

Complaint

Mr B has complained about the quality of a car that Moneybarn No.1 Limited ("Moneybarn") supplied to him through a conditional sale agreement.

Background

In October 2023, Moneybarn provided Mr B with finance for a used car. The car was approximately seven years old and it is my understanding that it had completed around 96,600 miles at the time of the sale.

The cash price of the vehicle was £6,090.00. Mr B didn't pay a deposit and applied for finance to cover the entire amount of the purchase. Moneybarn accepted Mr B's application and entered into a 60-month conditional sale agreement with him.

The amount borrowed was £6,090.00 and the loan had an APR of 30.5%, as well as interest, fees and total charges of £4,952.44. So the total amount to be repaid of £11,042.44 was due to be repaid in 59 monthly instalments of £187.16.

Mr B says that he immediately began having brake sensor issues with the car and visited the supplying dealer about this. The fault wasn't rectified despite a number of visits to the supplying dealer. The supplying dealer arranged for a manufacturer garage to repair the vehicle in December 2023. Mr B agreed to this repair taking place and on 6 January 2024 and he was informed that the matter had been resolved and the car was returned to him. However, Mr B says the issues still persisted and he attempted to reject the vehicle at that point and also complained to Moneybarn.

Moneybarn issued its final response to Mr B's complaint on 4 March 2024. In essence, Moneybarn didn't uphold Mr B's complaint. It said that this was because the vehicle had been independently inspected and a fault couldn't be found.

Since Mr B's initial complaint the car was returned to Moneybarn as Mr B was in arrears. Mr B has complained about the time it took Moneybarn to recover possession of the vehicle and a number of associated issues (in relation to recovery fees and delays) which he says has resulted in him being asked to repay an incorrect amount. However, we've explained that these are separate complaints which Moneybarn is considering independently and which we've not considered as part of this complaint.

Mr B's complaint was subsequently reviewed by one of our investigators. He thought that even if Moneybarn had supplied Mr B with a vehicle that was not of satisfactory quality, Mr B accepted a repair and the available evidence demonstrates that the repair was successful. He didn't think that it would now be fair and reasonable for Mr B to now reject the car and he therefore didn't recommend that Mr B's complaint be upheld.

Mr B disagreed with our investigator's view and asked for his complaint to be passed to an ombudsman for a final decision. So the complaint has been passed to me to decide.

My findings

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

I'm satisfied that what I need to decide in this case is whether the car supplied to Mr B was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for Moneybarn to do to put things right.

Having carefully considered matters, I'm satisfied that it's more likely than not even if the vehicle Moneybarn supplied to Mr B was not of satisfactory quality, he accepted a repair which appears to have been successful. And I'm therefore not upholding Mr B's complaint. I'll explain why in a little more detail.

The finance agreement in this case is a regulated conditional sale agreement, which we are able to consider complaints about. Under the conditional sale agreement, Moneybarn purchased the vehicle from the dealership Mr B visited.

Mr B then hired the vehicle from Moneybarn and paid a monthly amount to it in return. Moneybarn remained the legal owner of the vehicle under the agreement until Mr B's loan was repaid.

This arrangement resulted in Moneybarn being the supplier of Mr B's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers conditional sale agreements – such as Mr B's agreement with Moneybarn. Under a conditional sale agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Is or was there a fault with the vehicle?

Having considered the information provided I'm satisfied that it is more likely than not that there, at least, was a fault present on the vehicle. I say this because Mr B has provided a number of photographs showing that there were a number of instances where the vehicle was reporting fault codes suggesting that the brake fluid level was low. Furthermore, I've been provided with a copy of an invoice from a manufacturer garage, from December 2023, showing that a repair took place.

So I'm satisfied that there, at least, was a fault with the vehicle which needed to be rectified before it could be driven. Although I accept there remains a dispute over whether the fault remained at the time Mr B returned the vehicle in January 2024.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied was present on the vehicle, means that the car wasn't of satisfactory quality when it was supplied and Mr B should be allowed to reject it.

Was the vehicle that Mr B was supplied with of satisfactory quality and should he now be allowed to reject it?

It is clear that Mr B had issues with the vehicle - in particular the brake fluid sensor. But just because things might have gone wrong, it doesn't automatically follow that this should permit him to reject the car. I've therefore considered all of the information on the issues Mr B has highlighted and I have reached my own determination on things.

As I've set out in the section above, there is no dispute that the car needed repair work in relation to the brake fluid sensor. Indeed, it is my understanding that the brake fluid sensor itself and a wiring harness were replaced. I've also considered that Mr B has said that the repair carried out in December 2023 wasn't the only repair. But I've not seen anything to indicate that Mr B attempted to reject the vehicle prior to January 2024.

