

Complaint

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

Background

In December 2023, Moneybarn provided Mr E with finance for a used car. The car was seven and a half years old and it is my understanding that it had completed 66,012 miles at the time of purchase. The cash price of the vehicle was £7,500.00. Mr E paid a deposit of £400 and applied for finance to cover the remainder of the funds he needed for his purchase. Moneybarn accepted Mr E's application and entered into a 60-month conditional sale agreement with him.

The loan was for £7,100.00 had an APR of 49.90%, interest, fees and total charges of £9,546.66 and the total amount to be repaid of £16,646.26 (not including Mr E's deposit) was due to be repaid in 59 monthly instalments of £282.14.

Mr E began having difficulties with the vehicle at the beginning of March 2024. He said he was near his home when the car lost power and a number of warning lights came on. Mr E complained, to Moneybarn, that the vehicle was not of satisfactory quality on the following day. A few days after this, Mr E had a breakdown provider take a look at the car and it confirmed that the sparkplugs and coils needed replacing. Mr E has said that he had difficulties attempting to find a garage that would complete this work under the warranty that was supplied with the vehicle.

In any event, Moneybarn contacted Mr E informing him that the supplying dealer had agreed to complete the necessary repairs on the vehicle. However, there followed a dispute about who would be responsible for covering the costs of recovering the vehicle to the supplying dealer.

In the meantime, Mr E approached an independent garage for an estimate of repair work needed on the vehicle at the end of March 2024. This estimate, dated 26 March 2024, confirmed that by this stage the vehicle had completed 72,061 miles. It also stated that cylinder one of the combustion chamber was contaminated with oil which was causing a misfire as well as a lack of power. The estimate also stated that the other three engine cylinders were slowly following suit and as a result the vehicle required a new engine. This work was going to result in repairs of £6,742.00.

The vehicle was eventually recovered to the supplying dealer on 16 April 2024. And as Moneybarn still hadn't issued Mr E with a final response to his complaint within eight weeks of receiving it, Mr E exercised his right to refer his complaint to our service at the end of April 2024.

Mr E's complaint was subsequently reviewed by one of our investigators. He thought that the vehicle had faults with the engine and that this meant Moneybarn supplied Mr E with a vehicle that was not of satisfactory quality. So he recommended that Mr E's complaint be upheld.

Moneybarn did not accept the investigator's assessment. It confirmed that an inspection of the vehicle was due to take place and it wished to wait for the report on this inspection before accepting any recommendation. As Moneybarn did not accept the investigator's assessment, he passed the case onto an ombudsman for review as per the next stage of our process.

In the period before the case was passed to an ombudsman, the inspection took place. The inspection took place on 27 June 2024 and the independent engineer confirmed that the vehicle had a fault as he had observed an engine misfire as well as a number of warning lights illuminate when the vehicle was started. The independent engineer also read the vehicle's electrical control unit ("ECU") and this confirmed that the engine misfire warning present had previously occurred on 184 occasions.

The engineer considered that the engine fault was consistent with a spark plug or coil failure, but that further investigation of these faults were necessary. Finally, the engineer confirmed in his opinion that faults of this nature would be due to wear and deterioration and this would not be unexpected of a vehicle of this mileage and that as Mr E had completed 6,000 miles of his own, in the vehicle, he did not think the fault was likely to have been present at the time Moneybarn supplied it to him.

Subsequent to the engineer's report, Moneybarn issued its final response to Mr E's complaint on 10 July 2024. In this, albeit belated final response, Moneybarn stated that it wasn't upholding Mr E's complaint. It said that this was because the independent engineer confirmed that issues on the vehicle were as a result of wear and tear.

So it was satisfied that it supplied Mr E with a vehicle that was of satisfactory quality. Nonetheless, it accepted that its delays in providing its response are likely to have caused Mr E some distress and inconvenience and it paid Mr E £200 in compensation as a result.

Since then the case has been passed to me. And as the parties have not been able to agree on whether the car was of satisfactory quality when it was supplied, it is now for me to decide the complaint.

My provisional decision of 5 September 2024

I issued a provisional decision – on 5 September 2024 - setting out why I was not intending to uphold Mr E's complaint.

In summary, I wasn't intending to uphold Mr E's complaint because I was not persuaded that Moneybarn had supplied Mr E with a car that wasn't of satisfactory quality and therefore the £200 it had agreed to pay for the delays in helping Mr E was fair and reasonable in all the circumstances.

Moneybarn's response to my provisional decision

Moneybarn didn't respond or provide to my provisional decision or provide anything further for me to consider ahead of my final decision.

Mr E's response to my provisional decision

Mr E responded to say that he purchased and fitted a new coil pack and spark plugs and this did not rectify the problem. He said that he was working on getting garages to confirm this but despite being reminded of the deadline for responding, did not provide anything else or ask for me to consider, or ask for additional time to do so.

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 remain satisfied that what I need to decide in this case is whether the car supplied to Mr E 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 put things right.

Having carefully considered matters, including Mr E's response to my provisional decision, I'm not persuaded that Moneybarn supplied Mr E with a vehicle that was not of satisfactory quality. I'm therefore not upholding Mr E's complaint and 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 E visited. Mr E 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 E's loan was repaid.

This arrangement resulted in Moneybarn being the supplier of Mr E'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 E'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 there a fault with the vehicle?

