

## **The complaint**

Mr E complains that a car acquired under a conditional sale agreement with Moneybarn No.1 Limited trading as Moneybarn ("Moneybarn") wasn't of satisfactory quality when it was supplied to him.

## **What happened**

The parties are familiar with the background of this complaint so I will only summarise briefly what happened here.

In November 2022, Mr E acquired a used car from a dealership (F), although he wasn't supplied with the car until early December 2022. He made an advance payment for the car, with the balance being provided by Moneybarn under a conditional sale agreement. The car was nine years old and had covered approximately 85,000 miles when the agreement started. The agreement was for 60 months, and the cash price of the car was £8,949.

Mr E has said that he noticed problems with the car – a ticking noise when steering – a day after taking delivery of the car, but was told by F that the steering pump was new and needed bedding in. Two weeks after taking delivery, Mr E experienced a tyre burst and needed to pay for replacement. He's said that the tyres were confirmed by F as new, but the tyre technician told him it wasn't a new tyre.

In April 2023, Mr E experienced another tyre burst and had to pay for an emergency tyre replacement.

In May 2023, Mr E has said he was still experiencing problems with the car, including the ticking noise still being present. He said that, at this time, he got in touch with F and Moneybarn, but neither were willing to help so he arranged for a diagnostic test at a local garage. The car had covered approximately 87,000 miles at this point. This test identified a problem with the timing chain, but the garage were unable to undertake the work. Mr E found another garage that could help him out, and he went ahead with repairs to the timing chain.

This work was completed in early June 2023, but when Mr E went to collect the car it wouldn't start. The garage conducted another diagnostic test at this time, and it showed no compression in any of the cylinders. Mr E was advised that a new engine would be required to fix the car. He raised a complaint to Moneybarn at this time.

Moneybarn asked Mr E to provide some additional evidence so they could try and determine when the fault had occurred and if they had any liability for the fault. But Mr E didn't provide anything else to Moneybarn, and in August 2023 he paid £6,500 for an engine replacement. Mr E brought his complaint to our service. Our investigator said that Moneybarn should reimburse Mr E for the engine replacement costs, along with a refund of several monthly payments, as he felt Mr E's testimony was persuasive and proved the car wasn't of satisfactory quality when it was supplied to him. He also asked Moneybarn to pay an award for the inconvenience Mr E had experienced, and to remove any adverse information from his credit file in relation to the agreement.

Moneybarn didn't accept our investigator's findings. They said Mr E hadn't responded to their requests for information in June and July 2023, and by having the engine replaced without authorisation he had taken away any opportunity to determine when the original faults had occurred. Moneybarn also said that, had Mr E given them the opportunity to determine the liability and had that established Moneybarn were liable, they would have taken Mr E out of the agreement rather than agree to repair costs that were uneconomical, when the cash price of the car is taken into account.

As Moneybarn didn't agree, it was passed to me to decide. I issued my provisional decision on 6 December 2024. It said:

*'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Mr E has provided a lot of information here. I'd like to reassure him that I've read and considered everything that's been sent, although I haven't commented on it all within this decision. I will be focussing on what I consider to be the key points of the complaint.*

*When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice.*

*As the conditional sale agreement entered by Mr E is a regulated consumer credit agreement this service is able to consider complaints relating to it. Moneybarn are the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.*

*The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr E entered. Because Moneybarn supplied the car under a conditional sale agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the car and the price paid.*

*The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.*

*But, on the other hand, satisfactory quality also covers durability. For cars, this means the components must last a reasonable amount of time. Of course, durability will depend on various factors. In Mr E's case, the car was used and had covered approximately 85,000 miles when he acquired it. So, I'd have different expectations of it compared to a brand-new car. Having said that, the car's condition should have met the standard a reasonable person would consider satisfactory, given its age, mileage, and price.*

*Our investigator has explained that he thinks the car wasn't of satisfactory quality when it was supplied to Mr E. I don't agree in this case. There is no doubt the car has had some faults, and still appears to have them – the reports and previous repairs undertaken by Mr E confirm that. However, I'm not persuaded, from what I've seen, that the car can be considered as unsatisfactory quality when it was supplied to Mr E. I'll explain why.*

*Mr E has said that he initially brought the problems with the car to Moneybarn's attention in May 2023, although there is no evidence of that, either from Mr E or from Moneybarn's account notes so it's difficult to determine if this happened. However, Mr E did bring the problems with the car to Moneybarn's attention by email in early June 2023, just around six months after he'd been supplied with it. So, I need to consider if Moneybarn have done what I'd expect them to have done once they were aware there was a problem with the car.*

*The CRA explains that where goods are found not to have conformed to the contract within the first six months, it is presumed the goods did not conform to the contract at the point of supply. Unless the supplier, Moneybarn in this case, can prove otherwise. In Mr E's case, I'm satisfied it was within six months when he first informed Moneybarn of the faults with the car. Whilst the conditional sale agreement was signed at the end of November 2022, Mr E didn't actually get supplied with the car until 10 December 2022 – meaning his email complaint to Moneybarn on 5 June 2023 was within six months of being supplied with it.*

