

The complaint

Mr J has complained about the quality of a car provided on finance by Moneybarn No 1 Limited (Moneybarn).

What happened

Moneybarn supplied Mr J with a used car on a conditional sale agreement in March 2023. The cash price of the car was around £7,000 and it had covered around 45,400 miles since first registration in 2011. Mr J paid a deposit of around £700. The conditional sale agreement required payments of around £280 for 43 months.

Mr J contacted Moneybarn in June 2023, less than three months after the car was supplied, to let them know that the car had broken down. He said he was driving when smoke came from the bonnet, but he managed to roll to a safe space. He said that there was a ton of oil leaking from underneath the car, so he had it towed to a local garage who confirmed the engine had seized. He said that the engine management light (EML) was on, the engine was knackered and, as a mechanic himself, he could see that the only error code was a boost pressure circuit/range performance history. He said that he was without a car and had also consulted other professionals, as well as providing a diagnostic from the recovery agent which said "on recovery noted a puddle of oil under the vehicle and after a brief inspection noted the engine was ceased solid and further investigation would be needed to find the cause" [sic].

Moneybarn issued their final response in September 2023, explaining that they needed further information in order to accept liability for the problems with the car. Moneybarn also offered to reduce the arrears balance by £100.

An investigator here considered the complaint. He thought an inspection might have been helpful but reached the conclusion that the car wasn't of satisfactory quality and recommended that Mr J could reject the car with nothing further to pay and also get a refund of his deposit and payments from June 2023. The investigator also recommended compensation of £300. Mr J agreed with the recommendations.

Moneybarn disagreed. They said that an inspection was the most appropriate course of action.

The case was passed to me to make a decision. Given the lack of evidence on the cause of the break down, I contacted both parties, and Moneybarn agreed to arrange an independent inspection.

I received a copy of the independent inspection by an independent company I'll call "Expert A". Moneybarn have commented that although they accept there were possible issues at the point of supply, they consider Expert A's report alludes to a lack of maintenance by Mr J which may have contributed to the failure.

I issued a provisional decision which said:

I've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Moneybarn Limited 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 (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 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. In a case involving a car, the other relevant circumstances might include things like the age and mileage at the time of supply and the car'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.

When Mr J acquired the car in March 2023 the mileage was around 45,400 and the cash price was around £7,000. The car was first registered in December 2011, so by this stage it was around 11 years old. The mileage at supply was fairly low considering its age, but it wouldn't be unreasonable to expect the car to be showing some signs of wear and tear, and that might include the underlying components.

Mr J and Expert A confirmed the current mileage of the car as 47,793. This means Mr J was able to travel around 2,400 miles before the car broke down.

As a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the car of unsatisfactory quality.

Mr J's testimony points to a "ton of oil leaking" when the car broke down. The recovery agent also said that there was a puddle of oil and the engine was seized solid and that further investigation was needed to find the cause. Mr J said that the EML was on and there was an error code which related to the boost pressure circuit/range performance history.

Unfortunately this information in isolation wasn't enough to determine whether the car was of satisfactory quality at the point of supply.

I've now received an independent report from Expert A. I've considered the report and Moneybarn's comments carefully together with the evidence we already received. Expert A said that the car had been sitting for some time, and it was unable to start the car or perform a diagnostic check. It did, however, perform a detailed visual inspection, and came to the conclusion that the engine had detonated itself with the conrod big end exiting the block number 4 cylinder. Expert A went on to say, "We anticipate a big end failure is very likely and the low engine oil content is considered a primary cause for concern at this stage".

Expert A also said “We do consider from the evidence seen that the engine has suffered a catastrophic internal failure, we anticipate this is due to an underlining condition, which would have been developing at the point of sale. It is impossible now to confirm the initial and exact defect due to the consequential damage and clearly operation of the vehicle on depleted oil and coolant has led to avoidable consequential damage” [sic].

Expert A has provided lengthy submissions on why monitoring the oil and coolant levels are a fundamental aspect of vehicle maintenance and has made an assumption that due to the lack of oil and the coolant level being under minimum, Mr J has not maintained the car which has also contributed to the catastrophic failure. Both Expert A and Moneybarn have also pointed out the poor external condition of the car which has been standing since June 2023 and that the tyres were “close to the legal limit”. I have taken all of this on board in reaching my decision.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day. Unless it’s established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

Considering the requirements of the CRA I don’t consider the report has established that the car did conform to the contract when it was delivered to Mr J. And I think the onus was on Moneybarn to show this. I can understand why the exact cause of the fault is too difficult to determine at this stage, but I’ve noted that Expert A has agreed there was an underlying condition. So I’ve gone on to consider this further with the other evidence already provided.

