

The complaint

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

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

What happened

In June 2023 Mr B was supplied with a used car through a conditional sale agreement with Moneybarn. The retail price of the car was £7,714. Mr B paid an advance payment of £199 with 53 payments of £286.60. The car was first registered in November 2012 and had covered 73,766 miles at the time of supply. Mr B states that he provided a car in part exchange. The agreement itself contains no reference to a part exchange. Mr B informs us that it was agreed that the supplying car dealer would sell his car at auction and then take the amount off what he owed.

Mr B states that he experienced problems within the first few weeks with the car. We have been provided with a copy of a WhatsApp message dated 23 August 2023 where Mr B is enquiring about the brakes, as they were spongy, and when the tires were changed as the front passenger tire was nearing the legal limit.

On 12 December 2023 we have an invoice from an independent servicing garage that shows work done for the car to pass its MOT. Both front lower arm suspensions needed replacing, as did the two front tires. This was at a total cost of £608.86 and the mileage was shown as 79,714.

On 14 May 2024 there is another invoice from the same servicing garage that shows Mr B renewed the discs and pads on both the front and rear of the car. This was at a cost of £582.90 and the mileage was shown as 86,642.

On 12 June 2024 there is a vehicle health inspection report from another dealership that shows there are several faults where they recommend repairs are undertaken. This included repairs to the lights costing an estimated £517.49 and damage to the undertray/wheel arch at an estimated cost of £448.04. There is no mileage shown on the report.

Mr B then raised a formal complaint with Moneybarn. Moneybarn wrote to Mr B on 18 July 2024 not upholding his complaint. They concluded that the issues he had experienced with the car were commensurate with fair wear and tear. For example, with regards the brakes, these were highlighted in a WhatsApp message in August 2023 but this merely referenced squeaky brakes and asking when they were last changed. The MOT in December 2023 showed the brakes as an advisory not a failure. So, in their opinion the brakes were still road legal some six months and 6,000 miles after supply.

They also addressed a couple of other issues Mr B had raised. The first was the issue with the part exchange not being dealt with properly. Their records show no mention of a part exchange, and the agreement only references an advanced payment of £199. The second

issue was how the dealership and broker had dealt with Mr B's complaint. Whilst apologising for any failings they pointed out that both are separate entities to Moneybarn and he would need to raise his complaint with them directly.

As Mr B was not happy with this response he complained to us.

Our investigator did not uphold Mr B's complaint. They felt that it was likely there were faults with the car but having faults does not necessarily make something of unsatisfactory quality. They felt that there was no evidence that the parts had failed prematurely, meaning that the work done to pass the MOT in December 2023 and replace the brakes in May 2024 form part of routine maintenance for a car of the age and mileage that Mr B had been supplied with. Because of this they felt that this would be classified as reasonable wear and tear.

They did consider the complaint about the car provided by Mr B in part exchange. As this did not form part of the finance agreement, they did not consider it the responsibility of Moneybarn and Mr B would need to take it up with the supplying dealer.

Mr B did not agree with the investigator's decision, in particular the conclusion about the part exchange. Mr B referenced a WhatsApp message in June 2023 where he asks about cancelling the car tax on a vehicle. He felt that this showed he had supplied a car in part exchange. Mr B also raised the issue of irresponsible lending.

The supplied evidence did not change the investigator's view. Again they noted that there was no reference to a part exchange within the finance agreement. They also pointed out that if the car was to be sold at auction this would have been after the finance agreement had been signed, so Moneybarn could not be held to account. They did not consider the element of irresponsible lending as this had not yet been fully through Moneybarn's complaints process.

Because Mr B 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.

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 (if appropriate) what I consider was good industry practice at the time.

Mr B 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.

As complaint handling is not a regulated activity how the dealership and broker dealt with his complaint are not considered as part of my decision, despite them being issues he has raised with both Moneybarn and ourselves.

Mr B also raised with our investigator the potential of irresponsible lending. This is a regulated agreement and Mr B is free to raise a complaint with us once he has been through Moneybarn's complaints process. I have not considered this as part of my decision-making process. The sole issue I have considered is whether the car when supplied was of satisfactory quality.