*However, I'm also more satisfied than not that, at this point, Moneybarn attempted to gather more information and evidence from Mr E to allow them to consider his complaint about the quality of the car. Moneybarn acknowledged his complaint a week after it had been made, asking Mr E to provide any diagnostic reports, job sheets, or any other evidence he had that would help Moneybarn decide on appropriate next steps. Mr E didn't respond to this request, and Moneybarn wrote to him again in mid-July 2023 saying they needed the information to enable a decision to be made, and if nothing was received they would have to make a decision based on what they already had. Mr E didn't respond, and Moneybarn sent their final response to him explaining they wouldn't be taking his complaint any further as they were unable to agree that the car was of unsatisfactory quality when it was supplied to him.*

*Mr E has supplied evidence of diagnostic reports and testimonies from the garage that stripped the car and confirmed a new engine was the most appropriate remedy for the problems found. But none of those documents confirm the faults were present at the point the car was supplied to him, and Mr E didn't bring the need for a new engine to Moneybarn's attention, which would have enabled them to consider their next steps. It's more likely than not that Moneybarn would have arranged for an independent inspection of the car to try and determine when the faults occurred.*

*Moneybarn have also said that, had they known Mr E was planning to spend approximately £6,500 to replace the engine, and had it been confirmed that the new engine was required as a result of the car being unsatisfactory when it was supplied to him, they would have looked to end the agreement rather than authorise the engine replacement, as the repair costs aren't economical when the total cash price of the car is taken into account. I'm satisfied that is a reasonable thing to say. The engine replacement cost is almost the equivalent of the cash price Mr E originally agreed for the car.*

*Mr E had the engine replaced in August 2023. This was a month after Moneybarn had provided Mr E with the final response to his complaint. Whilst I understand why he went ahead with the repair – he needed the car to be mobile – he hasn't given Moneybarn the opportunity to inspect the car, review any evidence that suggests the car wasn't satisfactory when it was supplied to him, or allow them to make a decision on the best way forward for them and for Mr E. And by going ahead with the engine replacement, Mr E has now made it impossible for Moneybarn to determine when the original faults may have occurred. In effect, the burden of proof as to who is responsible for the problems with the car, and who should be liable for the repairs (or other action) has been taken away. As such, I don't have any evidence to confirm the car wasn't satisfactory when it was supplied to Mr E.*

*I can only ask Moneybarn to pay for the engine replacement if I have evidence the problems were present at the point the car was supplied to Mr E. And, whilst there is no doubt the car has suffered problems in the time Mr E has had it, there isn't anything provided to suggest the fault with the timing chain or engine were present when Mr E acquired the car.*

*Similarly, Mr E has explained the car needed two new tyres, and he's provided the invoices to show the payments he made – but there isn't any evidence, other than Mr E's testimony, to suggest the tyres had blown because they were old. There are many reasons why tyres*

*could need replacing, or encounter problems, such as driving style or road conditions, and the fact that two tyres needed replacing isn't evidence that they were faulty when the car was supplied.*

*Mr E has also raised concerns that the car wasn't serviced in the years prior to him taking delivery of it. I've asked for a copy of the car's service booklet to see if any services had been missed, but Mr E hasn't provided it. In addition, I haven't seen anything that confirms the car was advertised with a full-service history. So, I'm not able to make any comment on this.*

*I know this decision will come as a disappointment to Mr E, and he has a car that has required significant outlay, and has more work needed to it, but I just don't have enough evidence to be able to say I'm satisfied the car was of unsatisfactory quality when it was supplied to him. And by having the engine replaced, I'm more satisfied than not that Mr E has taken the opportunity to determine liability away from Moneybarn.'*

Mr E responded and has asked me to reconsider. He has explained the difficult situation the problems with the car have placed him in, and he believes he has sent proof to show the car had faults when he acquired it. He has said the diagnostic report and photos of the damage to some of the components were sent to Moneybarn when he complained, and Moneybarn have declined the offer from our investigator to instruct an independent assessor to inspect and report on the car.

### **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 haven't seen anything to persuade me away from the planned outcome in my provisional decision. I'll explain why.

Mr E has explained that he contacted Moneybarn and F in May 2023 and didn't receive any help. Even I accept that, my provisional decision explains why I'm satisfied Mr E was within the first six months when he formally complained to Moneybarn in June 2023, and it also explains what Moneybarn asked him to provide at that time.

I know that Mr E provided the report from his garage along with photos of the components, but as stated in my provisional decision, none of that evidence confirms that the faults would have been present at the point the car was supplied. And Mr E, by having the engine repaired after Moneybarn had issued their final response to him, and without giving them the opportunity to comment on the work that was needed, has now taken away any opportunity for Moneybarn to inspect the faults and determine, if possible, when they occurred.

I'm satisfied it was reasonable of Moneybarn to decline the offer to arrange an independent inspection when our investigator got in touch with them, as by that point the engine had been replaced. So, it follows that an independent inspection at that time wouldn't have been able to offer any insight into the previous faults, as they were no longer present in the car.

As stated in my provisional decision, I can only ask Moneybarn to reimburse Mr E for the amount he paid to replace the engine, if I'm satisfied the evidence provided confirms the car had the faults at the point it was supplied to him. And in this case, I'm not persuaded the evidence is available to confirm that, so I can't decide that Moneybarn must take responsibility.

Mr E has explained the difficult circumstances he's encountered with the car and having to find the money to pay for the repairs, as he needed the car to remain mobile. It's clearly been a troubling time for him, for which I empathise. However, in this case I can't hold Moneybarn responsible for that. I won't be asking them to do anything more here.

### **My final decision**

For the reasons above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 15 January 2025.

Kevin Parmenter  
**Ombudsman**