

The complaint

Mr K is unhappy that a car supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited trading as Moneybarn ("Moneybarn") was of an unsatisfactory quality.

When I refer to what Mr K has said and what Moneybarn has said, it should also be taken to include things said on their behalf.

What happened

On 8 September 2023, Mr K was supplied with a used car through a conditional sale agreement with Moneybarn. The car was priced at £6,791 and the agreement was for a total of £12,518.24 payable in 57 monthly instalments of £223.54. At the time of supply, the car was around 10 years old, and had done 111,900 miles.

In December 2023, Mr K experienced problems with his car. On inspection, his engineer found a fault with the gearshift solenoid. Mr K continued to experience problems and in February 2024, he called his engineer for another inspection. Although a fault wasn't identified at the time of inspection, the engineer reported that it was likely a reoccurrence of the solenoid fault. Mr K was given details of local auto transmission specialists.

Mr K took the car to a garage which diagnosed an internal collapse of the clutch assembly and quoted £3,840 for the repair.

Mr K complained to Moneybarn that the gearbox didn't work, and he thought the car had been faulty when it was first supplied to him. He wanted Moneybarn to repair the car, or take it back and cancel the agreement, or replace it with another similar car. In the absence of a response from Moneybarn, Mr K brought his complaint to our service for investigation.

Our investigator accepted there was a fault with the car, but didn't think the evidence demonstrated that it was likely present at the time of supply. The fault was to a serviceable part and Mr K had used the car for around three months before the fault developed. Our investigator said that with the age of the car and the mileage done, it was reasonable to expect that parts would already have suffered wear and tear and that worn out parts would need to be replaced.

Mr K didn't agree. He said that it was his right to hand the car back within six months because of the fault. Further, he said the year and model of his car was known for gearbox problems.

Because Mr K didn't agree, this matter has been passed to me to make 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time. Mr K was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr K entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Mr K took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

Moneybarn didn't respond to Mr K's complaint before he brought it to our service. I've thought carefully about the evidence available to me, and I don't doubt that Mr K experienced what appears to have been an intermittent fault with his car. But the evidence doesn't persuade me that it was present at the time of supply. That's because:

- The fault first developed after Mr K had used the car for three months. If it had been present at the time of supply it's likely he would've noticed something sooner.
- The MOT history doesn't show any problems of a similar nature. It does show that the car failed the MOT on the day of supply due to inoperative lamps, and then passed three days later. If there had been a fault with the gearbox, I think it's something that would've likely been identified.
- The fault was to a component of the car that would be subject to wear and tear and is considered a service/maintenance issue.
- The car had done another 2,500 miles since it was supplied, suggesting Mr K had been able to make reasonable use of it which would be unlikely if it was supplied with a faulty gearbox and/or clutch.
- There was no engineer report to support Mr K's belief that the fault had been present at the time of supply rather than being a fault that happened over time due to wear and tear.
- Mr K's own appointed engineer reported:

Intermittent gearbox fault No fault at time of test... Suspect solenoid fault, second occurrence [sic] of same problem. Vehicle driving ok at time of test. Advised [Mr K] to take to auto transmission specialist, left details for 2 local specialists. [Mr K] previously had vehicle booked in... for this fault but fault cleared.

- The garage reported that the gearbox fault developed because the clutch assembly collapsed, spreading debris into the transmission. The clutch is another serviceable part which would likely be subject to wear and tear in a car of this age.

So, while the evidence shows there was a fault with the car, there's nothing in this evidence to indicate that it was present at the time of supply.

I understand Mr K believed he had a right to return the car simply because the fault occurred within the first six months. Under the CRA, there is an implied term that the car would be of satisfactory quality, but that mustn't be confused with the quality expected of a new car. Mr K's car was 10 years old and had done almost 112,000 miles at the point of supply. So, the satisfactory quality implied under the CRA is that which a reasonable person would expect for a car of that age and mileage. I think it's unreasonable to expect that the car would be free of wear and tear of serviceable parts given that Mr K had used the car for several months.

For these reasons, I can't reasonably conclude that the car was of unsatisfactory quality or that Mr K was entitled to return the car.

I've noted Mr K's comment that the same type of car was known for gearbox problems. However, having looked at the record of Mr K's specific car, I haven't seen any evidence that there was a recall notice.

Finally, Mr K said he'd returned the car and he disputed the amount owing on the agreement. As this didn't form part of Mr K's original complaint, I haven't considered this evidence. Should he remain unhappy, he would first need to give Moneybarn an opportunity to resolve his complaint.

My final decision

For the reasons explained, I don't uphold Mr K's complaint about Moneybarn No. 1 Limited trading as Moneybarn.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 30 January 2025.

Debra Vaughan
Ombudsman