Having considered the information provided I'm satisfied that there is a fault currently present on the vehicle. I say this because while there may be a dispute regarding the extent of the fault as well as the party responsible for rectifying it, nonetheless the independent engineer, the breakdown provider and the garage Mr E visited all agree that there are, at least, faults with the spark plugs and engine coil.

The independent engineer Moneybarn commissioned and the breakdown provider Mr E used both considered that there was an issue with the spark plug and/or engine coil which was causing the engine to misfire. This has also been corroborated by the estimate Mr E sought – albeit what it considers is needed to rectify the fault goes further than the course of action proposed by the independent engineer and the breakdown provider.

In any event, I'm satisfied that three separate technicians all confirming varying issues with the spark plugs and the coil mean that there is, now at least, a fault with the vehicle.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied is currently present on the vehicle, meant that the car wasn't of satisfactory quality at the point of supply.

Was the vehicle that Mr E was supplied with of satisfactory quality?

It is clear that Mr E has had issues with the vehicle. But just because things have gone wrong with the vehicle, it doesn't automatically follow that it wasn't of satisfactory quality when it was initially supplied to him.

It's also worth noting that the independent engineer, who was commissioned with the specific purpose of establishing whether the vehicle was of satisfactory quality, rather than providing an estimate for work which he would complete himself, said that he considered there was a problem with the spark plug or coil and that this would not have been present or developing at the point of supply. This diagnosis of the fault is also corroborated by the report provided by the breakdown provider.

I appreciate Mr E's frustration at the fact that remedial work is required much sooner than he anticipated when he took delivery, as well as his strength of feeling on this matter. But the fact remains that parts such as spark plugs and coils will deteriorate over time and eventually require replacing. It is generally accepted that such parts will not last the entire lifetime of the vehicle. So I don't think that spark plugs and coils needing to be replaced after a vehicle has been used for around 72,000 miles means that they weren't durable.

In reaching my conclusions, I've thought about the estimate that Mr E has provided us with a copy of, which indicates that the garage he visited believes that the engine requires replacing. However, it is only this garage, which has a vested interest in replacing the engine, that has suggested this course of action.

Furthermore, while Mr E says that he has replaced the coil and spark plugs since my provisional decision and this has not resulted in the car now being operational, I've not seen anything to corroborate that the engine does need replacing or that this needs to be done because of a fault that was present at the point of supply.

In these circumstances, it still remains difficult for me to make the finding that the vehicle Mr E was supplied with was not of satisfactory quality because the engine needs replacing.

Furthermore, I'm mindful that even if the issue isn't with the spark plugs and coil and it is the case that the engine might now need some work on it, I'm mindful of the overall context here. In this case, Mr E acquired the vehicle in the middle of December 2023 and he had completed over 6,000 miles in it before he began having difficulties, less than three months later.

This is also in circumstances where the independent engineer's report states that the ECU had recorded 184 instances where the fault code relating to an engine misfire had been recorded. Even allowing for the fact that this may not be 184 separate instances, the number of miles completed does suggest that some of them may have been completed despite the presence of these engine misfire warnings.

As this is the case, I remain satisfied that I cannot reasonably conclude that Mr E's actions, in completing the number of miles he did despite at least some of these fault codes being present, did not significantly contribute to any possible engine issues that are now occurring. This means that I've not been persuaded that the engine on the vehicle was faulty at the time Moneybarn supplied it to Mr E.

In these circumstances, I'm not persuaded that the available evidence shows me that Moneybarn supplied Mr E with a car that had a faulty engine. This is particularly as while Mr E has disputed the findings in my provisional decision and has gone and carried out work of his own on the car, he still hasn't provided me with any of his own supporting information (I'd reiterate the estimate makes no comment on likely condition of the vehicle at the time it

was supplied and, in any event, I've explained why the weight I can place on it is limited) - such as an independent expert report - which confirms that the engine was faulty at the point of supply and that this resulted in the car being of unsatisfactory quality.

Finally, I've also thought about the crack that has developed in the windscreen. It seems to be the case that this was down to a chip which Mr E was aware of and which he knew needed repairing. In these circumstances, and repairing chips is a wear tear related maintenance issue, I'm satisfied that this doesn't mean that the car supplied to Mr E wasn't of satisfactory quality either.

Overall and having considered everything, whilst I accept there are now faults with the car Mr E was supplied with, I don't consider that these faults make the car of unsatisfactory quality. I'm satisfied that it is more likely than not these faults are age related and wear and tear issues and that they may well have been exacerbated by the miles Mr E completed in the vehicle after it was supplied to him.

So on balance, I'm not persuaded that the car supplied to Mr E by Moneybarn was not of satisfactory quality. It follows that I'm not upholding Mr E's complaint and I think that the £200 Moneybarn has agreed to pay for the delays in helping him once the car developed problems, is fair and reasonable in all the circumstances.

I appreciate that this is likely to be very disappointing for Mr E – particularly as our investigator suggested that the complaint should be upheld and he will be left in a position where he is being expected to pay for a car which he's unable to use without first getting it repaired. 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 above and in my provisional decision of 5 September 2024, I'm not upholding Mr E's complaint or telling Moneybarn No.1 Limited to pay Mr E any further compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 5 November 2024.

Jeshen Narayanan
Ombudsman