

## The complaint

Mr A complains about the quality of a used car he acquired through a conditional sale agreement with Moneybarn No. 1 Limited ('Moneybarn'). Mr A says that there were ongoing problems with the car shortly after he acquired it. He doesn't think the car is fit for purpose and he would like it repaired, or to have been able to reject it.

## What happened

Our Investigator thought the complaint should be upheld. Moneybarn didn't entirely agree with some parts of the compensation proposed by the Investigator. The complaint was then passed to me.

I issued my provisional decision saying that Mr A's complaint should be upheld. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

## What I said in my provisional decision:

*Mr A's complaint is about the quality of a car he acquired in July 2023. The car was used, and it was first registered in April 2013. So, it was about ten years old when Mr A received it. It had covered 105,435 miles.*

*Mr A acquired the car using a conditional sale agreement that was started in July 2023. The vehicle had a retail price of £7,490 and the full amount was financed. The agreement was to be repaid through 59 monthly instalments of £189.91. If Mr A made repayments in line with the credit agreement, he would need to repay a total of £11,204.69.*

*Below is a summary of the issues complained of by Mr A and the investigation and repair work that has been carried out by the dealership, alongside what has happened in respect of the complaint.*

*Mr A says that shortly after he acquired the car, he noticed that it was leaking coolant and he reported this to the dealership in October 2023. Mr A says that initially he wanted to get the car repaired under warranty.*

*A third party garage looked at the car, but it couldn't determine what the problem was. So, in December 2023, the car was looked at by a specialist garage. I understand the car had travelled 110,232 miles at this point.*

*I've been provided with the visual inspection document that was completed by this garage. This shows that there was an oil leak from the rear of the engine. I understand that the specialist garage had the car between 21 December 2023 and 8 January 2024.*

*In January 2024, Mr A visited a garage to have the problems with the car looked at. The car had travelled 110,626 miles at this point. I've seen an email from this garage, sent in January 2024, that says it had investigated the customer reports of coolant loss and found evidence that coolant was leaking through the exhaust system. It said this could be caused by a head gasket failure.*

*In February 2024, Mr A had some repairs made to the car. The water pump and cambelt were looked at by a third party garage under the car's warranty. Mr A has also confirmed that there have been repairs to the timing pulley for the fuel pump which weren't covered under the warranty.*

Mr A has provided a report from the specialist garage dated March 2024 which confirms that the car has a coolant leak. The garage has confirmed that it carried out a pressure test and found coolant to be leaking from a coolant pump. The rear coolant pipe was blistered and leaking, the car was leaking coolant from the charge cooler sensor. A new coolant pump and rear coolant pipe are required to rectify the fault.

I understand that Mr A has been unable to drive the car since 17 January 2024. I also understand he hasn't paid the finance for the car since March 2024 and has now purchased a new vehicle.

Mr A has complained to Moneybarn, in January 2024, while his problems with the car were ongoing. He said that he has had problems with the car which included the charge cooler being faulty and leaking, the car had an oil leak, the head gasket may be faulty and there are ongoing problems with the coolant system.

Moneybarn considered this complaint, and it didn't uphold it. It said that as Mr A had the car repaired at a third party garage then it couldn't now properly determine that the car was faulty at the time of supply. It has said that the further issues are not in dispute but if the car had these problems at the point of supply, then Mr A would have raised them much earlier. And the issues with the vehicle were likely to have been ordinary wear and tear in any event.

Mr A didn't agree with this and brought this complaint to the Financial Ombudsman Service.

Our Investigator upheld Mr A's complaint. She said that it seemed likely there were faults with the car, and these had been present at the time of supply. She thought that the car should now be repaired in line with the latest report from the third party garage.

I can see that Moneybarn didn't entirely agree with some parts of the compensation our Investigator recommended, but it did indicate that it would repair the vehicle, or the finance could be unwound, as there were issues within the first six months that could have resulted in failed repairs. It did note that Mr A had driven 5,000 miles in the car and so refunding his tax and insurance was unreasonable.

Because Mr A and Moneybarn didn't agree, this matter has been passed to me to make a final decision.

### **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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider was good industry practice at the relevant time.

The agreement in this case is a regulated conditional sale agreement – so we can consider a complaint relating to it. Moneybarn as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

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. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the car's history.

