

The complaint

Mr B complains about the quality of a used car that was supplied through a Conditional Sale Agreement with Moneybarn No. 1 Limited (MBL). Mr B also complains about the administration of his agreement which led to it being cancelled in error, leaving him in arrears which affected his credit file.

What happened

The circumstances surrounding this complaint and my initial findings were set out in my provisional decision which said:

Around February 2023, Mr B entered into a Conditional Sale Agreement with MBL to acquire a used car. The total price of the goods is listed on the agreement as £5,450. A deposit is listed as £400. The mileage of the car on the agreement is listed as 92,400 and the car was around ten years old.

Mr B was due to make 53 repayments of £208.07.

Mr B said after a few weeks of acquiring the car, the rear wheel came off. He said he was told by the garage it was due to corrosion. Mr B said he had to pay for the repairs but felt the car should never have been sold to him in that condition.

Mr B also said his agreement was cancelled by MBL without his authorisation, which resulted in him falling into arrears of around £1,040, meaning he has to enter into an IVA and pay an additional amount each month to repay it. Mr B said this has affected his credit file.

In December 2023 MBL issued their final response to Mr B's complaint. In it, they said they were notified of the following issues in August 2023 where Mr B requested to reject the car:

- 1. Vehicle back wheel is broken and snapped off, oil foil is snapped off.*
- 2. Vehicle does not have V5.*
- 3. The vehicle has crack on the windscreen.*
- 4. Turbo rusted....repaired it for £1200.00.*

MBL said their records show the V5 was issued in March 2023, and in relation to the turbo being replaced, as it was carried out by a third-party garage MBL hadn't had the opportunity to inspect or validate the issues, and so they considered the repairs to be unauthorised.

In relation to the wheels, and windscreen, MBL advised as the MOT was passed without advisories in October 2022, they were satisfied that the issues reported weren't present when the car was supplied. They concluded that the issues being experienced was as a result of in-service wear and tear. However due to the delays in resolving the complaint MBL offered Mr B £75 in compensation.

In relation to the arrears in the agreement MBL said they'd be willing to work with Mr B to address them. MBL didn't provide any explanation or context to how the arrears were accrued.

Unhappy with their response, Mr B brought his complaint to our service for investigation.

Having reviewed the information on file, one of our investigators contacted MBL to ask if they'd like to complete an independent inspection report. MBL declined to do so, advising that due to the age and mileage when the car was supplied it was Mr B's responsibility to carry out due diligence on the condition of the vehicle.

In February 2024, Mr B provided a copy of an invoice from a third-party garage, dated July 2023 for £453 confirming the trailing arm had been replaced along with the alignment of the wheels.

The investigator issued their assessment of Mr B's complaint in February 2024. In it, they concluded that the car wasn't reasonably durable and so didn't feel that MBL had acted fairly in the circumstances. The investigator recommended that MBL facilitate a rejection of the car. Specifically, they recommended the following:

- end the agreement with nothing further to pay.*
- collect the car (if this has not been done already) at no further cost to the customer.*
- refund the customer's cost for the repair carried out of £453.34*
- refund the customer's cost for the recovery of £160*
- pay a refund of rentals as directed in my findings (above) to cover any loss of use, or impaired use, of the car because of the inherent quality issues.*
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.*
- pay a further amount of £225 for any distress or inconvenience that's been caused due to the faulty goods.*
- remove any adverse information from the customer's credit file in relation to the agreement.*

Mr B accepted this recommendation. However, MBL didn't and asked that the complaint be referred to an ombudsman for 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.

I sent Mr B and MBL my provisional decision on 30 September 2024. I explained why I thought the complaint should be upheld. The key parts of my provisional findings are copied below:

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr B complains about a Conditional Sale Agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr B's complaint

about MBL. MBL is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory, fit for purpose and as described”. To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle’s history

My starting point is that MBL supplied Mr B with a used car that was about ten years old and had travelled 92,400 miles. With this in mind, I think it’s fair to say that a reasonable person would expect the level of quality to be considerably less than that of a brand-new car with lower mileage; and that there may be visual signs of wear and tear due to its usage.

