

The complaint

Mr M complains about a car supplied to him on a conditional sale agreement by Moneybarn No.1 Limited trading as Moneybarn.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Mr M says the car broke down with engine troubles several months after supply. He now wants to reject it, end the agreement and get compensation for the stress it has caused him.

Moneybarn concluded that the issues were due to reasonable wear and tear. In its initial response it noted that at the time the issues arose he had been in possession of the car for over 6 months – and had covered around 10,400 miles.

In November 2023 Moneybarn reviewed its original findings. It accepted that it had given inconsistent messages to Mr M and carried out a prolonged investigation (and paid him compensation of £200 for this). But still would not accept that it was responsible for the issues with the car. It also noted that Mr M had paid off the agreement in full.

A complaint about the matter has been considered by this service. Our investigator upheld it and said that Mr M could reject the car. Moneybarn did not accept the investigator's proposal and escalated the matter for an ombudsman to make a final decision.

I issued a provisional decision on this case which said:

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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

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 to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 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 Consumer Rights Act 2015 says the quality of goods are 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 Consumer Rights Act 2015 ('CRA from now on') 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 can be aspects of the quality of goods.

In May 2022 Moneybarn supplied Mr M with a second-hand car that was around 5 years old and had done around 62,000 miles at the point of supply. The dealer priced it at £22,750 which is less than what a new or newer model with less mileage would cost. It is fair to say that in these circumstances a reasonable person would consider that the car had already suffered wear and tear – and was likely to require more maintenance and potentially costly repairs sooner than you might see on a newer, less road worn model.

However, with all that said – this car could not be considered very high mileage or very old. And almost £23,000 is a significant amount to spend on a car. So I think there would be a reasonable expectation around durability and quality. For example, I wouldn't be expecting major issues with the engine anytime soon with normal use of the car.

However, I note that about 8 months into use of the car Mr M appears to have started having engine issues. He has provided a breakdown report showing his car was recovered with engine control errors at the start of January 2023 which supports this finding.

It appears that Mr M took the car into a main dealer who found signs of significant damage to the engine. It also confirmed that the vehicle had been modified, and while it was unable to say the exact date it confirmed this had occurred prior to 25 May 2021 (and therefore prior to Moneybarn supplying the car to Mr M).

The dealer has pointed out that performance enhancements, such as those found on Mr M's car can affect systems and components in an adverse way. And will invalidate the factory warranty for things like engine damage (I acknowledge the factory warranty would not apply to Mr M – but this information is relevant to how serious the manufacturer considers these types of enhancements).

Later on (when Mr M was not able to get Moneybarn to resolve things) the main dealer appears to have carried out a full stripping of the engine – where the findings confirmed engine damage – but were not conclusive as to the cause – suggesting something might have entered the cylinder or a spark plug fault.

An independent inspection was then carried out in November 2023 which revealed numerous engine related fault codes with the car. The report confirmed that the car modification (a re-map) had clearly been carried out prior to Mr M's ownership. And while it could not confirm that this caused the engine to fail it said:

'We cannot confirm if indeed the remap which has been applied to the control unit has had any bearing upon the failure of the engine without dismantling, however we do consider that on the balance of probability it has been a cause or contributing factor. The engine is designed / tested to ensure it meets design and operating tolerances, any change in its design and build specification, even a change in the vehicles software in the ECU will result in changes in how the vehicle functions and performs , this will induce increased load and pressure on certain components, not isolated to just the cylinders, valves or con rods, once

the changes are put in place the ignition / electronics will vary, unless there are changes to other components such as spark plugs, pistons and or valves, then the risk is that internal damage will take place, this is not necessarily immediately identifiable and can take time to develop to the point it is only identified much later on after the modification, the engine then does not function as expected when it is under operating conditions'

Based on the information available to me I am satisfied that Mr M has significant issues with the engine – that presently render it inoperable. The cost to remedy this would also appear to be high.

My starting point here is that even though Mr M had been driving the car for what appears to be around 8 months and about 10,000 miles I would not be expecting major issues with the engine with normal use for a car supplied with this age and mileage.

