

Complaint

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

Background

Mr T has also complained about Moneybarn's actions during the course of him exercising his right to voluntarily terminate his agreement. However, we've considered that matter separately and have already issued him with an answer on that part of his complaint, which he accepted.

So this decision will not be considering what happened when Mr T contacted Moneybarn about ending the agreement in 2024, other than recognising and acknowledging that Mr T voluntarily terminated his agreement.

In December 2022, Moneybarn provided Mr T with finance for a used car. The car was approaching ten years old and had completed 102,866 miles. The cash price of the vehicle was £5,348.00. Mr T didn't pay a deposit and applied for finance to cover the entire amount of the purchase. Moneybarn accepted Mr T's application and entered into a 48-month conditional sale agreement with him.

The loan had an APR of 23.9%, interest, fees and total charges of £2,697.57 and the total amount to be repaid of £8,192.57 was due to be repaid in 47 monthly instalments of £174.31.

Mr T says he began having issues with the car when he was test driving it. He says that he was reassured that this was how a vehicle of the type behaved normally and he went ahead with his purchase. However, Mr T says he saw warning lights illuminate on the dashboard and these lights continued to appear even after he took delivery of the vehicle and he was told these should clear.

Mr T says that after a number of discussions with the supplying dealer proved unsuccessful and he found out that he did not have the warranty he was led to believe he did, he paid a garage to repair the gearbox on the car in July 2023. Mr T says that this did not resolve matters and in September 2023 he complained to Moneybarn that the car it supplied to him wasn't of satisfactory quality.

Moneybarn didn't uphold Mr T's complaint. It said that the car had been in Mr T's possession for eight months and therefore, it did not believe that the fault was present on the car at the time it was sold. Mr T was dissatisfied at this and referred his complaint to our service.

Mr T's complaint was considered by one of our investigators. He didn't think that the car had a fault at the time of sale and so didn't uphold the complaint.

Mr T disagreed with our investigator's assessment of his complaint and asked for an ombudsman to consider his case.

My provisional decision of 7 November 2024

I issued a provisional decision – on 7 November 2024 - setting out why I was intending to uphold Mr T's complaint.

In summary, I was intending to conclude that Moneybarn had supplied Mr T with a car that wasn't of satisfactory quality.

Moneybarn's response to my provisional decision

Moneybarn accepted my provisional decision. Although it asked for a copy of the invoice for the gearbox repair which Mr T paid.

Our investigator provided a copy of the invoice to Moneybarn prior to the passing the case back to me.

Mr T's response to my provisional decision

Mr T didn't respond to my provisional decision or provide anything further for me to consider.

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'm satisfied that what I need to decide in this case is whether the car supplied to Mr T 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.

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 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 T visited. Mr T 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 T's loan was repaid.

This arrangement resulted in Moneybarn being the supplier of Mr T'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 T'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.

Was or is there a fault with the vehicle?

I've read and considered everything provided. Having done so, I've been provided with a breakdown report and an invoice for a gearbox replacement. So while there may be some dispute over who is ultimately responsible for this and what this means, it is not in dispute that the gearbox needed to be repaired before the car was, at the very least, once again operational. I am therefore satisfied that there, at least, was fault with the vehicle.

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

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

Moneybarn has placed significant weight on the vehicle having been in Mr T's custody for eight months, prior to him reporting any difficulties with it, for its decision not to uphold his complaint. My concern with Moneybarn's argument here is that it appears to be telling Mr T that it has no obligations in relation to the quality of a vehicle once six months passes from the date it supplies that vehicle to a customer.

However, it does not automatically follow, as Moneybarn appears to suggest, that a fault presenting itself more than six months after a car was supplied to customer, means that it cannot be the case that the car was not of satisfactory quality at the point of supply. Indeed, such an argument is not only incorrect it also betrays a fundamental misunderstanding of the CRA.

In any event, I also think that Moneybarn is incorrect to say that Mr T didn't have any issues with the car in the first six months he had it. I say this because I've seen instances of fault codes in relation to the gear control on a recovery report that a breakdown provider provided to Mr T after attending a breakdown in April 2023.

I'm also mindful that Mr T has also referred to reverting back to the supplying dealer in April 2023 on multiple occasions and he appears to have been without the vehicle from this point up until August 2023 as well. I also understand that it is the supplying dealer which referred Mr T to the garage which replaced the gearbox.

