

The complaint

Mr M complains about a car he acquired with credit provided by Moneybarn No. 1 Limited.

What happened

On 24 May 2023 Mr M entered into a regulated conditional sale agreement with Moneybarn in respect of a used car. The car was ten years old, its cash price was £5,410, and its mileage was 80,122 miles. It had passed its MOT test in April 2023 with no advisories.

In early August 2023 Mr M told the dealership that had sold him the car that he was having trouble with the gearbox. The dealership authorised him to have the car repaired by a third party garage, and agreed to pay for the majority of the repair costs in full and final settlement of his claim. Mr M denies that he agreed to that last part.

The car was duly repaired, but there still continued to be issues, and on returning the car to the garage, Mr M was told that the gearbox would now need to be completely rebuilt. The dealership did not agree to cover the cost of that second repair, and advised him to take up the matter with the third party garage.

In September 2023, Mr M complained to Moneybarn, but Moneybarn did not accept liability. It said that by allowing a third party to repair the car – which Moneybarn described as an unauthorised repair, although it recognised that the dealership had agreed to it – Mr M had deprived Moneybarn of the opportunity to inspect the car and establish whether it was liable for the fault or not. Moneybarn therefore did not uphold his complaint.

Being dissatisfied with that outcome, Mr M brought this complaint to our service, but our investigator did not uphold it either. She pointed out that Mr M had driven the car 19,675 miles before the problem appeared, and that he had done so in only about two months. The mileage was now almost 100,000 miles, which was approaching the lifespan of a gearbox. Given the unusually long distance driven by Mr M in such a short time, and the result of the MOT test, the investigator thought that the fault was the result of wear and tear since the point of sale, and not evidence that the car had already been faulty at that time. On that basis, she concluded that Moneybarn had not done anything wrong.

Mr M asked for an ombudsman's 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.

Under the Consumer Rights Act 2015, it was an implied term of the finance agreement that the car would be of satisfactory quality at the point of sale. What is satisfactory quality will depend on the age and mileage of the car, in that a used car would not be expected to be in the same condition as a brand new one. Moneybarn is only liable if the car was not of satisfactory condition at the point of sale; it is not responsible for any defects which only appeared later on (unless it turns out that they were present all along).

If a problem is discovered within six months of the point of sale, then it may be presumed that the problem was present all along, and Moneybarn bears the burden of proving that it was not. That presumption applies here.

If the car was not of satisfactory quality at the point of sale, then Moneybarn (or the dealership on Moneybarn's behalf) is entitled to one attempt to put it right. If that attempt is unsuccessful, then Mr M becomes entitled to reject the car and end his finance agreement.

Moneybarn was deprived of the opportunity to investigate the fault and to find out when and how it had arisen, because the car was taken to a third party garage. But I won't hold that against Mr M, because the dealership told him that would be alright.

However, the fact that the car passed its MOT test with no advisories in April 2023, when its mileage was 80,118 miles, and the fact that Mr M then drove the car nearly 20,000 miles in about two months, are strong indicators that there was nothing wrong with the gearbox when he got the car. On the balance of probabilities, I think it is more likely than not that the gearbox broke down due to wear and tear, and that the car was of satisfactory quality when it was sold.

Because I have come to that conclusion, I don't think I need to decide whether Mr M agreed or did not agree that his arrangement with the dealership was in full and final settlement of his claim.

Moneybarn is not liable for an unsuccessful repair by the third party garage.

So I am satisfied that Moneybarn has done nothing wrong.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 November 2024.

Richard Wood
Ombudsman