I have gone on to consider the likely cause of the premature engine failure – and I think the information from the main dealer and independent expert combined are extremely persuasive in showing this is likely due to the modification to the car rather than reasonably expected wear and tear. It is also clear that the modification took place before Moneybarn supplied the car to Mr M – so it isn't something he is responsible for.

I also note that an aspect of satisfactory quality is the description of goods. Here I don't have persuasive evidence showing that Moneybarn's dealer disclosed that the car engine was modified prior to sale. So I don't consider the reasonable person would expect this to have occurred without specific information to say so.

Overall, in the circumstances I consider the car is of unsatisfactory quality so I have moved on to consider an appropriate remedy under the CRA.

Mr M wants to reject the car – and I think this is fair in the circumstances. Usually a supplier has an opportunity to repair at least once. However, I consider that repairs pose problems here due to their unknown (and possibly disproportionate) costs and the significant inconvenience Mr M has already experienced and is likely to have going forward if repairs are an agreed remedy. In such circumstances, and with the CRA in mind I consider it fair that Mr M can exercise his final right to reject the car.

Moneybarn has mentioned that Mr M now owns the car as he paid off the finance agreement early. I appreciate that doing this might seem inconsistent with rejection – however, Mr M has indicated he did this so as to refinance the deal at a lower cost to try and mitigate his expenses while he had a car he was unable to use due to the engine issues. So I don't think this should fairly stop him rejecting the car. I also think that whatever the status of the finance agreement this does not prevent Mr M from exercising his legal rights under the CRA against the supplier of the goods under said finance agreement (Moneybarn in this case).

Now I turn to fair redress in the particular circumstances here.

Firstly, Moneybarn needs to collect the car at no cost to Mr M. I understand the finance agreement has been ended. However, Moneybarn needs to ensure that there is no adverse footprint on Mr M's credit file as a result of the agreement.

Moneybarn should refund Mr M's deposit for the car which is £3,500.

Mr M will not get all his finance payments back as he has had use of the car before the engine issues. However, Moneybarn should also refund him everything he has paid for the period he has not been using the car. In this case it will be:

- All Mr M's monthly rentals paid from January 2023 up until he settled the agreement (which I understand was in June 2023); and
- the lump sum payment he made to Moneybarn to settle the agreement (which I understand is £17,887.40).

What Mr M did was effectively refinance his monthly payments to Moneybarn with a lower interest loan (taken out in June 2023) to reduce his payments for a car he could not use (as he needed money for a hire car). This doesn't seem unreasonable. However, he has still been paying monthly interest on this refinance loan (in a similar way he would have paid interest to Moneybarn as part of his monthly rentals had that agreement continued). So it follows that Moneybarn should reimburse Mr M the monthly interest liability on the £17,887.40 from the start of the loan to the date Moneybarn settles this complaint with Mr M.

In the interest of clarity I note Mr M appears to have taken a loan out for more than the settlement amount he paid to Moneybarn – but Moneybarn will only be liable for the monthly interest on the settlement amount so some pro-rating will likely be necessary here when Mr M provides Moneybarn with information regarding interest charges.

Mr M has raised the hire car costs he has paid out for – however, from what I can see the cost of alternative transport should be sufficiently covered by the refunds I have directed. These represent reimbursement for the monthly rentals when Mr M has not had use of the car. Mr M would always have had some costs for transport during these months and the intention of my redress is not to provide free travel entirely.

On production of proof of payment to Moneybarn Mr M should also be reimbursed his tax and insurance costs on the car relating to the period from January 2023 to the date of settlement. Mr M has suggested he should get all of his insurance costs back, as he says his insurance was invalidated by the remap to the car. But we don't know what would have happened in a claim – and he had some use of the car so I don't think this would be fair and reasonable overall.

Mr M has said he paid for a £150 warranty which he could not make use of because of the remap. He said it was voided. I think it is fair to reimburse this in the circumstances if Mr M can provide proof of this warranty and the payment for it.

Mr M has claimed for diagnostics and expert reports and generally it would be reasonable for Moneybarn to reimburse for these as they appear to flow from the problems with the car. From the information I have Mr M appears to be claiming:

Item 1 - £120 for initial main dealer inspection

From what I can see there was an initial diagnostic carried out in January 2023 by a main dealer which confirmed a knocking noise, swarf in oil and found the remapping related codes from May 2021. It recommends further investigation to check for damage which appears to involve stripping the engine down. It appears the quote it provided for this was £1,800.