From the information provided I’m persuaded there was a fault with the car’s trailing arm. This is apparent from the invoice provided by Mr B dated 31 July 2023 advising of the removal and replacement of the trailing arm. I’m also persuaded by Mr B’s description of events alongside the images he sent to us of corroded car parts., Having considered the car had a fault, I’ve considered whether it was of satisfactory quality at the time of supply.

Satisfactory quality

In an email to the investigator dated 19 January 2024, Mr B complained about other issues with his car, for example issues with the traction control warning lights and other minor issues; and in a further email dated 12 August 2024 Mr B advised he’s experienced further corrosion to the exhaust. In consideration of the age and mileage of the car when it was supplied and the cash price being just over £5,000, which is significantly less than it would have cost brand new, I’ve not considered these issues would have rendered the car of unsatisfactory quality. In addition, and unlike the issue with the trailing arms, they’ve not caused catastrophic damage in an unreasonable timeframe. I think it’s reasonable to expect there’d be wear and tear, including corrosion in a car that has travelled in excess of 90,000 miles and which is older than ten years.

Mr B told us that his car failed in a few weeks, which means he had to have it uplifted by a recovery vehicle.

The invoice provided by Mr B was dated in July 2024, which confirmed the rear trailing arms were replaced. Although I’ve not seen a report that confirms the cause of the issue, I’m satisfied from the invoice provided that the trailing arms had failed. I’ve no reason to consider that Mr B would arrange a replacement of the components without them having failed so soon after supply. The Invoice also had the mileage recorded as 95,519, so Mr B had also driven around 3,000 miles since supply, and prior to the failure.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods. From the evidence provided I think it’s fair to conclude that Mr B’s car wasn’t suitably durable because it suffered catastrophic failure after 3,000 miles as the result of a part failing that should not reasonably have failed within that mileage. I do not think a reasonable person would expect the wheels

to have come off so soon after supply, so I don't consider the car was of satisfactory quality when Mr B acquired it.

I acknowledge Mr B used a third-party garage to repair the fault which MBL considers as unauthorised. However, in the circumstances, I don't think it was unreasonable for Mr B to seek the assistance of a third party considering the urgency of the situation he would have found himself in. The third-party garage is also a professional vehicle repair centre, so I have no reason to doubt their ability to diagnose and repair a mechanical issue. So, I'm persuaded, the repairs carried out would have been the same outcome had Mr B sought the assistance of the dealership.

Under the CRA, MBL is afforded an opportunity to repair, should the goods not confirm to the contract. Mr B has already had the issue repaired, and although I acknowledge Mr B has reported further issues with the car, I've not seen any evidence that they are related to the initial issue or that the repairs carried out have failed. So, although Mr B had requested a rejection of the car, I'm satisfied that the issue complained about was successfully repaired.

Having said that, I'll be instructing MBL to reimburse to Mr B any related costs he's incurred as a result of the failure of the trailing arms.

Payment arrears

Mr B also complained about the arrears he incurred on his agreement. Mr B said there appeared to be an issue with his direct debit which failed to take the monthly repayments from his account resulting in him being in arrears. Mr B said this had affected his credit file.

Having reviewed MBL system notes, I can see that in July 2023 Mr B advised MBL that no payments were being taken, and that in the following months arrears had accrued on Mr B's account resulting in notice of arrears correspondence being issued to Mr B In August 2023, and Mr B requesting some breathing space to support his arrears.

An entry on the system notes dated 1 August 2023 advised that the agreement was unwound in error; and to support this, an entry on 28 February 2023 advised 'Agreement terminated- unwind pending payment received'.

Having considered the circumstances surrounding the payment issue, I'm satisfied from the information provided that there was an error on the part of MBL in the administration of the agreement that caused the payments to fail.

