

complaint

Mr C complains about the quality of a car he acquired under a Conditional Sales Agreement with Moneybarn No. 1 Limited (Moneybarn).

background

At the end of January 2019, Mr C entered into a Conditional Sales Agreement with Moneybarn to acquire a nine-year-old used car that had travelled around 99,108 miles. The total cash price of the car was approximately £6,620. Mr C provided an initial payment of £400, and the monthly repayments on the agreement were around £281 over a 42-month period.

At the beginning of March 2019, Mr C wrote to the broker complaining about the quality of the car. He said that shortly after acquiring the car he noticed it had faults such as the oil warning light was illuminating, a failed handbrake, the air pressure and poor condition of tyres, satnav not working due to a missing media, power steering making a loud grinding noise, clicking noises which he said might be coming from a driveshaft, slight ticking when the engine is idling, and problems getting into gear.

Mr C has also told our service the headlight was insecure/loose and that car was emitting grey/blue smoke which may be connected to the oil warning light which was illuminating. Mr C says he wants Moneybarn to take back the car and he wants all his money back, including his deposit, plus compensation for the distress and inconvenience he says he has been caused.

In mid-April 2019, the car had an independent inspection completed, and on 22 May 2019 Moneybarn wrote to Mr C. In this correspondence they said that the Consumer Rights Act 2015 (CRA) required them to provide a car that is free from defects within the first six months, providing these defects are not cosmetic or as a result of fair wear and tear. They go on to say that they reviewed the independent inspection, which was requested by the supplying dealership. Based on this report, they said there was no suggestion that the car was not fit for purpose at the point of sale, and that issues raised of a cosmetic and wear and tear nature are not covered by the legislation. They quoted the report saying: 'Based on the current information the vehicle was undoubtedly road legal at the date of purchase with this opinion reaffirmed by the fact that the vehicle passed an MOT with a similar mileage as at the point of sale'. Moneybarn said the issues Mr C was experiencing were not in question, but they could not conclude that the car was in this condition at the point of sale.

In that response they talk about the additional issue raised with excessive oil consumption, which they say is a known manufacture fault due to faulty piston rings. They go on to say that after reviewing the report, the broker called a manufacturer's dealership in Oxford, as per Mr C request, and was advised to book the car in to have the relevant oil check carried out. They said that the manufacturer's dealership advised that, if this is a manufacturing fault, the repairs will be carried out at no cost to him and they say that, under the legislation, the dealership is entitled to have the opportunity to have the car repaired. Moneybarn also wrote that they may be able to assist further if Mr C experiences further issues after the repairs completed by the supplying dealership had failed; provided Mr C is able to evidence this.

Moneybarn concluded, in the mid-April 2019 correspondence, by saying that Mr C was not entitled to reject the car and reminded him that he should not cancel his monthly payments

as he is still the account holder and liable for the payments. They said that, if the arrears go unaddressed, this could negatively impact his credit file and requested that he contact their customer service if he wants to discuss exit options from the agreement.

Mr C was unhappy with this, so he brought his complaint to this service.

Our adjudicator thought the complaint should not be upheld.

Mr C disagreed with the adjudicator. So, the complaint has been passed to me to decide.

my findings

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 is most likely to have happened based on the evidence available and the surrounding circumstances.

Mr C has questioned the affordability aspects of his finance agreement, but it is important to note that in this decision I'm not looking at this aspect, as this has been investigated by Moneybarn under a separate complaint. Also, Mr C has mentioned that Moneybarn issued him with a default notice and has talked about repossession of his car and the impact of this on his credit file, but in this decision, I'm only looking at whether the car in question was of satisfactory quality at the point of sale. So, I'm only considering the events/issues that have been addressed by Moneybarn in the correspondence to him dated 22 May 2019, and only the ones that have been raised with them by Mr C before that date.