I don't appear to have an invoice or quote for the £120 inspection. But the cost sounds credible. Mr M says he has paid this to the main dealer as evidenced by a bank statement. However, it appears this statement wasn't attached to his email to this service (or at least we were unable to view it). Ideally Mr M could provide an invoice for the amount and proof of payment. But if he can provide me with the statement to show a £120 payment was made to the dealer around the time of the inspection in January 2023 then it would appear likely this was for an inspection – and I would be willing to direct Moneybarn to pay for this based on this information.

Item 2 - £1,800 secondary diagnostic

It appears that Mr M then got the further investigation carried out as recommended by the first inspection. But from what I can see Mr M has not shown he paid the dealer for this. I note the invoice for this from June 2023 appears to show the charge was £0. I think it likely wasn't £0 but evidentially, considering the amount in question here I would expect Mr M to provide me with more persuasive evidence he paid the main dealer £1,800 for diagnostics before I am willing to recommend Moneybarn refund this. However, if Mr M provides persuasive evidence that he paid this I think Moneybarn fairly refund it, as it was something which Mr M has done as a result of the goods not being of satisfactory quality.

For clarity – I have thought about if Mr M was acting reasonably in authorising such a costly diagnostic. However, he has indicated that he was put in a position where he had to do this as he complained to Moneybarn in January 2023 and they didn't uphold his complaint based on the initial diagnostic information. So it seems he was in a difficult position. And the next logical step appeared to be carrying out what the main dealer had recommended and strip the engine down. Which naturally appears like a big and expensive job.

Item 3 - £360 independent inspection report

Mr M has persuasively evidenced that he paid the independent inspection company £360 for a report. It seems he did this because once again Moneybarn was not accepting responsibility for issues with the engine and had suggested it was going to go out and pay for a report but later decided against it. And this is the report that appears to have tied together the issues with the remap and its likely impact on the damage to the engine. Overall it seems reasonable that Moneybarn should reimburse this too.

Mr M has also claimed for some general maintenance costs to the car including brakes and tyres. These are wear and tear items which normally would not be fairly refundable. However, I note that Mr M will not get the full benefit of the costs he has sunk into the car due to its lack of functionality (and now its rejection). So he should get some of these costs back but noting that he has used the car for about 10,000 miles and would have always had some costs for wear and tear items as a result. Mr M has provided persuasive evidence to show he paid for tyre replacements and wheel alignment in November 2022 for £619.13 and for brake pads and discs around the same time costing £573.96. In the circumstances I think it is fair that Moneybarn refund him 75% of each of these charges.

Mr M has described his personal difficulties with his overall financial situation - including paying certain bills including his council tax and mortgage and the wider impact on his credit file because of this. He appears to attribute these things to the issues caused with the car. While I am sorry to hear about this I am not minded to make any awards against Moneybarn in this respect as I consider these to be too remote to be considered reasonable consequential losses here.

Mr M has also described the amount of stress the matter has caused him. He describes the distress due to the amount of time he has been without a car he can use and the worry caused by the situation which has been ongoing for some time. There has also been a level of inconvenience in Mr M having to hire cars or find alternative ways of transport. I think that Moneybarn could have done more here to accept rejection or get repairs sorted sooner – especially noting the initial evidence Mr M provided regarding the remap. Considering our approach to distress and inconvenience awards (as detailed on our website) I think that an

additional compensation award of £300 is justified here (noting that Mr M has already received £200 from Moneybarn for the initial customer service issues it identified).

