

## **The complaint**

Miss J is unhappy that a car supplied to her under a conditional sale agreement with Moneybarn No.1 Limited was not of a satisfactory quality.

## **What happened**

In December 2021, Miss J was supplied with a used car through a conditional sale agreement with Moneybarn. She paid an initial payment of £750 and the agreement was for £6,649 over 60 months; with 59 payments of £169.50. At the time of supply, the car was around seven years old, and had done 83,000 miles.

In January 2023 Miss J complained to Moneybarn about a number of faults with the car. She had previously complained about these faults to the dealer and the finance broker in February 2022. These included problems with a turbo pipe, the water coolant reservoir, an oil leak, and a faulty tyre sensor. She said her main issue was with the faulty automatic gearbox. She said it was failing and had recently failed on a motorway journey. She described it as going into limp mode.

She provided evidence from a diagnostic check in February 2022: this highlighted a split in the turbo boost pipe, a broken wheel sensor, an oil leak, and a split in the water reservoir. She also provided a diagnostic report from November 2022 that highlighted an oil leak, and the engine management light being permanently on. It also confirmed that the car gets stuck in gear.

Moneybarn said that Miss J had the car for more than twelve months. They said this meant she had to show that any faults were not due to normal wear and tear, and that she needed to provide evidence that the faults were present or developing at the time of sale. They said the car had passed two MOTs and that this confirmed the car was roadworthy. They said Miss J hadn't provided sufficient evidence and they were satisfied the faults were due to wear and tear.

They also said that Miss J had paid for repairs that they had not authorised so they wouldn't investigate these issues.

Miss J was unhappy with this response, so she referred her complaint to our service for investigation.

Our investigator upheld Miss J's complaint. He was satisfied that the car wasn't of satisfactory quality and the faults were likely to have been present or developing at the time of supply. He said that Miss J should be allowed to reject the car, and Moneybarn should pay her £400 for the distress and inconvenience caused.

Moneybarn didn't agree with the investigator. They said the car had now passed three MOTs and none had highlighted any inherent issues other than "*advisories*". They said Miss J had continued use of the car, so they felt an independent inspection was a reasonable next step.

Because Moneybarn didn't agree, and because Miss J didn't agree to an independent

inspection, this matter has been passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss J was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Miss J entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. In this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Miss J took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

Miss J first reported issues with the gearbox in the first two months after Moneybarn supplied it to her. She has supplied a diagnostic report that she obtained from a local garage in February 2022.

This report highlighted four issues. It doesn't explain in any detail how or when these faults occurred. Miss J had raised these with the supplying dealer, and with the credit broker. Miss J has provided evidence that the broker agreed to pay for some of these repairs. Our investigator asked Moneybarn to supply information including notes from the broker. They didn't supply anything so I'm accepting Miss J's testimony that the broker agreed to pay for necessary repairs.

I'm satisfied that it's more likely than not that the faults, especially the turbo pipe fault, were present or developing at the time of supply. That's because Miss J only had the car for two months at the time the diagnostic report was done, and she had reported issues to the dealer when she first got the car. I have no reason to doubt her testimony that she raised issues with the automatic gearbox with the supplying dealer at the time she received the car.

That report doesn't highlight the issue with the gearbox. It appears that the gearbox issue may have been wrongly linked to the split turbo pipe. I suspect that was because Miss J had reported that the car was lacking power. But I'm satisfied that the fault was present or developing at the time of sale. Miss J has been consistent in her testimony, and I can see

from emails she's supplied that she had previously raised power issues with the supplying dealer and the broker in February 2022.

Miss J has supplied a diagnostic report from November 2022. She said she got this because Moneybarn told her she had to provide her own report. That report confirms the faulty gearbox. It states:

*"Gearbox – gets stuck in gear , slow round roundabouts, cannot change to manual mode"*

The broker had agreed to pay for the repairs to the turbo pipe. That failed to fix the issue with the lack of power. In November 2022 the fault was found to be with the gearbox as highlighted in the report I've referred to above.

I'm satisfied that the problematic gearbox is more likely to be a fault rather than wear and tear. That's because Miss J has complained about the power issue from within the first two months of Moneybarn supplying the car to her.

The CRA gives Miss J the right to reject after one repair has been attempted. That repair was done and failed to fix the fault. The CRA is clear that, if the single chance at repair fails, as was the case here, then the customer has the right of rejection.

Moneybarn said that three MOTs have shown no issues. That is likely to be the case, as gearbox faults wouldn't show up on an MOT. But Miss J has supplied a report from an independent garage that confirmed faults with the gearbox. That report was supplied to Moneybarn but I haven't seen any comment from them on the content of the report. Rather, they waited until our investigator issued his view before suggesting another independent report is done.

In the absence of any other evidence, I'm satisfied I can rely on the diagnostic report dated November 2022. This confirms the presence of the faulty gearbox. I think it is more likely than not to be the cause of the power issues first reported to the dealer in the first two months. And as a repair has already been attempted, the CRA gives Miss J the right to reject the car.

### **Putting things right**

Despite the problems with the lack of power Miss J was able to use the car. She travelled around 13,000 miles in the two years she had it. So it's only fair that she pays for this usage. So, I won't be asking Moneybarn to refund any of the payments she's made up to June 2024, when she declared the car off the road through the SORN process.

Moneybarn should refund any payments Miss J made since June 2024.

Miss J has provided evidence of the costs she incurred in having the car inspected. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that Moneybarn reimburse these costs.

It's clear that Miss J has been distressed and inconvenienced by having a car that was not of a satisfactory quality. She had to arrange for the car to be repaired, and this repair was unsuccessful. She also had to obtain two diagnostic reports. She's had to pay for and drive a car for more than two years that loses power unexpectedly. I think her recent experience on the motorway must have been especially distressing.

So, I think Moneybarn should pay her £400 in compensation to reflect the distress and inconvenience caused.

Therefore, Moneybarn should:

- end the agreement with nothing further to pay;
- refund the Miss J's deposit contribution of £750 (if any part of this deposit is made up of funds paid through a dealer contribution, Moneybarn is entitled to retain that proportion of the deposit);
- Refund any payments made since June 2024;
- refund Miss J £50 for the cost of the diagnostic report;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement<sup>†</sup>;
- pay £100 to Miss J, as agreed in the Final Response Letter;
- pay a further amount of £400 for any distress or inconvenience that's been caused due to the faulty goods;
- remove any adverse information from Miss J's credit file in relation to the agreement.

<sup>†</sup>If Moneybarn considers that tax should be deducted from the interest element of my award, they should provide Miss J with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

### **My final decision**

For the reasons explained, I uphold Miss J's complaint about Moneybarn No.1 Limited and they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 2 September 2024.



Gordon Ramsay  
**Ombudsman**