As this is the case, the available evidence shows that Mr T did have problems with the car in the first six months. Although I do accept that while Mr T says otherwise, Moneybarn may not have been notified about these issues at this stage as its contact log has no record of it being contacted by Mr T about this around this time.

That said, there appears to be no dispute that Mr T was in contact with the supplying dealer. As I've explained the gearbox was replaced in July 2023 and I'm led to understand that this was after the supplying dealer had referred Mr T to a garage.

I do appreciate that Moneybarn may not have been able to carry out its own diagnostic check or inspection of the vehicle before the gearbox was replaced. However, the breakdown provider has confirmed that there was a fault code reported in relation to the gear control. Furthermore, there appears to be no dispute that the gearbox was replaced after the car was taken back to the supplying dealer as a result of this breakdown. So I'm satisfied that it is more likely than not there was an issue with the gearbox and at the very least it required repair.

In reaching my conclusions on whether the gearbox replacement means that the car Moneybarn supplied to Mr T was not of satisfactory quality, I've kept in mind that Moneybarn has said that the vehicle is likely to have had some wear and tear at the time it was supplied.

It's fair to say that Mr T acquired a car that was used – it was over ten years old when it was sold and had completed over 100,000 miles.

I also accept that there would be different expectations regarding the quality of a car this age when compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage, price and any other relevant factors. Here, the vehicle supplied needed substantial repair work to, at least, the gearbox.

As I've said, the vehicle had completed over 100,000 miles by the time it was supplied and I do appreciate that as it wasn't new there'd be an expectation that it would have had some wear and tear on it. So a gearbox showing some signs of wear and tear would not necessarily demonstrate it was defective, as like many components in a car it will gradually deteriorate and wear over time and through usage.

I also accept that it is not uncommon for a gearbox to require repair or replacing during the lifetime of a vehicle. But I think that a reasonable person would expect Mr T to have had far more use of a vehicle costing around £5,500.00 – notwithstanding the mileage completed prior to the purchase - before the gearbox would need replacing.

Given just how soon after Mr T's purchase – a couple of months at the latest - that Mr T began seeing fault codes in relation to the gearbox, I'm satisfied that the car was supplied to Mr T in a defective state - with an excessively worn gearbox that was on the verge of a complete and catastrophic failure and which was in need of an imminent replacement.

For the sake of completeness, I would also point out that I've not seen any evidence, nor can I see that either Moneybarn or the supplying dealer have argued, that the vehicle was supplied at a discounted price, because the fact that such work needed to be carried out in the near future, was brought to Mr T's attention either.

Indeed, from what I've seen the vehicle may well have been sold at a price that was around 10% above its standard value. I therefore think it unlikely that the worn gearbox and the fact that it would shortly need replacing was either priced into the sale, or brought to Mr T's attention.

Taking all of this into account, I think that the fact that a fundamental component – the gearbox – needed replacing shortly after Mr T acquired the vehicle, means that the car was not of satisfactory quality when Moneybarn supplied it to Mr T in December 2022.

As I'm satisfied that the car was not of satisfactory quality when Moneybarn supplied it to Mr T, I'll now proceed to set out what I think that Moneybarn should now do to put things right.

What Moneybarn needs to do to put things right for Mr T

Mr T told Moneybarn that he wished to reject the car. Bearing in mind the provisions of the CRA and when the fault presented itself, I'm satisfied that Moneybarn would have been entitled to an opportunity to repair the car at the time the fault with the gearbox presented. Mr T paid for a repair to be carried out and ordinarily I would say that it would be fair and reasonable for Moneybarn to simply reimburse Mr T the cost of the repair and the agreement to continue.

However, I'm not only mindful of the particular circumstances of this case but also that things have moved on significantly since Mr T made his initial complaint to Moneybarn. Indeed, Mr T, in any event, returned the car to Moneybarn by exercising his right to voluntary

terminate the agreement. The available information does seem to suggest Mr T chose to exercise this option because he was struggling to keep up with the costs of the car.

I think that Mr T having to pay for the repair to the gearbox had a significant impact on his ability to afford the monthly payments. I've also seen what Mr T has said about being told that there wasn't a warranty after he was led to believe that he was sold a car with one. I've also seen that the advert for the car, prior to it being sold to Mr T, does state that it would be supplied with a six-month warranty.

