

The complaint

Mr B complains about a car acquired through a Conditional Sale agreement with Moneybarn No. 1 Limited ('Moneybarn').

Mr B has said the engine management light has appeared multiple times, he's had multiple issues over a number of months and says the car isn't of satisfactory quality.

He wants to hand back the car and have a refund of his payments.

What happened

The events are well-known to both sides, so I won't reiterate them all here. I issued a provisional decision as follows:

'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 the complaint.

I'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.

Where information or evidence is missing or contradictory, I'll make my decision based on the balance of probabilities – that means what I consider to have more likely than not happened – given the available information.

I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

Mr B acquired the car through a Conditional Sale agreement with Moneybarn. Under this type of arrangement, Moneybarn became the supplier of the car and is responsible if the goods aren't of satisfactory quality when provided. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.

Satisfactory quality is described as the standard that a reasonable person would expect taking into account, among other things, the description, age and price of the goods. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.

As confirmed above, when the car was supplied it was eight years and five months old, had covered 69,700 miles and cost £17,995.00.

As the car had some age to it, and corresponding mileage, it's reasonable to expect it to be more worn than a newer, less-used car. That means that items are likely to require maintenance sooner than they otherwise would.

However where issues arise soon after taking possession of a car, it's more likely that those issues were present or developing at the point of supply.

In this instance the EML illuminated after a couple of days and issues persisted with the car for many months following that. It's clear there were faults with the car at the outset, and these issues remained up to November 2023. All within the first six months and without significant mileage having been covered. So I think all of these issues were likely present or developing at the point of supply – and that made the car not of satisfactory quality.

Mr B requested rejection in May 2023, however if the dealer was willing to cover the costs of repair he was willing to accept that. Looking at the series of events following that I'm not persuaded the dealer kept to that. I can see there were times where the dealership said it would make payments and then did, and other times where it didn't make those payments and seems to have then avoided doing so. As a result Mr B seems to have been left with significant repair costs – including being pursued with the threat of legal action. Given he asked to reject the goods unless the dealer could fix the car at no cost to him, I don't think the position he now finds himself in is fair.

Part of what also makes goods of satisfactory quality is their durability. That means that they'll last for a reasonable amount of time. In this instance the car has had persistent faults throughout the time Mr B had it. Some of these arose later than others, but there was a relatively consistent series of faults that cropped up each time the car was looked at.

Although the car was used at the point of supply, I think these issues go beyond what a reasonable person would expect to encounter. The cost of repairs has built up to several thousands of pounds, and Mr B has understandably lost faith in the car. Even now new faults are arising and there doesn't seem to have been a time where the car has been used for an appreciable amount of time without something going wrong.

The broker, when considering matters, seemed to recognise this, but Moneybarn did not. I don't think that was fair and reasonable in the circumstances.

Because of this, I think it's fair for Mr B to be able to reject the car. There have been times when he'd been kept mobile in a courtesy car, while at other times he was able to use the car - albeit that use was likely impaired by the issues he was experiencing. All-in-all, I think Moneybarn should refund 20% of the payments he made throughout the agreement.

His deposit should be refunded along with anything he had to pay towards repairs to the car. Mr B should provide evidence of any costs he's incurred to repair the car. If any adverse information has been recorded with credit reference agencies this should be removed.

I think he should also be paid £250 for the significant difficulties caused by all of this.'

Responses to the provisional decision

Moneybarn broadly agreed with the provisional decision, but informed me that the agreement had in fact now been settled through a part-exchange by another dealership, so the car couldn't be collected. It suggested a different settlement was appropriate given the circumstances. It suggested refunding 20% of Mr B's deposit, the interest portion of the

monthly payments he'd made along with the £250 compensation originally suggested and removing any negative information reported with credit reference agencies.

Mr B agreed with the provisional decision and provided evidence of roughly £1,700 of repair costs he'd incurred prior to settling the agreement. He also provided evidence of a shortfall of roughly £2,700 he had to pay in order for his agreement with Moneybarn to be settled through his new agreement. He wanted these costs covered as well.

Moneybarn was provided evidence of these costs and I explained I was minded to include these as part of my final decision and if Moneybarn was willing to incorporate these costs into its offer then this may resolve the matter.

It was willing to refund the repair costs, but not the settlement shortfall. It thought this wasn't linked to the quality of goods and only came about because Mr B agreed to sell the car for less than the settlement figure. Given how far through the agreement he was, he could have handed the car back to Moneybarn at no further cost. So it thought it shouldn't cover this.

Mr B didn't think it was fair for him to face the cost of the shortfall as he felt he had no other option in the circumstances. So he didn't accept Moneybarn's increased offer.

As the matter remains unresolved it comes to me to issue a final 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've outlined in the provisional decision what I'm required to take into account, how I'll come to a decision and the key legislation in this case. I'll lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

Having weighed up the responses to the provisional decision, I'm satisfied that it would be fair and reasonable for Moneybarn to settle the complaint in the way I set out below.