My provisional decision

I uphold this complaint and direct Moneybarn No. 1 Limited trading as Moneybarn to:

- *Take back the car at no further cost to Mr M and ensure there is no adverse information on his file as a result of the finance agreement;*
- *refund all Mr M's monthly rentals from January 2023 up until he settled the agreement; and*
- *refund the lump sum payment he made to Moneybarn to settle the agreement (which I understand is £17,887.40);*
- *on Mr M providing proof of this liability reimburse Mr M the monthly interest due on the loan of £17,887.40 from the start of the loan to the date Moneybarn settles this complaint with Mr M;*
- *on production to Moneybarn of proof of payment Mr M should also be reimbursed his tax and insurance costs on the car relating to the period from January 2023 to the date of settlement;*
- *refund £360 for the independent inspection carried out in November 2023;*
- *refund 75% of the £619.13 cost for brake pads and discs;*
- *refund 75% of the £573.96 cost for tyres;*
- *pay 8% simple yearly interest on all refunds from date of payment to date of settlement; and*
- *pay Mr M £300 compensation for distress and inconvenience.*

If Moneybarn deducts tax from the interest element of my award it should provide Mr M with a certificate of tax deduction so he may claim a refund if appropriate.

Note: currently I am not making an award for the £120 and £1,800 diagnostic investigations or £150 warranty – however, I intend to if Mr M provides persuasive evidence to this service before my final decision of these costs/payment for them.

Both parties accepted my provisional 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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

I note Mr M has provided evidence he paid £100 for the warranty with a copy of the sales invoice stating this and a receipt for £100. I am unclear why the invoice here is different from another we have on file that doesn't have the a separate entry for a £100 warranty. However, as Mr M has produced a separate card receipt for £100 to the dealer from around the time it seems likely this was a payment for an extra like a warranty. Mr M has also clarified he mistakenly thought this was £150 before. On balance I think it fair that Moneybarn should pay him this. Mr M has also provided a bank statement showing he paid £120 to the main dealer for the initial diagnostic. So Moneybarn should pay that too.

Regarding the £1,800 secondary diagnostic to date Mr M has not provided persuasive evidence that he is out of pocket for this expense. He has explained his late father paid this for him and he paid him back over a couple of months for it so he doesn't have a receipt himself. Mr M has explained how he has had difficulty getting confirmation of payment from the main dealer too. Our investigator has called the main dealer for further information to confirm that Mr M paid this and explain the discrepancy with the job sheet which says £0. However, to date it appears we are waiting on a call back to clarify things. And I don't want to delay this case any longer as I know there is some urgency to get things resolved from Mr M's point of view.

I feel the most pragmatic solution here is to give Mr M some extra time to gather the evidence he needs without holding the decision on this case up. So Moneybarn will have to pay him the £1,800 if within 4 months from accepting my decision Mr M is able to produce confirmation from the dealer that it charged him and received £1,800 for the diagnostic.

Putting things right

Moneybarn should put things right as I have set out below. Please note that in the body of my provisional decision I said that Moneybarn should refund Mr M his £3,500 deposit but this was not included in the provisional summary of redress. For clarity I have included this below.

My final decision

I uphold this complaint and direct Moneybarn No.1 Limited trading as Moneybarn to:

- Take back the car at no further cost to Mr M and ensure there is no adverse information on his file as a result of the finance agreement;
- refund Mr M his £3,500 deposit;
- refund all Mr M's monthly rentals from January 2023 up until he settled the agreement; and
- refund the lump sum payment he made to Moneybarn to settle the agreement (which I understand is £17,887.40);
- on Mr M providing proof of this liability reimburse Mr M the monthly interest due on the loan of £17,887.40 from the start of the loan to the date Moneybarn settles this complaint with Mr M;
- on production to Moneybarn of proof of payment Mr M should also be reimbursed his tax and insurance costs on the car relating to the period from January 2023 to the date of settlement;
- refund £360 for the independent inspection carried out in November 2023;
- refund £100 for the warranty;
- refund £120 for the initial diagnostic carried out in January 2023;
- refund £1,800 for the secondary diagnostic if within 4 months of accepting my decision Mr M is able to produce the information I have referred to above;
- refund 75% of the £619.13 cost for brake pads and discs;
- refund 75% of the £573.96 cost for tyres;
- pay 8% simple yearly interest on all refunds from date of payment to date of settlement; and
- pay Mr M £300 compensation for distress and inconvenience.

If Moneybarn deducts tax from the interest element of my award it should provide Mr M with a certificate of tax deduction so he may claim a refund if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 15 November 2024.

Mark Lancod
Ombudsman