I don't know whether a warranty was supplied but it didn't cover the gearbox being replaced, whether there was a delay once Mr T brought the problems with the gearbox to the attention of the supplying dealer and this saw any warranty claim being out of time, or whether it was simply the case that a warranty wasn't supplied despite the advert stating that one would be. Either way, it's clear that Mr T quite reasonably believed that a warranty would have covered the cost of the repair, but this didn't happen.

Furthermore, I've also seen photographs showing that the gearbox fault code continued to appear after the repair. Indeed, I note that after Moneybarn took possession of the car, it wrote to Mr T, in June 2024, informing him that it estimated repairs of around £2,500.00 were needed on the car as it had mechanical issues.

I think that this supports the possibility that any repair was unsuccessful. Therefore, it seems to me that it may well be the case that Mr T may have legitimately been entitled to exercise his right to reject the vehicle, prior to his decision to voluntarily terminate the agreement, due to a failed repair.

Bearing all of this in mind, I think that it would be fair and reasonable to approach fair compensation from the standpoint of placing Mr T, as close as practically possible, in the position he would be in had he been able to reject the car when he attempted to in September 2023.

So to start with and if this hasn't already been done, Moneybarn should end Mr T's agreement and leave him with nothing further to pay. Moneybarn should also reimburse the £514.80 which the invoice he's supplied shows he paid to have the gearbox on the car replaced, as it would have been responsible for covering the costs of any repair at this stage. It should also add interest to this reimbursed payment from the date that Mr T made it to the date it settles this complaint.

I now turn to the payments Mr T made on the agreement and specifically what it would be fair and reasonable for Moneybarn to keep to account for Mr T's usage of the car for the period he had it. There isn't an exact formula for working out fair usage. But in deciding what's fair and reasonable I've thought about Mr T's usage of the car and what sort of costs he might have incurred to stay mobile had he not had it

Having done so, taking account of the car itself, that a portion of Mr T's monthly payment was going towards him having ownership at the end and the amount of interest due on the agreement itself, I think that Moneybarn should be able to retain £90 of the majority of each of the payments which Mr T made.

I've deliberately said that Moneybarn should be able to retain £90 of the majority of the payments which Mr T made as from what I can see he was without the car for the period between April 2023 and August 2023. I can't see that Mr T was provided with a replacement car during this period and as this is the case, I'm satisfied that Moneybarn should refund Mr T's May 2023, June 2023, July 2023 and August 2023 payments in full and that it can retain £90 a month of the rest of the payments which Mr T made.

I now turn to any distress and inconvenience Mr T may have experienced. It's clear that Mr T had to deal with the stress of arranging and getting to and from garages for diagnostic checks and repairs to be carried out. And this is in circumstances where he he's had health problems.

I appreciate that Mr T also feels that Moneybarn failed to act fairly and reasonably during the period where he exercised his right to voluntarily terminate the agreement. But I've already explained that we've looked at Mr T's complaint in relation to this separately and that he's accepted a settlement in relation to these concerns. So I've not considered these matters as part of this decision.

Bearing in mind what I've considered in this decision as well as the level of distress and inconvenience that Mr T has experienced, I'm satisfied that Moneybarn should pay Mr T £200 for the distress and inconvenience he experienced as a result of being supplied with a car that was not of satisfactory quality.

Fair compensation – what Moneybarn should do to put things right for Mr T

Overall and having considered everything, I think it is fair and reasonable for Moneybarn to put things right for Mr T by:

- if this has not been done already, ending the conditional sale agreement and ensuring that Mr T has nothing further to pay;
- refunding the May 2023, June 2023, July 2023 and August 2023 payments in full. Moneybarn should also refund £84.31 of all the other monthly payments Mr T made;
- removing any adverse information it may have recorded against Mr T as a result of this agreement from his credit file. If the above results in Mr T's account having in a positive balance, Moneybarn should report to the credit reference agencies that the outstanding balance is £0.
- reimbursing him the £514.80 which, the invoice supplied shows, he paid for the gearbox to be replaced. If Mr T can provide invoices or receipts evidencing that he paid more than this, Moneybarn should also reimburse him for this;
- adding interest at 8% per year simple on any refunded and reimbursed payments from the date they were made by Mr T to the date the complaint is settled†;
- paying him £200 in compensation for the distress and inconvenience that was caused.

† HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mr T a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained above and in my provisional decision of 7 November 2024, I'm upholding Mr T's complaint. Moneybarn No.1 Limited should put things right for Mr T in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 23 December 2024.

Jeshen Narayanan
Ombudsman