Given the length of time the car was in Mr J’s possession and the mileage he covered I don’t think it fair to assume that he hasn’t maintained the car, and this has been a significant factor in causing the breakdown. By his and the recovery agent’s testimony, there seems to have been a large oil leak on break down, which could explain the lack of oil in the engine. In addition, the car has sat from June 2023 until October 2024, so I’ve thought about whether this could have impacted fluid levels. Expert A said “oil and coolant levels are affected by seasonal temperature changes, with cold weather causing potential leaks due to contraction and hot weather increasing evaporation rates”. The car has sat for around a year and a half through all seasons and temperature variations. So I think it most likely all of this has contributed to the current lack of fluids in the car, and I can’t safely say that Mr J’s actions have caused the car to fail.

I’ve considered what the CRA sets out about durability, and I think a reasonable person would not expect a car to suffer a catastrophic engine failure within a short time from supply. The report from Expert A confirms there was an underlying condition that led to – or at least contributed to it. I’m not persuaded that Mr J didn’t maintain the car when it was in his possession. I think there’s enough information to persuade me, on the balance of probabilities, the car was not of satisfactory quality when it was supplied to Mr J – in particular – that it wasn’t reasonably durable. So I’ve come to the conclusion that the car was not of satisfactory quality as required by the CRA.

As I have found the car was not of satisfactory quality, I will now consider what is needed to put things right.

Putting things right

I understand that the car now requires a replacement engine along with other repairs due to the length of time it has been standing. I do not think it reasonable to expect Mr J to wait, when those repairs are likely to be uneconomical. I’m also conscious of the time the car has

been left unused and the additional impact this would have had on the car now. The CRA sets out a repair as an option, but given the repair is likely to be uneconomical, and it hasn't been carried out in a reasonable time and without significant inconvenience, it is now fair and reasonable for Mr J to be able to reject the goods.

I think it reasonable for Moneybarn to take back the car from Mr J and cancel the conditional sale agreement with nothing further owed. Moneybarn should arrange for the car to be collected and Mr J should not be responsible for any costs with taking the car back.

Mr J should receive a refund of the £670 deposit payment he made at the outset.

Mr J hasn't had use of the car since the fault occurred, and a courtesy car hasn't been provided, but he hasn't maintained his payments since the car broke down. I don't think it's fair that Mr J should have to pay for a car he's been unable to use. But Mr J did use the car initially and has covered around 2,400 miles, so I think that it is fair for Moneybarn to keep the two payments that he made. If any adverse information has been reported to the credit reference agencies it should be removed.

Finally I've considered the £300 compensation that our investigator awarded. No amount of money can change what's happened. But the compensation recommended by our investigator is in line with what's awarded where the impact of the mistake has caused considerable distress, upset and worry – and/or significant inconvenience that needs a lot of extra effort to sort out. So I think the compensation that's been recommended seems suitable in the circumstances because I agree it's had that sort of impact on Mr J.

Considering all the circumstances, and the other refund that I've set out plus out of pocket interest, I think the compensation seems broadly fair.

Mr J replied and agreed with the provisional decision. He said that he regularly checked the fluid levels in the car. Moneybarn also replied and agreed with the 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.

I'd like to thank both parties for responding to my provisional decision.

I haven't been provided with any further information to change my decision so I still consider my findings to be fair and reasonable in the circumstances.

Therefore, my final decision is the same for the reasons set out in my provisional decision.

My final decision

My final decision is that I uphold the complaint and direct Moneybarn No.1 Limited to:

- End the agreement with nothing further to pay.
- Collect the car at no cost from Mr J.
- Refund the £670 deposit contribution*
- *Pay 8% simple annual interest on the above amount from the date of payment to the date of settlement.
- Pay £300 compensation for the inconvenience caused.
- Remove any adverse information reported to the credit reference agencies.

* If Moneybarn No.1 Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 20 December 2024.

Caroline Kirby
Ombudsman