

The complaint

Mrs M complains about the quality of a car she acquired under a conditional sale agreement with Moneybarn No. 1 Limited (Moneybarn).

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

What happened

In August 2023, Mrs M entered into a conditional sale agreement with Moneybarn to acquire a car first registered/manufactured in November 2013. At the time of acquisition, the car had travelled around 90,000 miles. The cash price of the car was around £5,699. The total amount payable was approximately £8,618. The duration of the agreement was 60 monthly instalments of around £146.

In summary, Mrs M said she is seeking a full refund and wants to return the car because of the issues she had experienced with it. She said that three weeks after supply, the car's driver's door needed repairs as it would not open from the inside. A few weeks after this, Mrs M said the Engine Management Light appeared and the supplying dealership had to replace a fuel injector. Then, towards the end of November 2023, Mrs M said she noticed a loud rattling noise vibrating throughout the car. The clutch felt like it was vibrating and did not feel right. So again, the car returned to the supplying dealership. At the time the supplying dealership again looked at the driver's door which was not closing properly and at the window, which was also rattling. After Mrs M picked up the car, she said the vibrations, the sounds, and the clutch issues were still there. And shortly after this, the car started to smell of burning, smoke was coming from the bonnet, and it broke down again, having to go back for repairs.

Mrs M said that early into January 2024, the Engine Management Light and the Particulate Additive Light appeared plus the rattling sound also returned. At the time, she was advised the clutch master cylinder had been replaced and the issue had been rectified. But she had to pay a bill of around £140 as she was advised the warranty would not cover it. Mrs M said that the car continued to experience vibrations, and she was advised that the car needed repairs to the Dual Mass Fly Wheel. And, she said, she was advised that she would face a £900 bill as the warranty company would not cover it.

Mrs M said she felt that she was being unfairly treated by the garage that the supplying dealership was using to fix her car, so she took her car to a third-party garage for a professional opinion. This garage told her the car was unsafe and unfit for purpose. There was a confirmed fuel leak, as the fuel rail had been incorrectly fitted and the clutch pedal was sticking, so it needed to be bled. The third-party garage also supplied and fitted two front drop links, two new CV boot clips, and four new tyres, since the existing ones were completely not road worthy. Mrs M said they advised her that there were no issues with the Dual Mass Fly Wheel. Mrs M said the third-party garage advised her the car was safe to drive, but they could not guarantee for how long. At the start of April 2024, Mrs M noticed the clutch starting to stick badly and the car was vibrating heavily again. This time the third-party garage confirmed there was a leak in the slave cylinder and that it would need a full engine

strip down to find where the rattle and vibration was coming from. Mrs M also said that the touch screen controls have always been problematic and that she has never received any paperwork for what repairs have been completed.

In July 2024 Moneybarn wrote to Mrs M. In the correspondence, Moneybarn said that when they talked to Mrs M's representative, they explained that they may be limited as to what they can investigate due to the unauthorised repairs that had been conducted. They said they noted that Mrs M had done the repairs as she felt the previous issues were not resolved and the car was not safe. But Moneybarn said they are unable to investigate the concerns she had raised due to the repairs being unauthorised. Moneybarn explained that before Mrs M proceeded with the repairs, they may have been able to assist her by obtaining an independent inspection to verify whether the issues were present when she acquired the car and/or to see if any of the repairs had failed. They explained that the repairs removed the opportunity to establish liability and ability to tell if the repairs had failed. So they said, they were unable to investigate the issues that Mrs M had reported to Moneybarn or substantiate when they arose.

Mrs M remained unhappy, so she referred her complaint to the Financial Ombudsman Service (Financial Ombudsman).

Our investigator considered Mrs M's complaint. The investigator did not think the car was of unsatisfactory quality and did not think that Moneybarn needed to take any further action in relation to Mrs M's complaint.

Mrs M disagreed with the investigator. So, the complaint has been passed to me to decide.

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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered good industry practice at the relevant time. Mrs M acquired the car under a conditional sale agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Moneybarn is the supplier of goods under this type of agreement and is responsible for dealing with complaints about their quality.