*The CRA 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.*

*This car was about ten years old when Mr A acquired it and it had travelled over 100,000 miles. I think a reasonable person would accept that such a vehicle would probably have some parts that are worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a new vehicle.*

*But there's also a reasonable expectation that a vehicle will be relatively durable - taking into account its age, price and mileage at the outset. So even though the vehicle wasn't new Mr A should have been able to use it for a reasonable period before it needed significant work.*

#### **Was there a fault with the car**

*It seems reasonable to say there is a fault with the car. As far as I can see, there were some repairs made to the car's cooling system under warranty. But, as I've outlined above, the car was looked at on more than one occasion as the faults were ongoing and not properly rectified. There may ultimately be a problem with the car's head gasket which, as Moneybarn has said, could be catastrophic and could itself be causing the coolant problems that Mr A was noticing.*

#### **Was the car of satisfactory quality bearing in mind the fault**

*Moneybarn initially said the faults happened too far on from the point of supply for them to have been present when supplied. Although it later agreed that the coolant system and related faults were brought to its attention within the first six months of ownership and so were assumed to have been present at the time of sale, and I would agree with this.*

*Taking this into consideration, alongside all the problems Mr A has described, I don't think it's unreasonable to say that the car wasn't of satisfactory quality at the point of sale. It does seem to have been sold to Mr A with a potentially serious engine problem and it has started to fail early on into Mr A's ownership. And whilst is a relatively old and well-travelled car it doesn't seem to have been durable.*

*I don't intend to provide any more detail about this as it seems to have been accepted by Moneybarn. In the correspondence following our Investigator's opinion Moneybarn has agreed to repair the car or to unwind the finance agreement. And Mr A is in broad agreement that the car should have been repaired or the finance unwound.*

*Given this, it's not entirely clear why this situation is not resolved. But what remains for me to decide is what is the best way for Moneybarn to put this right, which I've considered below.*

*I think Mr A should now be allowed to reject the car and have the finance unwound. This is because the car has been repaired for the same issue on more than one occasion and the problems with the coolant system and the engine are potentially serious and ongoing.*

*And under the CRA any repairs to a car should be made in a reasonable time and without significant inconvenience and I don't think this happened here as Mr A reported the problems with the car over a year ago now. And there should only be one repair made to a car to make it conform to the contract and there has already been more than one repair to the car for related issues. And I think that any further repairs will add to the problems Mr A has already faced with the car. I don't think a repair is now the right thing to do now.*

*I think Mr A should have been able to reject the car when the repairs failed earlier. I understand that Mr A has been unable to use the car since 17 January 2024 when the potentially serious problem with the engine was identified. Mr A should have been allowed to reject the car then, and I intend to put him back in the position, as far as I can, that he would be in had this taken place.*

*If Mr A had rejected the car on 17 January 2024 he wouldn't have paid any finance repayments since this time, so if he has paid anything after this, those payments, if any, should be refunded to him.*

*Mr A will have paid insurance and road tax on the car. Whilst I note Moneybarn has said this is a legal requirement, which it is, if he had been able to reject the car at in January 2024 he wouldn't have paid for them. So, I think these should also be refunded to him as well. Mr A should provide this information about what he has paid to these as soon as possible, and ideally before the deadline to respond to my provisional decision below.*

*I've noted our Investigator suggested that Mr A should have some travel costs and diagnostic costs refunded to him. Whilst I agree with this in principle, I've also taken on board that our Investigator suggested a fairly complex method for refunding what seem to be relatively modest sums.*

*In the light of this I think it is more straightforward to increase the compensation for distress and inconvenience that I think should be made to Mr A, rather than calculate his travel costs and so on. I can also imagine it would have been very frustrating and stressful for the problems to keep re-occurring as they did. So, I think £500 for the distress and inconvenience he experienced is fair.*

## **Developments**

Moneybarn, and Mr A received my provisional decision. Mr A agreed with what I had said. Moneybarn also agreed, but it did ask for some clarification about the refund of the insurance and road tax that Mr A has paid for.

## **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.

Moneybarn, and Mr A, didn't raise any significant new points after receiving my provisional decision. So, I've reached the same conclusions I reached before, for the same reasons. I think the car wasn't of satisfactory quality and Mr A should be paid compensation on this basis.

The insurance and road tax amounts that Mr A paid should be pro-rated. As Moneybarn has noted it can't be determined exactly how to do this until Mr A lets Moneybarn know the amounts he paid, and whether he paid annually or monthly and so on. But refunding the monthly amounts he paid over the relevant period, or a part of an annual payment to reflect the time Mr A was unable to use the car, are both reasonable methods. Mr A should provide this information as soon as possible if he accepts the decision.

## **Putting things right**

I uphold this complaint against Moneybarn and tell it to:

- End the finance agreement and collect the car at no further cost to Mr A.
- Pay a refund of the finance amounts Mr A paid between 21 December 2023 and 8 January 2024, unless Mr A was provided with courtesy car over this period.
- Refund Mr A's finance repayments from 17 January 2024 until settlement.
- Refund Mr A's insurance and road tax costs from 17 January 2024 to the date of settlement.
- Pay Mr A 8% simple yearly interest on all refunds calculated from the date of payment to the date of settlement.

- Pay Mr A £500 compensation for the inconvenience and distress this situation has caused him.
- Remove any negative entries from Mr A's credit report about the finance agreement.

If Moneybarn considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons I've explained, I uphold Mr A's complaint.

Moneybarn No. 1 Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 2 April 2025.

Andy Burlinson  
**Ombudsman**