

## **The complaint**

Mr B complains about the quality of a car he has been financing through an agreement with Moneybarn No. 1 Limited (who I'll call Moneybarn).

## **What happened**

I issued my provisional decision on this complaint in March 2024. An extract from that provisional decision is set out below.

*Mr B took receipt of a used car in March 2023. He financed the deal through an agreement with Moneybarn.*

*On the day he took receipt of the car he lost drive. He emailed the broker the next day and explained that the car just revved when accelerating and that it moved forward very slowly. The car was taken back to the garage, but no fault could be found, and Mr B was told to monitor the situation.*

*In early July 2023 the car lost power again: Mr B says the symptoms were the same. An independent inspection of the car was completed in October 2023. The inspector suggested the problem was likely to be related to the turbocharger and didn't think the fault was likely to have been developing at the point the car was supplied to Mr B. Moneybarn, therefore, rejected Mr B's complaint as they said they were only responsible for problems that were present or developing when the goods were supplied.*

*Our investigator agreed with Moneybarn, but Mr B didn't. He didn't think concerns he had raised with Moneybarn and this Service, about the car's mileage being misrepresented to him, had been considered, and neither did he think we had given adequate consideration to the fact the car had previously broken down with exactly the same problem on the day it was supplied to him. He asked for a decision by an ombudsman and has subsequently provided a copy of the invoice for work to fix the problem that was completed in January 2024.*

## **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 don't currently think Moneybarn have been reasonable here and I'm expecting to uphold Mr B's complaint. I'll explain why.*

*Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.*

*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 acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.*

*The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Moneybarn, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they 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. That legislation says that we should take into account whether goods have been durable when we consider satisfactory quality.*

*In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr B. The car here was about 11 years old and appears to have completed in the region of 53,000 miles.*

*An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.*

*The independent inspector thought it likely the fault Mr B had experienced was:*

*"...there was a slight whine from the turbocharger . The turbocharger will require removal in order to check for play within the spindle bearing."*

*It was on that basis that the inspector decided that:*

*"the faults were not present or in development at the point of vehicle sale as the vehicle has covered sufficient mileage for these faults to have developed solely within the period of hire."*

*While the inspector had been asked to comment on the gearbox condition, he did not. Mr B has now had the car fixed at a specialist gearbox centre. The invoice explains:*

*"Vehicle recovered – loss of power*

*Carry out diagnostic checks. Find 3-5 rev clutch breaking up causing filter to block and lose drive. Remove transmission and torque converter, recondition and refit, fill with fluid..."*

*So, as the most recent repair appears to have fixed the problem, it seems the independent inspector's comments were not well founded, and the problem related to clutch break up.*

*My research suggests clutch packs on automatic gearboxes, as fitted to this car, should last around 100,000 miles. I've spoken with our internal experts, and they have explained that unlike a manual gearbox, on an automatic gearbox the vehicle controls when the gears are changed, and the driver is unable to slip the clutch and cause additional wear, so I don't think it's likely Mr B's driving style significantly reduced the lifespan of the clutch pack. The loss of drive Mr B reported to the broker on day one would support the view that debris was clogging up the transmission when the car was supplied but that it managed to pass through the gearbox. The subsequent failure seems likely to have been caused when the level of debris had increased and had caused the gearbox to completely clog up.*

*So, I'm not persuaded that this car was supplied in a durable condition, and I think Moneybarn should take some action to put things right for Mr B.*

*The relevant legislation gives the business one opportunity to repair a fault present when a*

vehicle is supplied. I think Moneybarn had that opportunity in March 2023 when Mr B first reported the issue to them. As I'm persuaded the fault wasn't rectified I think they should now allow Mr B to reject the car and that they should end the finance agreement.

And, even if I'm wrong about the car not having been supplied in a satisfactory condition, I think the car was also misrepresented to Mr B as there are mileage discrepancies. I think that misrepresentation would also, on its own merits, be likely to persuade me to tell Moneybarn to take the car back and end the agreement.

Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.

Here, the finance agreement and invoice both list the car as having a mileage of 53,600 when it was supplied to Mr B on 30 March 2023. But the MOT completed in March 2022 lists the mileage as 54,248 on both the pass and fail certificates, and the mileage recorded when the car was first looked at by the garage in early April 2023 was also lower than the 2022 MOT mileage. There was, therefore, an unresolved issue with the mileage when the car was supplied to Mr B. It can't be the case that the mileage had reduced on the car between the 2022 Mot and the point of supply. I think, had Mr B been aware of that before the car was sold to him he wouldn't have been likely to proceed until the issue was rectified. I say that because ownership of the car was eventually to pass to Mr B, and I think any mileage discrepancy would impact on any resale value he was able to achieve. I think Mr B would have been unlikely to proceed had he known that.

