

## **The complaint**

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

## **What happened**

In November 2022 Mr S entered into a five-year regulated conditional sale agreement with Moneybarn to purchase a used car. The car was seven years old, its mileage was nearly 78,000 miles, and its cash price was £6,695.

In March 2023, when the mileage was about 81,000 miles, a warning light came on. The car was towed to a garage, where the sparkplugs were replaced. In August that year, the same warning light came on. The AA replaced the sparkplugs at the roadside. Then in September 2023, when the mileage was about 87,000 miles, the car broke down. The AA attended and diagnosed a fault which was causing the sparkplugs to fail. After that, Mr S lost confidence in the car and refused to keep paying for it. He complained to Moneybarn that he had been sold a faulty car.

Moneybarn did not uphold Mr S's complaint. It said he had failed to provide evidence of any fault occurring before the breakdown in September 2023, and that under the Consumer Rights Act 2015 he bore the burden of proving that the car had been faulty at the point of sale.<sup>1</sup> It told him that the issue he had reported was most likely just wear and tear. It pointed out that the car had passed its MOT test in November 2022, that Mr S had driven the car nearly 10,000 miles since then, and he had not raised any issues with Moneybarn before.

Being dissatisfied with that response, Mr S brought this complaint to our service. He said that Moneybarn had focused unduly on the date of his complaint, rather than on the dates of the earlier issues, which had begun in March 2023 – less than six months after the point of sale. (Meanwhile he returned the car to Moneybarn, and it was sold at auction.)

Our investigator did not uphold this complaint. He said that sparkplugs failing would normally be a wear and tear issue. As they had been replaced by a third party, not on behalf of Moneybarn, then Moneybarn would not be responsible for the replacements, unless it could be shown that the sparkplugs were failing because of some underlying fault which had been present at the point of sale. He said there was no evidence that there had been such a fault, especially taking into account that the car had passed its MOT test in 2022, and considering the age and mileage of the car.

Mr S did not accept that opinion. He asked for an ombudsman to review this case. He also asked why, now that the car has been sold at auction, he still owes money to Moneybarn. He argued that the proceeds of the sale should be deducted from his account balance.

I wrote a provisional decision which read as follows.

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<sup>1</sup> Under section 19 of the Act, a fault which appears within six months of the point of sale is presumed to have been present all along, unless the trader can prove otherwise. There is no such presumption for a fault which appears later than that. Moneybarn is only responsible for a fault if it was present at the point of sale.

## What I've provisionally 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 will begin by answering Mr S's question about the proceeds of the sale of the car at auction. When the car was returned, Moneybarn treated this as a request to voluntarily terminate the finance agreement. *Voluntary termination* is a statutory right under sections 99 and 100 of the Consumer Credit Act 1974. In summary, when this right is exercised, it reduces the customer's liability under the agreement to half of the total price, which in Mr S's case was £5,463:70. Under voluntary termination, Moneybarn is entitled to keep the proceeds of the sale when the car is resold.

(An alternative would have been *voluntary surrender*, which is when the car is resold and the proceeds of the sale are used to reduce the outstanding balance. That would only have been a better option if the car was sold for more than £5,463:70.)

Turning to Mr S's complaint, Moneybarn is only liable for a fault which was present when the car was delivered to him in November 2022. It is not liable for faults which develop afterwards, or for ordinary wear and tear. Usually, I would consider sparkplugs failing to be a wear and tear issue, but the fact that the sparkplugs on this car failed three times over a period of six months suggests that there may well have been some underlying fault which was causing them to fail. There is strong support for this in the report by the AA's roadside recovery service in September 2023, which says:

"Combustion failure detected. ... New spark plugs were fitted [approximately two] weeks ago, on removal of the plugs, No. 3 (from the timing belt), was oily. Cleaned and swapped with no. 2 and the misfire moved to no. 2. Fitted a second hand plug as a temp repair to get the customer back home and to his garage for further inspection and repair."

The nature of that underlying fault was not diagnosed at the roadside (which is understandable, given the limited resources available compared with what can be achieved at a garage). However, I think it is more likely than not that there was a fault which also caused the sparkplugs to fail in August and September 2023, and potentially in March 2023 as well. Wear and tear would not adequately explain why new sparkplugs would fail after only five months (and less than 6,000 miles), and again after just one month.

In March 2023, it would not have been obvious to anybody that the sparkplugs had failed for any untoward reason. It is the subsequent failures in August and September that implicate the March failure. Mr S provided the AA's report to Moneybarn when he complained in September, so it had evidence that there was an underlying issue. For the purposes of section 19 of the Consumer Rights Act, I think that the available evidence demonstrated that the car was not of satisfactory quality in March 2023, which was within six months of the point of sale, and so Moneybarn bore the burden of proving otherwise. So I think that Moneybarn should not have rejected Mr S's complaint on the ground that he had not provided enough evidence of a fault – the onus was on Moneybarn to show that there was no fault. It had the opportunity to do that when it took the car back (if not before). But even if I took a different view about where the burden of proof lies, I think that the AA report is enough evidence to show that there was an underlying fault which was affecting the sparkplugs.

The car has since been auctioned, and it passed another MOT test in January 2024. I asked Moneybarn if the car had been repaired in between being collected from Mr S and being re-sold; Moneybarn told me it had not. (I find that rather surprising, given that the roadside

repair in September was only a temporary repair just to get the car to a garage to be looked at properly.) On the balance of probabilities, I don't think this proves that there was no longer a fault, or that there was never a fault. Rather, it's more likely that it was not the kind of fault which would be picked up during a routine MOT test.

So it appears that Moneybarn chose not to investigate the fault which the AA had reported (and of which Mr S had made it aware), and did not arrange for a permanent repair to be carried out. I therefore conclude that Moneybarn has not shown that the fault was not present at the point of sale, or that the sparkplug failure in March 2023 was only due to wear and tear. For that reason, I propose to uphold this complaint, and to direct Moneybarn to unwind the agreement (rather than treating it as terminated), and to discharge Mr S's liability under the agreement, except that it may retain the monthly payments he made up until September 2023, because he had the use of the car during that period, so it's right that he should pay for that. Any adverse markings reported on his credit file should be removed. And I propose to award Mr S £200 as compensation for his inconvenience.

### **Responses to my provisional decision**

Both parties have agreed to accept my provisional conclusions. So there's no reason for me to depart from them, and I confirm them here.

### **My final decision**

My decision is that I uphold this complaint. I order Moneybarn No. 1 Limited to:

- Unwind the agreement (rather than treating it as terminated), and discharge Mr S's liability under the agreement, except that Moneybarn may retain the monthly payments he made up until September 2023;
- Refund any payments Mr S made after September 2023;
- Remove any adverse markings reported on Mr S's credit file; and
- Pay Mr S £200 as compensation for his inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 July 2024.

Richard Wood  
**Ombudsman**