As both sides essentially agreed with the reasoning in the provisional decision, I shan't go over all that again here, but the reasons for upholding the complaint still stand. However having been made aware that the car is no longer in Mr B's possession and the agreement is settled, I've had to recommend different redress.

I explained to both sides that Moneybarn's offer was likely fair in part, but I was minded to also include the evidenced repair costs and the shortfall Mr B had to pay to settle his agreement in my final decision.

As Moneybarn wasn't willing to offer the shortfall costs Mr B had incurred, and with Mr B thinking this was unfair, I've considered what I think is fair in the circumstances based on both sides' submissions.

While the agreement has now been settled, Mr B paid roughly £15,000 towards the car through a deposit and monthly payments and almost £4,500 in extra costs. So he's spent just over £19,000 on the car, which had an initial cash price of just under £18,000. However he no longer had this asset.

Moneybarn advanced nearly £12,500, but received just over £21,000 in monthly payments and settlement. It has received over £8,500 but also no longer has the asset.

The asset underpinning the agreement has now gone, and Moneybarn can't mitigate any outlay in relation to the settlement by selling it on. But if it was getting the car back, it wouldn't have received roughly £11,000 to settle the agreement in full. And it would only have been able to recoup anything further by selling the car. Given the condition of the car, its age and use, and the likely method of disposing of the car, it's unlikely it would've sold for a substantial sum – and unlikely for more than Mr B eventually was able to secure for it.

So I'm not persuaded that the net effect is significantly different now the car has gone, nor that Mr B should lose out purely on the basis of the car having now been sold on and the agreement having been settled. Even though it may not have been the most advisable option in the circumstances, I can understand why he took the action he did to try and mitigate what he thought his losses were at that point. This is particularly as, by this stage, he'd already complained to Moneybarn and it hadn't upheld the complaint.

There are a number of remedies under the CRA, including rejection, repair and price reduction. And I think the offer Moneybarn has made of refunding 20% of the deposit and the interest portion of the monthly payments is akin to a price reduction. However, the effect of this price reduction is diluted when applied across the whole agreement, after factoring in the settlement of the agreement and the inevitable lower price obtained for the car as a result of its unsatisfactory condition. So the fact the car wasn't of satisfactory quality compounded the cost to Mr B of settling the agreement by both reducing the amount he could obtain for it to begin with and the fact that the full cost of settling the agreement was paid, thus reducing the overall effect of the price reduction offered.

When upholding a complaint, we try as much as is possible to put someone back in the position they would've been in but for the issue complained of. There are some general principles that apply, but there isn't always an exact formula that applies in all cases. So in the circumstances of this case, I think that Moneybarn's offer, which in effect offers a partial price reduction, is fair in relation to the portion of the agreement that it corresponds to, namely the deposit and the monthly payments.

However this price reduction doesn't adequately account for paying the full settlement of the agreement and dilutes the overall offer. Additionally it doesn't account for the reduced value of the car when it was sold on. As such I think it's fair for Moneybarn to cover the shortfall Mr B had to make, which was made worse by having to settle the full outstanding balance while only being able to secure a reduced price for the car as an inevitable result of its condition at that point.

Putting things right

After considering everything, in order to offer an adequate price reduction, Moneybarn should refund 20% of Mr B's deposit. It should also refund any payment Mr B made above a fair use figure. For these purposes the fair use figure for each month would be the amount borrowed divided by the term of the agreement. And anything paid above that each month, which Moneybarn has calculated as being anything above £208.25, should be refunded.

Moneybarn should also refund the repair costs of £1,706.51 which Mr B has evidenced and wouldn't have been incurred but for the car not being of satisfactory quality. It should also refund the shortfall Mr B had to pay of £2,710.00 in order to settle the agreement.

It should pay Mr B £250 to reflect the distress and inconvenience caused by the ongoing faults with the car and the repeated issues he faced over a prolonged period. And if any negative information has been reported to credit reference agencies this should be removed.

Moneybarn must now:

- Refund 20% of Mr B's deposit
- Refund everything above the capital portion of his monthly payments
- Refund £1,706.51 of repair costs Mr B has evidenced
- Refund the £2,700 shortfall payments Mr B has evidenced
- Pay 8% simple interest on the above refunds from the date of any payment to the date of settlement*
- Pay Mr B £250 for the distress and inconvenience this matter has caused**
- Remove any adverse information reported to credit reference agencies

* If Moneybarn considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

** If Moneybarn does not pay this £250 compensation for distress and inconvenience within 28 days of the date on which we tell it Mr B accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

My final decision

My final decision is that I uphold Mr B's complaint against Moneybarn No. 1 Limited. It must now settle the complaint in line with what's outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 May 2025.

Scott Walker
Ombudsman