

## Complaint

Mr T complains that Moneybarn No. 1 Limited refused to let him reject a faulty car.

## Background

In April 2018 Mr T acquired a second hand car costing £9,275 funded by a deposit of £150 and the balance was covered by a conditional sale agreement. It was some five years old and had done 91,809 miles. At the end of September having been driven for some 6,000 miles the car broke down. The RAC report records a suspected flywheel failure.

The car was taken back to the dealer. Mr T says it was unhelpful. An email trails shows that the dealer estimated the repairs would cost £2,658 including VAT and the warranty would cover £1,200 of this. The dealer said it may be able to make a contribution as a gesture of goodwill.

Mr T contacted Moneybarn and complained. He said that in addition to the car being unfit for purpose it had been mis-sold. He said he had been put under pressure to buy it and he had been told that taking out finance would help his credit rating. Moneybarn rejected his complaint and said he hadn't notified it of the fault until six months had elapsed. It also said it believed the car had been repaired.

Mt T brought his complaint to this service where it was considered by one of our adjudicators who didn't recommend it be upheld. He said he thought the agreement along with the terms and conditions were clear, signed and accurate. He noted that two items on the previous owners and service history form signed by Mr T hadn't been completed. However he didn't think this was significant and concluded it was likely that they had been covered in the sales process.

He didn't believe the salesman's alleged claim that another potential buyer was coming to look at the car created undue pressure on Mr T. Nor did he think it significant that the salesman may have suggested the agreement would improve Mr T's credit rating.

Our adjudicator told Moneybarn that as Mr T had established the fault had occurred before six months had passed the onus was on it to establish it wasn't present at the point of sale. It arranged and paid for an independent inspection. The inspector concluded that *"the dual mass flywheel displayed excessive movement due to general in service wear and deterioration, which, on the balance of probability, would not have been developing at finance inception."*

Our adjudicator agreed there was a fault, but he couldn't say that it had been inherent at the point of sale. He added that the car had been driven for over 6,000 miles after acquisition. Mr T didn't agree and said that there was no evidence to conclude that the salesman had referred to the missed tick boxes on the form. He also said it was wrong to endorse the pressurised sales tactics. He also said that it was ludicrous to suggest him driving the car for 6,000 miles had been the cause of the fault. He thought it was wrong that he owed £13,000 for a car that was sitting on is driveway which was unrepairable. He said the inspector hadn't looked at the crankshaft

## My findings

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

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the conditional sale agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law 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 can be aspects of the quality of the goods.

I have every sympathy with Mr T, but I don't consider I can uphold his complaint. I will explain why.

I cannot say what happened during the sales process. Mr T has raised two issues. He says he was told another person was coming to look at the car which put him under pressure to make a decision as to whether to buy the car or not. He hasn't provided any evidence that this was said or that it was untrue. Without that I cannot say that the alleged statement was factually untrue.

On the matter of the benefit to his credit file it would be unwise of anyone without the necessary knowledge and expertise to give financial advice. I can't say if this alleged statement was untrue in regard to Mr T's financial situation, but I don't consider it was such an inducement as to cause Mr T to take out the finance agreement. He only raised it as an issue after he had problems with the car.

I am satisfied that the agreement was sufficiently clear and Mr T had every opportunity to be satisfied with both the car and the agreement. The fact two boxes were not ticked or circled doesn't mean the agreement isn't valid or that Mr T was unaware of what he was signing. As such I am not persuaded that car or the finance agreement was mis-sold.

On the issue of the fault it is regrettable that this happened some five months after Mr T acquired the car. It had done a fairly high mileage for a five year old car and so would have been liable to fairly heavy wear and tear. I have to be satisfied the fault was present at the point of sale. I gather the car had been serviced prior to the sale and I see that according to the DVLA records it passed its MOT in January 2018 and again in July 2019.

I have to rely on the findings of the independent inspector who concluded that it was unlikely that the car had been faulty at the point of sale. Quite simply, I have seen no reasons or evidence that would allow me to reach a different conclusion. So while it was unfortunate that the car broke down I don't consider I can hold Moneybarn responsible. In the circumstances I cannot safely conclude that this complaint should be upheld.

### **My final decision**

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 5 July 2020.

Ivor Graham  
**Ombudsman**