

The complaint

Mr M complains Moneybarn No. 1 Limited (Moneybarn) supplied him with a car that he believes wasn't of satisfactory quality. He also complains the car was misrepresented to him.

What happened

The details of this case are well known to both parties so I won't repeat them here. Instead I will focus on the reason for my decision.

In March 2023, I issued a provisional decision partially upholding the complaint. I said:

"Was the car mis-represented?"

Under section 56 of the Consumer Credit Act 1974, the finance provider (Moneybarn) can be held responsible for antecedent negotiations (meaning what was said or done) by the broker and/or supplier (the dealership) before the consumer enters into a finance agreement. So I've taken this relevant law into account when looking into this complaint.

Mr M says the car was misrepresented to him for a number of reasons. I won't list them all but they include:

- The car had a known fault with the engine;*
- It was said there was one previous owner but there were three;*
- The car didn't have a full service history;*
- The car had an outstanding safety recall notice but he wasn't told about it;*
- The odometer provided an incorrect reading.*

To be satisfied there has been a misrepresentation, the following must be satisfied:

- 1. There has been a false statement of fact has been made; and*
- 2. That false statement induced Mr M to enter into the agreement to acquire the car.*

Was there a false statement of fact?

Engine fault – there is insufficient evidence the dealership was aware of a fault with the engine. I've seen a copy of the pre-delivery inspection and it doesn't mention any faults it. So I can't say there was a false statement of fact. Later, I discuss the engine fault in more detail. Previous owner – I can see the advert says there was one previous owner. Mr M says there were three but I haven't been provided with sufficient evidence to support that. So I can't say there was a false statement of fact.

Service history – having read the car's advert, it doesn't say it has a service history (whether full or partial). Equally based on Mr M's testimony there is nothing to suggest he asked about the car's service history before he bought it. If that was a key consideration for him in the decision making process, I find it would've been reasonable for him to have asked about it

but I don't enough to say he did. I have insufficient evidence a false statement of fact was made.

Recall notice – I've reviewed the dealership's sales invoice which details the car, its description, its price, etc. I can also see it also says:

"I am aware the vehicle has an outstanding safety recall and that I will need to book this vehicle into a dealership to have a repair carried out free of charge"

This statement is just above where Mr M had to sign to agree to the invoice so I'm satisfied he knew about it and he was aware he needed to take action. His later actions support this whereby he bought the car to a garage for the remedial work to be carried out within days of acquiring the car.

Odometer – the car was advertised with around 40,000 miles. There is insufficient evidence for me to say that wasn't the case when Mr M acquired it so I can't say there was a false statement of fact.

Based on the above, I'm not persuaded the dealership made false statements of fact about the car. As the first misrepresentation criteria hasn't been met, it's not necessary to consider the second criteria. Overall I don't find the car was misrepresented to Mr M.

The Consumer Rights Act 2015 also says goods should be sold as described. For similar reasons as above, I'm satisfied the car wasn't mis-described.

Was the car of satisfactory quality at supply?

Mr M acquired a car under a regulated credit agreement. Moneybarn was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that, under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.

Mr M was supplied with a used car. It was around five years old and had travelled around 40,000 miles. For used cars, it's reasonable to expect parts may already have suffered notable wear and tear and may need repair and/or maintenance sooner than a car which wasn't as road-worn when it was supplied.

The battery

Mr M said on the day of collecting the car, he experienced issues with it, namely the engine oil and battery warning lights were displayed. He said the car stopped working and breakdown assistance had to be called. The breakdown report says "Non start and just ignition warning lights. Battery warning system and engine oil light".

Based on this evidence, it would appear there was an issue with the car. I don't find a reasonable person would expect to experience such an issue and for the car to break down

so soon after acquiring it. I can see Mr M contacted the dealership about this and they asked him to provide a copy of the breakdown report so they can consider reimbursing him for the recovery and repair costs. Mr M says he provided them with the same but the dealership denies receiving this. I have insufficient evidence (such as an email) to show Mr M sent this to the dealership as they requested.

I can see Mr M contacted a garage for repair, I will refer to them as W. They confirmed they could book it in for the recall notice for free and they would charge £114 for a diagnosis of the faults. W's job card confirms the remedial action relating to the recall were carried out on 8 July 2021 which is within a few days of Mr M acquiring the car. This concerned a software update for the clutch slip detection system.

Mr M has provided evidence that he arranged for the battery to be replaced around July 2021 at a cost of £176.99 which was within days of supply. According to Mr M, W turned off the battery and oil warning lights and he was told there was a fault with the engine which was related to the recall notice and the timing chain hadn't been changed. For obvious reasons, I wasn't present during these conversations but the job cards from W don't support what Mr M has said. Equally I note the recall notice was in relation to the clutch detection system, not the engine.

Based on the above evidence, on balance, I believe it's more likely than not there was a fault with the battery at the point of supply (a weak battery) which is why the car broke down. Mr M has provided evidence of the dealership's pre-delivery inspection which indicates the battery wasn't checked. I can't say for certain had they done so, the fault would've been identified but it does support it wasn't looked at. Nevertheless that doesn't necessarily mean the supplying dealership purposely and knowingly supplied Mr M with a car that they knew had a weak battery.

While I accept a battery is a serviceable component and subject to wear and tear, I don't find a reasonable person would expect it to need replacing so soon after acquiring the car. For that reason, I don't find the car was of satisfactory quality as it wasn't reasonably durable meaning there was a breach of contract.