I also think it's reasonable that Mr B wouldn't necessarily notice this error soon after the agreement was incepted. It's plausible that Mr B would report this some months later.

In the circumstances I'll be instructing MBL to remove any adverse information from Mr B's credit file in relation to this agreement and to pay him some compensation in relation to this issue.

I invited both parties to make any further comments.

Mr B responded to say 'yes, please proceed'. He didn't make any further submissions or comments, so I've taken this as his acceptance of my provisional decision. MBL also responded to say that they accepted my provisional findings.

Now both sides have had an opportunity to comment, I can go ahead with my final decision.

Findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I still consider my provisional decision to be fair and reasonable in the circumstances. Neither party has added anything which gives me cause to change these. Therefore, for the reasons as set out in my provisional decision, I'm satisfied that the car wasn't of satisfactory quality when it was supplied to Mr B. So, my final decision is the same.

Putting things right

Having concluded the car wasn't of satisfactory quality due to the rear wheel coming off, I'm satisfied that Mr B acted fairly in having the issue repaired by a third-party garage. However, in the circumstances I think it's reasonable that MBL reimburse the costs of this for him. The invoice was for £453.34. So, I'll be instructing MBL to reimburse this amount to Mr B.

During the complaint setup call with our service Mr B said the wheels shouldn't have failed within three months. So, I'm satisfied it failed around May 2023, which Mr B accepted as stated in the investigator's assessment. I can see it was repaired at the end of July 2023 which means Mr B wouldn't have had any use of it for about three months. So, I'll be instructing MBL to refund to Mr B three months of repayments to reflect the car being undriveable from May 2023 to July 2023.

Mr B also said he didn't have a copy of the report of his car recovery, but said he paid about £160 for the recovery when it broke down. He also said he took out a membership alongside that. I don't think it's reasonable to ask MBL to pay for Mr B's membership to the agency, however I do think Mr B should be reimbursed for the recovery itself. In the absence of proof of payment, research suggests what Mr B paid is reasonable for a person requiring vehicle recovery without cover in place, (as Mr B advised was his circumstances at the time). I think it's reasonable that MBL pay Mr B £160 for the recovery.

MBL offered Mr B £75 for the inconvenience caused by their complaint handling, however as complaint handling isn't a regulated activity and so not something I can consider I won't be commenting on this. Having said that, in relation to the inconvenience caused as a result of the issues with his car, for example, breaking down, and with Mr B having to arrange and initially pay for repairs, I'll be instructing MBL to pay Mr B £200 in compensation.

In addition to this Mr B experienced further distress from the administrative error when his repayments weren't setup correctly. This caused Mr B to fall into arrears. Although I think it's reasonable that Mr B pay the arrears that have accrued on his agreement, I think the error on MBL's side made the situation difficult for Mr B, and so I think he should receive a further £150 in compensation for this.

I recognise the investigator recommended MBL pay for impaired/ loss of use from July 2023 to the date of settlement, however as the main issue with the car was repaired in July 2023, and any further issues are either expected through wear and tear or have not been proven to have made the car of unsatisfactory quality, I don't think asking MBL to reimburse a percentage of the repayments, as explained in the investigator's assessment, is fair in the circumstances.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and instruct Moneybarn No.1 Limited to:

- refund to Mr B the cost of the repair to replace the trailing arms, as per the invoice provided this would be £453.34
- reimburse to Mr B £160 for the cost of recovery for his car when it failed
- refund to Mr B three monthly repayments to reflect the time he spent without use of the car from its failure in May 2023 to when it was repaired in July 2023
- pay 8% yearly simple interest on all refunds and reimbursements calculated from the date of payment to the date of settlement
- remove any adverse information that may have been recorded with the credit reference agencies in respect of the agreement
- Pay Mr B £350 in compensation for the distress and inconvenience caused as a result of the unsatisfactory quality of the car

If Moneybarn No.1 Limited considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 October 2024.

Benjamin John
Ombudsman