

The complaint

Mr M 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 M has said and what Moneybarn has said, it should also be taken to include things said on their behalf.

What happened

Both Mr M and Moneybarn are familiar with the details of this complaint, so I've summarised what I think are the key issues.

In October 2023, Mr M was supplied with a used car through a conditional sale agreement with Moneybarn. The cash price of the car was £7,175 and he paid an advance payment of £700. The credit agreement was for £12,441 payable in 59 monthly instalments of £199. At the time of supply, the car was around five and a half years old, and had done 74,531 miles.

Mr M complains that the engine management light (EML) came on, there was a fault with the catalytic converter within days of supply, and he wanted to reject the car. He took the car back to the dealership and the part was replaced. However, he experienced further problems and, when he asked an independent garage to check, they said the catalytic converter hadn't been replaced. Mr M took the car back to the dealer on at least two occasions during the first few months, and he also complained to the credit broker.

The dealership went into administration, so Mr M contacted Moneybarn asking it to unwind the agreement. He said the car was unusable because of the fumes, amongst other problems, and he provided a copy of the diagnosis and repair estimate as evidence.

Moneybarn investigated Mr M's complaint, but it didn't think it had done anything wrong. It said there was no evidence that Mr M had taken the car to the dealership about the same problem he now complained about. Further, it said the car had passed the MOT just a few months prior to the sale and it hadn't identified any problems. As Mr M had been able to travel almost 4,000 miles in the car during the time he had it, Moneybarn didn't think the catalytic converter would've been of unsatisfactory quality at the time of supply.

Mr M didn't agree, so one of our investigators looked into his complaint. She asked Moneybarn to arrange an independent inspection report, which it did, and she shared that with Mr M. The report concluded that the fault wasn't likely to have been present at the time of supply, and it was more likely due to wear and tear. Based on the report, the lack of evidence that Mr M reported problems with the catalytic converter to the dealership, and the miles travelled when he had the car, our investigator didn't uphold the complaint.

Unhappy with the outcome, Mr M asked for an ombudsman's 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 based on 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. Mr M 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 this and, 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.

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

Complaint Handling

I note Mr M was unhappy with how Moneybarn handled and responded to his complaint. I see Moneybarn paid £100 compensation for its delays in handling the complaint. Complaint handling is an unregulated activity and so, falls outside of our service's jurisdiction to consider. So, I haven't considered the way Moneybarn handled Mr M's complaint, nor have I considered any payment it made to Mr M in respect of any complaint handling shortfall it identified.

Undisputed Fault

In this instance, it's not disputed there is problem with the catalytic converter/exhaust. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on whether it's more likely than not that this fault was present at the time of supply.

Single Chance at Repair

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs. i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Moneybarn – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The evidence provided by the broker shows that Mr M took the car back to the dealer within the first few weeks of supply. Mr M said it was to replace the catalytic converter, but his own engineer said it hadn't been replaced. There's no evidence of what, exactly, the car was returned for, or what work was done. Therefore, I can't reasonably conclude from the

evidence that there was a fault with the catalytic converter at the time of supply. Nor can I conclude that the dealer failed to complete whatever repair was needed.

Engineer's Report

Mr M's engineer reported that the catalytic converter needed to be replaced following his inspection in March 2024. The report doesn't state that the fault was likely to have been present at the time of supply. The fault isn't disputed – the key issue is whether it was present at the time of supply. So I don't find this report persuasive in that respect.

Independent Engineer's Report

I've seen a copy of the independent engineer's report, dated 10 September 2024. In this report, the engineer concluded that the fault *"would be due to wear and deterioration and would not be unexpected on a vehicle of this age and recorded mileage. Considering the vehicle has incurred 2732 miles since purchase, we would consider, based on our engineering perspective, these faults would not have been present at the point of vehicle sale"*.

The engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied it's reasonable to rely upon this report.

MOT

I've looked at the history and note that prior to purchase, the car passed its MOT. Exhaust emissions are measured during the test. I think it's likely that if there'd been a fault with the catalytic converter, it would've been picked up during testing of the emissions. I think it's reasonable to rely on the MOT certificate as an accurate record of the car's status immediately prior to sale. Therefore, I'm persuaded that this is further evidence to suggest the fault was not present at the time of sale.

Further comments

I've noted Mr M's further comments in response to our investigator's view. I understand he isn't using the car and he hasn't taken it for its most recent MOT because he said it would fail. The estimate Mr M was given by his own engineer to repair the car was around £800, but that hasn't been done. Mr M also said he's got another car now.

I appreciate that Mr M would've been frustrated at experiencing a fault with the car so soon after purchase. However, I can only ask Moneybarn to end the agreement where I think the fault would've likely been present at the time of supply. I've thought carefully about the evidence provided in both engineers' reports, and I've taken into consideration reliable reports of the life expectancy of a catalytic converter based on distance travelled (70,000 - 100,000 miles) and driving style (frequent, shorter trips). Mr M's car was well within the scale for a fault to develop and he reported using the car to take children to school.

Based on this evidence, and the balance of probability, I think it's reasonable that Moneybarn concluded the fault likely developed after supply and was due to wear and tear. Therefore, I see no reason to ask Moneybarn to end the agreement.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 April 2025.

Debra Vaughan
Ombudsman