The Consumer Rights Act 2015 (CRA) is of particular relevance 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". The CRA 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. 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 vehicle's history.

The CRA says the 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. Where goods are second hand, as in this case, due regard must be had to the price, age and any description applied to the car.

So, if I thought the car was faulty when Mr B 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.

As stated earlier the age, mileage and price of any vehicle has to be taken into account when deciding what is satisfactory quality. Second hand cars also have an element of fair wear and tear that needs to be taken into account when coming to any decision.

Mr B states that he began to experience issues with the car shortly after being supplied with the car. The evidence presented to support this is a WhatsApp message on 23 August 2023. This message is to the supplying dealer asking about whether the brakes were changed as they were spongy, and he'd checked the MOT history and there was a note that they were thin. He also enquired about when the tires were last replaced as the front passenger tire was near its legal limit.

The next evidence presented about issues with the car is a receipt and MOT from a servicing garage on 12 December 2023 that shows work needing to be done for the car to pass its MOT. Both front lower arm suspensions needed replacing, as did the two front tires. This was at a total cost of £606 and the mileage was shown as 79,714. Checking the online MOT history shows that there was an advisory related to the brake pads being thin. The same garage replaced the discs and pads on both the front and rear of the car. The invoice was dated 14 May 2024 with a cost of £582.90 and the mileage was shown as 86,642.

On 12 June 2024 there is a vehicle health inspection report from another dealership that shows there are several faults where they recommend repairs are undertaken. This included repairs to the lights costing an estimated £517.49 and damage to the undertray/wheel arch at an estimated cost of £448.04. There is no mileage shown on the report.

When deciding if the faults identified as set out above would constitute the car being of unsatisfactory quality at the time of supply, I need to take into account the age/mileage at the time of supply and the length of time after supply any fault came to light. Whilst Mr B contacted the garage on the 23 August 2023 this was purely to enquiry as to whether the brake pads had been changed. The fact that on 12 December 2023 the brakes were deemed roadworthy enough to pass an MOT, albeit with an advisory note, is enough to convince me that this would not be sufficient evidence on their own to prove that the car was of unsatisfactory quality. Brake components are subject to wear and tear, and they were not replaced until 14 May 2024. This is nearly a year and 13,000 miles after the original supply.

With regards the other faults Mr B has on the car the age, mileage and usage between supply and the faults coming to light would mean it is unlikely that they would be classed as more than reasonable wear and tear. Mr B would need to produce evidence to show that the faults were present at supply for me to consider the car being of unsatisfactory quality when supplied to him. The first invoice dated 12 December 2023 shows work needing doing to pass an MOT but it relates to suspension components and tires which are subject to wear

and tear, requiring periodic replacement. This fault is commensurate with a car over 11 years old and having covered nearly 80,000 miles. The faults identified in May and June 2024 occurred a year after supply when the car had covered another 13,000 miles. None of these faults convince me that they were more than reasonable wear and tear for a car of that age. I do not find that the car was of unsatisfactory quality at the time of supply.

Moneybarn do have responsibility under Section 56 of the Consumer Credit Act 1974 for certain things that may have been promised to Mr B by the supplying dealer before the credit agreement was entered into. Whilst I have no reason to doubt what Mr B has stated about the part exchange, I have to base my decision on the evidence presented to me. Mr B has produced a WhatsApp conversation that identifies the car being part exchanged by photograph and contains the following statement from the supplying dealer “we would be looking at taking the part EX and a £199”. This is the only evidence that we have been supplied as to the nature of the part exchange agreement. No part exchange is included as part of the formal agreement with Moneybarn but the agreement does show a £199 advanced payment. I cannot uphold this element of Mr B’s complaint purely based upon the WhatsApp message when the agreement itself does not contain any details of the part exchange. The available evidence does not lead me to conclude that Moneybarn ought reasonably to honour something agreed with the supplying dealer in respect of a part exchange because it’s not clear enough to me that anything was in fact agreed.

There is insufficient evidence to uphold Mr B’s complaint and Moneybarn are not obliged to do anymore in relation to Mr B’s complaint. In which case it is open to him to pursue the matter by other means should he wish to do so.

My final decision

My decision is that I do not uphold this case.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 13 December 2024.

Leon Livermore
Ombudsman