles. There'd be very different expectations of it than if it was a brand-new car. But I'm conscious the car

cost around £15,500. So I can understand why Mr F would be unhappy with any significant issues that occurred straight away.

I think there's enough evidence to demonstrate there are faults with the car. We have an independent report highlighting issues. And Mr F has also submitted vehicle health checks or estimates for works that look to be required.

I can understand that Mr F is disappointed at having spent over £15,000 to acquire a car that there are various issues with it. And he's not covered a huge number of miles in it. But what I have to bear in mind is that I don't need to just see there's faults, I need to see that the faults were in relation to something that made the car of unsatisfactory quality when it was supplied to Mr F. Is there enough evidence of that?

Mr F supplied a description from a garage in July 2022 about a service lamp on the dash. It says it looks like a service indicator (in relation to a filter) has been removed and that it couldn't recode the fault. But it's not said anything about when this was likely to have happened, or what is required to put things right. Mr F said it would cost £2,500 to fix, but I've got no supporting evidence of that. Moreover, like Moneybarn pointed out, I'm conscious that the check was from a garage but, from what I can tell, not a manufacturer garage, that might've been able to give some more clarity.

Next, I have an independent report that was carried out. Moneybarn obtained the report because Mr F complained about faults within the first few months of acquiring the car. I think this was a fair step for Moneybarn to take. Again, while the report highlights faults, it doesn't say any of the faults were inherent or the responsibility of the trader. So this doesn't give me the grounds to say the car wasn't of satisfactory quality at the point of supply. I appreciate that Mr F might not agree with the report. But the report is independent from a qualified professional. And I can only base my decision on the evidence that's available.

Mr F supplied further evidence after Moneybarn sent its final response letter. But like with the initial vehicle check, the further evidence from December 2022 Mr F supplied highlights an estimate for a set of works. It doesn't provide a report on faults and details of whether those faults were inherent, or whether they made the car of unsatisfactory quality. So this doesn't give me the grounds to say the car wasn't of satisfactory quality at the point of supply either.

I've next thought about the airbag issue. Given this is a key safety issue I agree this must have been really concerning for Mr F to have been told. Like our investigator pointed out, I've not got the evidence this was down to an inherent problem with the car, or whether it was something that happened since Mr F acquired it. I have no evidence it's linked to any of the other issues Mr F highlighted. I'm conscious it wasn't found until over a year after Mr F acquired the car. The car was around 10 years old at this point and had covered well over 100,000 miles. Without the evidence I've mentioned, I have no way of knowing whether this was down to an inherent problem or not.

Mr F has had the opportunity to supply further evidence about the faults, and their causes. I appreciate he queried why the investigator hadn't contacted various garages and the credit broker, but it's important to note that it's our role to consider the evidence submitted by the complainant and the respondent to then reach a conclusion on what we think is fair and reasonable. As I said above, we're required to resolve complaints quickly and with minimum formality. So if there was evidence Mr F thought was important for us to see, it was up to him to supply it. I can understand he's disappointed with the outcome. And I do sympathise. But based on the evidence submitted, I don't have the grounds to say the faults made the car of unsatisfactory quality.

However, I did want to highlight that after being presented with the new vehicle check information, Moneybarn seems to have left the door open to consider any new evidence Mr F might have. I'm conscious the fault with the airbag in particular might not be something linked to anything Moneybarn has had the chance to consider. Moneybarn has highlighted the car hasn't been seen by a manufacturer garage I note the independent inspection also said this could be considered. Mr F may wish to consider this as it might be able to give more information about when the faults occurred. But I'll leave that to him to decide.

I don't want to pass Mr F around the houses. But it's important to set out our service is here to look at complaints that have already been considered by the respondent firm. Given Moneybarn seems willing to consider any evidence Mr F might have – if he has something new to submit that he thinks supports his case (in relation to the issues highlighted after Moneybarn sent its final response), he should supply this to Moneybarn in the first instance to give it the opportunity to look into things. If Mr F is unhappy with its response, it may be something our service is able to consider.

Finally, Moneybarn offered Mr F £50 for the delay in handling his complaint. This seems to be broadly fair in all the circumstances. However, while I sympathise, based on the evidence submitted, I don't have the grounds to make any other directions.

My final decision

Moneybarn No.1 Ltd offered Mr F £50 to resolve the complaint. I think this offer is fair in all the circumstances. So to the extent it's not done so already, Moneybarn No.1 Ltd should pay Mr F £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 12 October 2023.

Simon Wingfield
Ombudsman