Mr C acquired the car under a Conditional Sales 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. The CRA covers agreements such as the one Mr C entered into. Under the 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 and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mr C's case the car was used, with a price of around £6,600. It had covered around 99,108 miles and was approximately nine years old when he acquired it. So, the car had travelled a reasonable distance and it's reasonable to expect there to be some wear to it as a result, and I'd have different expectations of it compared to a brand-new car. But given the age, mileage and price paid, I think it's fair to say that a reasonable person wouldn't expect any significant issues to be wrong shortly after it was acquired.

Mr C, when outlining why he should be entitled to reject the car, has informed us of the many faults that he believes were present when he took possession of the car.

The CRA sets out that Mr C has a short term right to reject the car within the first 30 days if the car is of unsatisfactory quality, however, he would need to ask for rejection within that

time. Mr C would not be able to retrospectively exercise his short term right of rejection at a later date.

Mr C purchased the car at the end of January 2019, and I can see, from the copies of correspondence provided, that Mr C started to mention to the broker some of the faults he was experiencing with the car only at the beginning of March 2019. But even if I accept there were faults which made the car of unsatisfactory quality – which I'm not making a finding on at the moment - Mr C could only reject the car within the first 30 days, if he expressed his wish to do so. However, it appears that Mr C at that time was not asking to reject the car. He was unhappy about some of the faults such as issues with oil consumption, condition and air pressure of tyres and missing satnav media. And the broker explained to him that his first port of call is to speak to the dealership, to which Mr C replied that he will get a hold of them. So, based on this evidence I don't think Mr C expressed his wish to reject the car within the first 30 days.

CRA says that if the car acquired wasn't of satisfactory quality, or not as described then Mr C would be entitled to still return it after 30 days, but Mr C doesn't have the right to reject the car until he has exercised his right to repair. So, Mr C doesn't have an automatic right to return the car. He would first need to show the car wasn't of satisfactory quality because the faults he complains about were likely to have been present or developing at the point of sale and Moneybarn's one attempt at a repair has failed.

Moneybarn say there is no evidence to indicate that the car was not of satisfactory quality or fit for purpose at the point of sale. They have mentioned that the independent inspection, which was carried out mid-April 2019, concluded that there was no evidence that the car was not fit for purpose at the point of sale. So, I've considered the independent report which was done when the car had travelled around 100,330 miles (approximately 1,222 miles travelled since the point of sale).

I can see that the independent report conducted an eight-mile road test and a physical assessment of the car to assess the faults mentioned by Mr C. The report concludes that there was no doubt that the car had multiple issues, as reported. It said that most of the issues were cosmetic, however, the handbrake was not operational, and the front headlamp was loose so the car would not be considered road legal at the point of this inspection; as it would not meet the MOT standards. The report goes on to say that the car did pass the MOT on 5 February 2019, when it had travelled 99,156 miles, so it says that the headlamp and the handbrake issues found must have developed after the point of sale.

The report also comments that the noise coming from the drive shaft were most likely the cause of wear and tear to the associated CV joint, and that these must be within minimal MOT standard as otherwise the car would not have passed its MOT in February 2019. In the end, the report concludes that the car was undoubtedly road legal at the point of sale, and it concludes that this opinion is reaffirmed by the fact that the car passed the 5 February 2019 MOT.

The broker told us that Mr C questioned why the independent report doesn't mention the issues with the gears, so the broker reached out by phone to the engineer who inspected the car. They said that the engineer confirmed that the car struggled to go into gear only once, but that this was simply due to the fact that the engineer misplaced the gears, and the engineer told them that he did not find any faults relating to the gears. So, I think most likely, if there was an issue with getting into gear, the engineer would have spotted this when he conducted an eight-mile road test and a physical assessment of the car, and, most likely,

would have noted this on the report. Also, I haven't been presented with anything persuasive to make me think it's more likely than not that there were issues with the gears.

I know the report doesn't specifically comment on the condition and air pressure of tyres, but I think, most likely, these must have been within the minimal MOT standard as otherwise the car would not have passed its MOT in February 2019. However, the report does say that Mr C's concerns regarding the oil consumption will require further investigation using industry standards methods.