It's for those reasons that I think Moneybarn should now allow Mr B to reject the car. They'll need to collect it at no cost to Mr B and they should refund any deposit he may have paid, with interest, as Mr B has been deprived of that money.

If Mr B has had to commission any reports on the car's condition in order to support his claim. I think that cost has been incurred as a consequence of the car being of unsatisfactory quality. So, Moneybarn should refund the cost of those reports on provision of receipts from Mr B. They should add interest to that refund too.

Mr B has provided an invoice for £3,996 that he says he paid to repair the car's clutch/gearbox. Moneybarn should refund the cost of that invoice, with interest, if Mr B can provide proof of payment.

Mr B has been inconvenienced by these issues. He's had the car recovered on occasions and he's explained the difficulties he's had when being deprived of the use of his vehicle. He lives in a rural area and he's dependent on the car to get to work and transport his family. He's also explained he has had to arrange food deliveries at additional cost. In those circumstances Moneybarn should pay him £300 compensation for the distress and inconvenience he's experienced.

It seems Mr B wasn't kept mobile with a courtesy car while his vehicle was being repaired. In those circumstances, it would be unfair for him to be paying for use of the car during those periods. I, therefore, think Moneybarn should refund any finance instalments Mr B paid them for the months his car was off the road. They should add interest to any refund and waive any payments that were due during those periods but that haven't been paid. Mr B has explained that he had to pay for the use of an alternative car when his was off the road, but as I'm asking Moneybarn to refund his instalments for those periods, it wouldn't be fair to ask them to refund that cost as well.

**My provisional decision**

*For the reasons I've given above, I'm expecting to uphold this complaint and to tell Moneybarn No. 1 Limited to:*

- *Allow Mr B to reject the car and end the finance agreement.*
- *Collect the car at no cost to Mr B.*
- *Refund any deposit that has been paid and add 8% simple interest\* per year from the date of payment to the date of settlement.*
- *Refund the £3,996 it cost Mr B to have the car repaired, upon proof of payment. Add 8% simple interest\* per year from the date of payment to the date of settlement.*
- *Refund the cost of any diagnostic reports Mr B has had to commission on provision of receipts from him. Add 8% simple interest\* per year from the date of payment to the date of settlement.*
- *Pay Mr B £300 to compensate him for the distress and inconvenience he's experienced.*
- *Provide a pro-rata refund of monthly instalments for any time Mr B can demonstrate he wasn't kept mobile. Add 8% simple interest\* per year from the date of payment to the date of settlement.*
- *Remove any adverse reports they may have made to Mr B's credit file in relation to this issue.*

*\*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

### **The parties' responses to my provisional decision**

Moneybarn didn't have anything to add, but Mr B did. He explained that the seatbelt issue that had been noted during the independent inspection had now been fixed at a cost of £258. He wondered if that could also be refunded to him. Mr B also said that *"given all the effort that has gone into fixing this car and the fact we were without transport for 7 months, we are very reluctant to give this car back. Can a solution be found where we could keep the car?"*.

I explained to Mr B and to Moneybarn that I wasn't persuaded there was evidence the seat belt was faulty when the car was supplied, and that I couldn't see that the independent inspector thought that either. I explained on that basis I was not expecting to ask Moneybarn to refund the cost of that repair.

I set out the basis upon which I would ask Moneybarn to settle the complaint if Mr B was to keep the vehicle. I suggested that in those circumstances, the finance agreement wouldn't need to end, and the car wouldn't be rejected or collected. If Mr B was to keep the car, I explained that there would be no deposit returned but that the other aspects of the redress I had set out in my provisional decision would apply.

Both parties agreed to that modified redress. Moneybarn wanted to make it clear that they wouldn't be in a position to support Mr B with any future repairs given the length of time he had now had the car, but they agreed the previous repairs would fall under the remit of the Consumer Rights Act (2015). Mr B understood and accepted that position.

### **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'm asking Moneybarn to put things right in the way I've set out above, and detailed below.

### **My final decision**

For the reasons I've given above, I uphold this complaint and tell Moneybarn No. 1 Limited to:

- Refund the £3,996 it cost Mr B to have the car repaired, upon proof of payment. Add 8% simple interest\* per year from the date of payment to the date of settlement.
- Refund the cost of any diagnostic reports Mr B has had to commission on provision of receipts from him. Add 8% simple interest\* per year from the date of payment to the date of settlement.
- Pay Mr B £300 to compensate him for the distress and inconvenience he's experienced.
- Provide a pro-rata refund of monthly instalments for any time Mr B can demonstrate he wasn't kept mobile. Add 8% simple interest\* per year from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to Mr B's credit file in relation to this issue.

\*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 May 2024.

Phillip McMahon  
**Ombudsman**