

## **complaint**

Mr A is unhappy that a car supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited was of an unsatisfactory quality.

## **background**

In April 2018, Mr A was supplied with a used car through a conditional sale agreement with Moneybarn. The agreement was for £13,000 over 60 months, with monthly repayments of £395.79. At the time, the car was just over four years old and had done 41,863 miles.

In November 2018, Mr A complained to Moneybarn that the car was faulty. He said there was a fault with the airbag, and a problem when reversing the car. Moneybarn arranged for an independent engineer to inspect the car. The independent engineer said he couldn't replicate the reversing problem. He also said there was a fault with the airbag, but thought this wouldn't have been present when the car was supplied to Mr A. So Moneybarn didn't uphold the complaint and Mr A brought it to us for investigation.

Our investigator said, because the faults were first reported more than six months after Mr A was supplied with the car, he needed to prove the faults were present or developing when the car was supplied. Moneybarn had arranged for the car to be inspected. But the engineer didn't say the faults were there when the car was supplied, and Mr A hadn't provided anything to show they were. So the investigator didn't uphold the complaint.

Mr A didn't agree with the investigator. He said that Moneybarn didn't carry out a formal investigation, and he didn't think the independent engineer did a proper inspection. The investigator explained why she didn't think Mr A's comments changed her views and said she could reconsider this if Mr A provided evidence of the faults being present earlier. Mr A hasn't provided any evidence and has asked for an ombudsman to make a final decision.

## **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 this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr A was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The relevant law – the Consumer Rights Act 2015 (CRA) - says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale; and the vehicle's history.

The CRA also says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. But, if the fault is identified after the first six months, then it's for Mr A to prove the fault was present when the car was supplied. So, if I

thought the car was faulty when Mr A took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

When Mr A took possession of the car on 21 April 2018, it was just over four years old and had done 41,863 miles. I'd expect to see wear and tear in a vehicle of that age and mileage. And I think any reasonable person would expect to have to repair or replace some parts of the car over time.

Mr A says the faults started about six months later – the dashboard was showing 'air bag faulty' and 'reverse not possible'. He's also said the reversing fault was intermittent and didn't happen all of the time. He reported the faults to Moneybarn on 6 November 2018. Moneybarn arranged for an independent engineer to inspect the car. This inspection took place on 27 December 2018.

I've seen a copy of the independent engineer's report. At the time the car had done 45,554 miles – 3,691 miles more than when it was supplied to Mr A. After a physical and diagnostic inspection of the car, and after a "short road test", the engineer concluded "*we were unable to fault the vehicles transmission at the time of inspection. We can confirm there is an airbag malfunction light illuminated on the dash display, requiring further attention although in our opinion on the balance of probability the conditions have had sufficient time and mileage to progress and develop since the point of finance inception and therefore would not have been present at that time.*"

I'm aware Mr A wasn't happy with the inspection and expected it to be more thorough. But I'm satisfied that, with a physical inspection, a diagnostic inspection, and a road test; the engineer took appropriate steps to identify the faults with the car. And I can't say the inspection wasn't appropriate just because it didn't identify a fault Mr A says was present.

The report also made it clear that the engineer's duty is that of an expert to help the court. So, regardless of who instructed the engineer, and who paid for the inspection, the engineer is independent of either Moneybarn or Mr A. Because of this, it's reasonable for Moneybarn to rely on the contents of this report, regardless of the outcome.

Mr A reported the fault to Moneybarn more than six months after taking possession of the car. So it's his responsibility to show that any faults were present when the car was supplied. He's said "*I took it upon my self to go and get this issue looked at I have been advised it is a transmission fault and the cost I will pay for the car to fix I may aswell get a new one.*" But I haven't seen a copy of this report, nor any other report that says that either or both of the air bag or transmission (reversing) faults were present or developing in April 2018.

Because of this, considering all the relevant circumstances, I'm satisfied Mr A's car was of a satisfactory quality when supplied, So I don't think Moneybarn are responsible for the costs of repairing Mr A's car; nor do I think they should take the car back and unwind the finance agreement.

**my final decision**

For the reasons explained above I don't uphold Mr A's complaint against Moneybarn No. 1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 January 2021.

Andrew Burford  
**ombudsman**