I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. But I have focussed on those that are central to me reaching, what I think is, the right outcome. This reflects the informal nature of the Financial Ombudsman as a free alternative to the courts.

Also, I am only considering the aspects Moneybarn are responsible for, so I cannot look at certain actions and/or inactions of the dealership/broker which Mrs M might be unhappy about. So, in this decision I only focused on the aspects I can look into. And, I am only looking at the events that have been raised by Mrs M with Moneybarn, the ones they had an opportunity to address in their correspondence sent to her in July 2024.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mrs M entered into. 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. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mrs M's case the car was used, with a cash price of around £5,699. It had covered around 90,000 miles and was more than nine years old when she acquired it. So, the car had travelled a reasonable distance, and it is reasonable to expect there to be some wear to it because of this use. I would have different expectations of it compared to a brand-new car. As with any car, there is an expectation there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time, and it is reasonable to expect these to be replaced. And with second-hand cars, it is more likely parts will need to be replaced sooner or be worn faster than with a brand-new car. So, Moneybarn would not be responsible for anything that was due to normal wear and tear whilst in Mrs M's possession.

In summary, Mrs M thinks that she should be entitled to reject the car.

The CRA sets out that Mrs M has a short term right to reject the car within the first 30 days, if the car is of unsatisfactory quality, not fit for purpose, or not as described, and she would need to ask for the rejection within that time. Mrs M would not be able to retrospectively exercise her short term right of rejection at a later date.

The CRA does say that Mrs M would be entitled to still return the car after the first 30 days, if the car acquired was not of satisfactory quality, not fit for purpose, or not as described, but she would not have the right to reject the car until she has exercised her right to a repair first – this is called her final right to reject. And this would be available to her if that repair had not been successful.

First, I considered if there were faults with the car. I've considered Mrs M's testimony and I've seen job sheets for the work that was completed.

In mid-December 2023, I can see that the garage used by the supplying dealership did work to the car. The paperwork under 'Labour' states that they renewed the clutch assembly and the manual transmission. Under 'Parts' it also lists a charge for a gearbox. At the time the car had travelled around 92,993 miles (approximately just under 3,000 miles since supply). I can also see that the same garage, later in mid-January 2024, renewed the clutch master cylinder.

I can see that the third-party garage where Mrs M took the car did some work to it towards the end of February 2024. At the time the car had travelled around 95,103 miles (approximately more than 5,000 miles since supply). In this paperwork I can see that they bled the clutch, removed and refitted the fuel rail, supplied and fitted two front drop links, four tyres, and two CV boot clips.

Later in mid-April 2024, this third-party garage also did some further work. The mileage on that paperwork shows that the car had travelled around 99,000 miles (around 9,000 miles after supply), but Mrs M has provided a picture of the car's mileage that shows it had travelled around 98,103 in mid-April. So, I think, most likely, the third-party garage made a typo and, at the time of those repairs, the car had travelled around 8,000 miles since supply. During that visit the third-party garage reported that the car needed a new slave cylinder due

to a leak. They said that for them to fully diagnose the vibration Mrs M was reporting as a full strip down may be needed before they could tell whether these issues were due to faulty engine mounts or coming internally from the engine.

Based on this evidence, it is clear that the car was faulty. But just because a car was faulty does not automatically mean that it was of unsatisfactory quality when supplied. So, I have considered if the car was of unsatisfactory quality when it was supplied to Mrs M.

Mrs M has provided a lot of information, so I have taken all of this into consideration, but I have not seen enough evidence to be able to say that, most likely, the faults with the car were ones that would render the car of unsatisfactory quality.

Mrs M said that three weeks after supply the car's driver door needed repairs as it would not open from the inside. A few weeks after this Mrs M said the Engine Management Light appeared and the supplying dealership had to replace a fuel injector. So, I have considered this, but I do not think these issues would render the car of unsatisfactory quality. When coming to this conclusion I considered the car's price, mileage it had travelled, and when these faults have, most likely, been raised. With second hand cars there is an expectation there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time, and it is reasonable to expect these to be replaced. So, I do not think I have seen enough evidence to be able to say that most likely these repairs would render the car of unsatisfactory quality. And even if the fault with the injector or the issues with the door would have rendered the car of unsatisfactory quality at the time – which I am not saying they would have - I have considered that these have now all been all rectified. And I have not seen enough to say that, most likely, those repairs have now failed.