In any event, it is clear that there were issues with the brake fluid sensor which means that the car was not of satisfactory quality and I don't need to make my own finding to that effect. I appreciate Mr B's frustration at the fact that significant remedial work was required on the vehicle much sooner than he anticipated when he took delivery, as well as his strength of feeling on this matter.

However, Mr B was offered repairs of these faults which there doesn't appear to be any dispute that he accepted at the time. And as he accepted the major repair, which is the only repair I've seen an invoice for, should be carried out, I don't think that it would be fair and reasonable for Mr B to now reject the car should it be the case that he's simply changed his mind.

That said, the CRA does permit a customer the opportunity to reject a vehicle after a failed repair and if it is the case that the December 2023 repair did not rectify matters, as Mr B says, Mr B would be entitled to reject the car.

Therefore, it seems to me that what I need to consider here is whether I'm satisfied that the repair the supplying dealer arranged on the vehicle, in December 2023, was successful and whether Mr B consequently lost any possible right to reject the vehicle (under the CRA) for this matter.

I've carefully considered the position.

I understand and appreciate that Mr B has supplied a number of photographs showing the brake fluid sensor fault code being reported on the car. But all but one of these photographs were taken before the December 2023 repair took place. That said, I do accept that Mr B has provided a photograph which appears to show that the fault code was showing on the car on 6 January 2024, which was not only after the repair, but also after Mr B had already told Moneybarn that he wished to reject the car.

However, I've got to weigh this photograph against the rest of the evidence I've been provided. And I'm mindful that after Mr B returned the car to the supplying dealer, Moneybarn arranged for an independent inspection of it to be carried out. This inspection was carried out on 23 February 2024.

I think that it's worth me starting my consideration of the report by explaining that the independent engineer was commissioned with the specific purpose of establishing whether there was a fault on the vehicle. The independent engineer not only stated his experience, expertise and qualifications, on the report, but he also made it clear that he was providing this report as an independent expert and with a duty to assist the court, rather than the party (Moneybarn) that commissioned it.

I now turn to the content of the report. Having reviewed it, I can see that the independent engineer was made aware of the previous issues with the brake fluid sensor and the repair

that was carried out. The engineer confirmed that he checked the brake fluid level and this appeared to be correct. He also confirmed that this was done when the vehicle was in a cold condition.

The report then confirms that the engineer started the car and found that it not only started readily but no warning lights appeared in relation to the brake fluid sensor, either when it was started up or during the road test which he carried out. Finally, the independent engineer also stated his conclusion that he was unable to find, or replicate the faults that were present prior to the repair and in his opinion this meant that there were no faults with the vehicle.

As I've said, I do appreciate that Mr B has provided a photograph which shows the brake fluid sensor warning on 6 January 2024, which was after the repair had already been carried out. I've also considered what Mr B has said about the vehicle having been with the supplying dealer for some time before the inspection took place and it is possible that it could have arranged for a further repair to take place in this time.

I don't completely discount Mr B's submissions on this matter and do accept that the supplying dealer did, at least, have the time to complete a further repair. But I'm mindful that the supplying dealer paid the manufacturer garage for the repair which took place prior to the vehicle being returned to Mr B. And it's difficult to envisage the supplying dealer being able to repair a fault, in a way that resulted in no fault presenting during the inspection, in a way that the manufacturer garage was not able to in December 2023. Indeed, it would have been far easier and more economical to just have repaired the car itself in December 2023.

So while I accept the theoretical possibility that the car did undergo a further, but this time more successful, repair prior to the car being inspected, I think that this is unlikely. And I've certainly not been persuaded with sufficient evidence to be able to reasonably conclude that this is more likely than not what happened here.

In these circumstances, bearing in mind the conclusions of the independent report and Mr B not having supplied an independent report of his own, I'm persuaded that the available evidence demonstrates that it is more likely than not that the repair to the brake fluid sensor was successful. And this means that it would not be fair and reasonable for Mr B to have been able to reject the vehicle in January 2024.

As this is the case and in the absence of any evidence of any other faults indicating that the car may not have been of satisfactory quality at the time it was supplied to Mr B, I'm satisfied that it would not be fair and reasonable for me to direct Moneybarn to now accept Mr B's rejection of the vehicle. So overall and having considered everything, I'm not upholding Mr B's complaint.

I appreciate that this is likely to be very disappointing for Mr B – particularly as he's been left with a considerable debt even though he's, in any event, returned the vehicle for other reasons. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr B's complaint.

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

Jeshen Narayanan

Ombudsman