Taking everything into consideration, including the independent report, I think most likely all the faults mentioned by Mr C, except for the oil consumption issue, were not present at the point of sale. But considering everything, including the age and mileage of the car I think Mr C needs to expect there to be some faults starting to develop in the car when he first acquired it. I will separately address the oil consumption issue below.

Regarding the missing media for the satnav, Mr C has not given our service any evidence that would show that the media for the satnav was to be included in the sale, and I know that he says that it is a standard spec for the type of car he bought, so this should have been included. However, just because an item is a standard spec on a brand-new car that doesn't necessarily mean that a second-hand car would still have this item. I haven't been presented with anything persuasive to make me think it's more likely than not that satnav was a feature that was included as part of this sale. And on that basis, I don't think it would be reasonable for me to conclude that the media for the satnav should have been included.

Regarding the oil consumption, the report suggested that a further check needs to be undertaken under workshop-controlled conditions.

Mr C says that he asked for the car to be booked into the manufacturer's dealership in Kent so that he could drop it off for the oil consumption test, but he says that when he talked to that manufacturer's dealership, they told him they have no record that they should be expecting his car. So, he says, that he didn't arrange to bring in the car as he didn't want to be stuck with the bill.

The broker provided our service with a summary of their notes and copies of some of the correspondence they had with Mr C. Based on these, it seems Mr C told the broker that he has spoken directly with one of the manufacturer's dealerships about the oil issues, and he was told that the issue is possibly a manufacturing fault relating to the piston rings. So, the broker says they themselves decided to contact one of the manufacturer's dealerships in Oxford, who also confirmed that the oil issue is more than likely a manufacture defect on that specific engine. So, from summary of the notes and the correspondence, it seems that the broker on a few occasions told Mr C to book in with a manufacturer's dealerships to have the fault with the oil checked. Also, on a few occasions, the broker told Mr C that if he books the car in, they would also cover the £120 diagnostic fee if it later turns out not to be a manufacturing defect. The broker communicated to Mr C that, if it turns out not to be a manufacturing defect, the supplying dealership will rectify the fault.

I can also see from one of the emails to Mr C that the broker wrote: 'I have since called the East Kent branch as per your request who confirmed to me they will be happy to book the vehicle in for an Oil consumption test / investigation (Funded by us) to establish whether this is a manufacturing fault or not. They advised they will need the vehicle for the full day of your choice, however they will have a courtesy car available for you upon request. I was advised to pass you their direct booking number:' and the email provides a booking number that Mr C

can call when it is convenient for him. So overall, I'm satisfied that the broker did try to get to the bottom of the fault with the oil issue by providing reasonable options to Mr C, so they have taken fair steps to try and put things right. And Mr C doesn't have the right to reject the car until he has exercised his right to repair. So, it wasn't unfair for Moneybarn to say he couldn't reject the car until Moneybarn had been given an opportunity to repair it first.

In October 2019, Mr C told our service that there have been further issues with the car. He says he had a local mobile mechanic come out and run a few basic checks on the car. Mr C says the checks showed that there was no compression and the cam chain has snapped, so he says he should be well in his rights to have this fixed or the finance agreement cancelled. We asked Mr C if he wants to provide our service with an inspection report that would counter the independent report completed in April 2019, but he has not provided us with one.

Considering everything, including the age and mileage of the car, I think Mr C needs to expect there to be some faults starting to develop in the car when he first acquired it. But even if the oil faults were such significant issues that a reasonable person wouldn't expect to be wrong with the car shortly after it was acquired, Mr C still wouldn't have the right to reject the car until he has exercised his right to repair. Taking all the circumstances into account, including the fact that Mr C didn't give Moneybarn the chance to have an attempt at repairing the car, I don't think it would be fair or reasonable to say that he had the right to reject the car.

While Mr C has my sympathy, I'm very sorry to disappoint him but considering all the circumstances and evidence available I can't uphold his complaint.

my final decision

For the reasons set out above my final decision is that I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 June 2021.

Mike Kozbial
ombudsman