

## **The complaint**

Mr J complains about the quality of a car he acquired under a conditional sale agreement with Moneybarn No. 1 Limited (Moneybarn).

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

## **What happened**

On September 2023, Mr J entered into a conditional sale agreement with Moneybarn to acquire a car first registered in 2013. At the time of acquisition, the car had travelled around 80,507 miles. The cash price of the car was around £10,990. The total amount payable was approximately £23,520. The agreement was for 60 months, and each monthly payment was around £399.

Mr J said a month after he acquired the car, it developed a whining noise. The supplying dealership agreed to rectify the fault and it took them over two weeks, but he was supported as they gave him a like for like car. Mr J said the dealership decided to replace the rear differential, but upon collection (in February 2023) Mr J said that he noticed the rear differential was jammed/locked and the car did not turn corners without tearing up the back tyres. Mr J also said that the original whining noise was still present. So, he reported this to Moneybarn the next working day. Mr J said that he is refusing to pay for a car that is not safe to drive, and he would like to reject the car.

From the contact notes it is evident that at the beginning of February 2024, Mr J raised a complaint with Moneybarn as he felt that the repairs carried out by the supplying dealership made the issue worse. But the complaint remained unresolved, so Mr J referred his complaint to the Financial Ombudsman Service (Financial Ombudsman).

While the complaint was with the Financial Ombudsman, Moneybarn arranged an independent inspection to be completed in July 2024. The independent inspection concluded that at the time of the inspection, there was a slight judder and a very slight loss of drive when the car was under load. The inspection also stated that a heavy grabbing sensation was coming from the rear of the car when in full lock and a slight thudding sensation when gears were engaged, but they felt that these faults would not have been present or in development at the point of supply.

Our investigator considered Mr J's complaint and believed he could not conclude that the issues with car's Haldex system have been caused or worsened by having the differential replaced by the supplying dealership. So, the investigator did not think that he could uphold Mr J's complaint about the quality of the car. But the investigator was of the opinion that Moneybarn not handling things better and quicker did cause Mr J distress and inconvenience. So, the investigator thought that Moneybarn should pay Mr J £200 for the distress and inconvenience caused.

Mr J 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. Mr J 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 the 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.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr J 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 Mr J's case the car was used, with a cash price of around £10,990. It had covered around 80,507 miles and was around 10 years old when he 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 Mr J's possession.

Mr J, in summary, thinks that he should be entitled to reject the car.

The CRA sets out that Mr J 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 he would need to ask for the rejection within that time. Mr J would not be able to retrospectively exercise his short term right of rejection at a later date.

The CRA does say that Mr J 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 he would not have the right to reject the car until he has exercised his right to a repair first – this is called his final right to reject. And this would be available to him if that repair had not been successful.

First, I considered if there was a fault with the car. I've considered Mr J's testimony, and I've seen a copy of the independent inspection commissioned by Moneybarn.

Mr J said that shortly after supply, the car differential was making noises. And, after the dealership fixed the differential, the car did not turn corners without tearing up the back tyres and that the original whining noise was still present.

I've seen a copy of the independent report commissioned by Moneybarn in July 2024. At the time of this inspection, the car had travelled approximately 90,605 miles. This report concludes that at the time of the inspection there was a slight judder and a very slight loss of drive when the car was under load. The inspection also stated that there was a heavy grabbing sensation coming from the rear of the car when in full lock and a slight thudding sensation when engaging gears.

Based on all of the above evidence, it is clear that the car had some faults. So, I've gone on to consider if the car was of satisfactory quality when it was supplied to Mr J.

The supplying dealership had fixed the differential and Mr J picked up the car in February 2024. So, at the point of supply, the car may have been of unsatisfactory quality due to the issues with the differential, but I think this has now been rectified. I say this because the independent inspection commissioned by Moneybarn, has indicated that when the car was in full lock and was in forward or reverse a heavy grabbing sensation from the rear of it was evident. The report went on to say that this could be potentially due to the Haldex system on the rear of the car, which they said was separate from the rear differential. So, I think most likely the faults that Mr J has experienced after picking up the car in February 2024 are not due to a failed repair by the supplying dealership.

When coming to the above conclusion, I have also considered that the independent report states that there were no diagnostic fault codes within the diagnostic machine, the faults which presented at the time of inspection would not have been present or in development at the point of sale, and would not be due to a failed repair. And I considered that, at the time, the car had travelled about 90,605 miles, and approximately 10,000 miles since its supply. So, when considering the age and mileage of the car, combined with when the above issues were noted, alongside the information from the independent inspection, I think it is most likely the faults that Mr J was experiencing are because of normal wear and tear and parts coming to the end of their life cycle. So overall, I've not seen enough evidence to be able to say that Moneybarn should be responsible for these.

While I sympathise with Mr J for the difficulties that he is experiencing, based on the evidence that has been presented 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 that Mr J mentioned in February 2024. However, I do agree with the investigator that Moneybarn could have handled things better and quicker. When Mr J made them aware of the issues with the car, they could have arranged an independent inspection sooner, and could have provided Mr J with better information when dealing with his complaint. I think these issues did cause Mr J distress and inconvenience, so Moneybarn should pay Mr J £200 for the distress and inconvenience caused.

### **My final decision**

For the reasons given above, I direct Moneybarn No. 1 Limited to pay Mr J a total of £200 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 11 April 2025.

Mike Kozbial  
**Ombudsman**