Given the cost of the battery incurred as a result of being supplied with a faulty car, this cost should be refunded to Mr M. I've also thought about the impact of the same on Mr M which includes having to call the breakdown service and the inconvenience that caused, bringing the car to W for inspection, arranging a new battery to be fitted, etc. For this, Moneybarn should pay £150 for the trouble and upset caused.

A further job card from W shows they looked at the car again on 9 August 2021 which is around a month after Mr M acquired it, he had travelled around 700 miles by that point (40,779 miles). It says the "Steering seems off doesn't seem to be as responsive". It goes on to say they were unable to reproduce the fault and they visually inspected the car and it was OK. There's nothing to suggest he was charged a diagnostic fee for this.

The car later passed its MOT in November 2021 with no advisories. At that point, it had travelled around 1,700 miles since Mr M bought it. In November 2022, the car failed a MOT test because the headlamp projected beam image was incorrect but it later passed without

any major defects so presumably the headlamp was repaired. Had there been engine management lights displaying, any other warning lights showing or the battery remained faulty, I would've expected this to be noted on the MOT test but there's no evidence of this. In light of the above, I'm satisfied the replacement of the battery fixed the fault.

I also note Mr M contacted the dealership in January 2022 about whether he could make a claim under warranty for the lightbulbs and wipers but he was told he couldn't do so as these parts are considered serviceable. If faults remained with the battery or otherwise, I believe it would've been reasonable for him to have made them aware of this but there is nothing to suggest he did.

The engine oil service light would've alerted Mr M that a service was due, but a lack of service doesn't necessarily mean a car is of unsatisfactory quality. As mentioned above, this car wasn't sold with a service history so it would've been prudent for Mr M to arrange a service as the car hadn't had one for quite some time.

The engine and oil pump

In February 2023, I understand the car had broken down again and the breakdown report says this was due to the oil warning light being on. The mechanic suspected the oil pickup was blocked because the oil was murky and grey in colour. The car was returned to W and they provided a quote for a repair (around £4,200). They found the oil pressure warning light was on indicating the oil pump had failed. This had impacted the engine and it was advised it needed to be replaced. At that time, the car had travelled 54,987 miles.

Based on the breakdown report and W's findings, it's evident there were new faults with the car. However I'm not persuaded they were present or developing at supply. I say this because by the time of the breakdown in February 2023, it had been in Mr M's possession for around 18 months and he had travel in excess of 14,000 miles. Had there been an engine or oil pump fault from the outset as he's alleged, I don't find the car would've been able to cover that amount of miles and over that amount of time. I believe the faults with the engine and oil pump is due to wear and tear through use of the car by Mr M. I'm not convinced these further faults made the car of unsatisfactory quality.

Mr M has provided evidence of a complaint he has raised to the car manufacturer in March 2023 in relation to garage W. He said they failed to adequately service the car despite his requests and their failure to do so contributed to the faults with the engine and oil pump. I must stress this complaint is against Moneybarn and I'm considering whether the car was of satisfactory quality at supply. If Mr M had issues with W's actions regarding the servicing of the car, I can't reasonably hold Moneybarn responsible for this.

Mr M is likely to argue by the manufacturer offering to pay £1,000 towards the car's repair that shows there was an engine fault from the outset. However I disagree. Having read the manufacturer's response, they make it clear the award is a gesture of goodwill (without admission of liability) and it's for the repair of the wet belt (timing-belt-in-oil). There's insufficient evidence of this fault or that it was present at supply therefore I can't say this would make the car of unsatisfactory quality.

Other

Mr M also complains about how Moneybarn handled his complaint specifically their lack of response to his complaint. He says he first complained to them online shortly after he bought the car but he failed to hear back from them, he also said he tried to call on a number of occasions but was unable to speak to anybody.

Based on Moneybarn's contact notes, the earliest I can see he contacted them was February 2023 which is many months after he bought the car in June 2021. If there were engine and oil faults with the car from the outset as he's alleged, I would've expected Mr M to have contacted them sooner than he did but there's not enough evidence he did so. Moneybarn responded to his complaint in April 2023. I don't consider their response time was excessive. They've offered £25 compensation given their phone line was down when Mr M tried to call. In the circumstances, I consider this to be fair and if they haven't paid this already, they should do so.

Summary

Taking everything into account, I find the car wasn't of satisfactory quality at supply due to the fault with the battery but this was successfully repaired. Moneybarn should reimburse Mr M for the cost of the same and pay compensation. For the faults with the engine and oil pump, I'm satisfied these were due to wear and tear. Therefore I won't be asking Moneybarn to allow Mr M to reject the car".

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.

Both parties were invited to respond to my provisional decision. Mr M accepted the findings and requested that the payment be sent to him by cheque to his home address. He asked that the payment isn't used to set off any account arrears. Moneybarn didn't respond.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to partially uphold Mr M's complaint.

To put things right, Moneybarn should:

- Reimburse Mr MF for the cost of the battery (subject to proof) plus pay 8% simple interest per annum from the date of payment to the date of settlement*;
- Pay £25 compensation for the poor level of service (if not paid already);
- Pay £150 to Mr M for the trouble and upset caused.

*If Moneybarn No. 1 Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M 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 M to accept or reject my decision before 24 April 2024.

Simona Reese
Ombudsman