I then went on to consider the issues with the clutch. From the available evidence I can see that in mid-December 2023, the clutch assembly and the manual transmission was renewed. Also later in mid-January 2024, the clutch master cylinder was also renewed. But at that time the car had travelled at least around 92,993 miles (approximately just under 3,000 miles since supply). So, given the age, mileage, and price paid, I think it is fair to say that a reasonable person would expect there to be some wear to the car when Mrs M acquired it. As such, I think the faults with the door/window, injector, and the clutch, most likely, needed work because of normal wear and tear and parts coming to the end of their life cycle. Also I think, had the clutch been faulty at the time of sale, most likely, Mrs M would not have been able to cover around 3,000 miles in this car.

When considering if the car was of unsatisfactory quality, I have also considered some of the other repairs that were done later to the car. I can see towards the end of February 2024 the clutch was bled, the fuel rail was removed and refitted. Plus, I can see that two front drop links, four tyres, and two CV boot clips were supplied and fitted. At the time the car had travelled around 95,103 miles (approximately more than 5,000 miles since supply). So, it is not unreasonable that a car of this age and mileage after travelling 5,000 miles might need some of these parts to be replaced due to wear and tear. I considered that the MOT, done at the time of acquisition, did not mention any of those needed immediate replacement. And I have not seen enough evidence to be able to say that, most likely, the car was not safe at the time of supply. When coming to these conclusions I have thought about the fact that there is not enough evidence for me to say that, most likely, these issues were present when Mrs M acquired the car. This is further exacerbated by the fact that Mrs M had unauthorised repairs done by a third-party garage and these repairs obscured the opportunity to establish whether the issues were present or developing at the point of supply.

This third-party garage later, in mid-April 2024, did some further work. The mileage on that paperwork shows that the car had travelled around 99,000 miles (around 9,000 miles after supply), but based on an MOT and a picture of the car's mileage provided by Mrs M showing

the car had travelled around 98,103 in mid-April 2024, I think most likely the third-party garage made a typo and, most likely, at the time of those repairs the car had travelled around 8,000 miles since supply. During that third-party garage visit it was reported that the car needed a new slave cylinder due to a leak. And, they said, that for them to fully diagnose the vibration Mrs M was reporting a full engine strip down may be needed. But at this time Mrs M has managed to travel around 8,000 miles in the car. She also had the car for other repairs at the third-party garage for them to give her an opinion on the car's health, so I think, if there were significant issues developing with the engine, most likely, this would have been mentioned at that point in time. Furthermore, there is not enough evidence for me to say that on balance of probabilities the vibrations that she was experiencing previously are related to the more recent issues. Also, I think the other repair to do with the new slave cylinder, most likely, would not render the car of unsatisfactory quality as Mrs M had travelled a significant number of miles before this has been diagnosed. Therefore, I think, most likely, the repair was needed because of normal wear and tear and parts coming to the end of their life cycle.

In addition, I have taken into consideration the age and mileage of the car, combined with the timing when the above issues were raised. At the time when the car needed the new slave cylinder due to a leak and the engine vibrations were noted, the car was over 10 years old, had had travelled a significant number of miles (approximately 98,103 miles), with around 8,000 miles since its acquisition. Therefore, based on the current evidence available in this case, I cannot say that these issues would render the car of unsatisfactory quality.

In addition, I know that Mrs M said the touch screen controls have always been problematic, but I have not seen evidence of any work being done to this or that this was mentioned by the third-party garage when they did the car's health check. So I have not seen enough, on balance of probabilities, to conclude that this issue would render the car of unsatisfactory quality.

Overall, taking all the circumstances of the case in question, I do not think the car was of unsatisfactory quality when it was supplied.

While I sympathise with Mrs M for all the difficulties that she is experiencing, based on all the information available in this case, I do not think there is sufficient evidence to say that, most likely, Moneybarn should be responsible for the faults with the car. As such, I do not think it would be fair and reasonable to ask Moneybarn to take any further action regarding these.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 31 July 2025.

Mike Kozbial
Ombudsman