

## **complaint**

Mr M complains about a car he acquired through a conditional sale agreement with Moneybarn No. 1 Limited. He says he was misled into buying the car as he was told it had not been in an accident, but he then realised the car had in fact been involved in a previous accident.

He is unhappy about the previous repairs as they have now caused problems with the car and he has had to pay for those substantial repairs. He would like to be reimbursed for the costs he has incurred.

## **background**

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 5 February 2014; a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I felt Mr M's complaint should be upheld and what redress I felt would be appropriate. In summary, I was minded to conclude that the car had been in an accident at some point before it was supplied to Mr M and he was not told about the accident or repairs when buying the car. I thought that the prior repairs were not completed to a reasonable standard and the car was not of satisfactory quality when supplied to Mr M.

I explained that Mr M had arranged for the car to be repaired and I felt that he should be reimbursed for, most of, the repair costs.

Both parties responded to my provisional decision. Mr M stated, in summary, he is pleased that it has been recognised that the car supplied to him was not of satisfactory quality. He said the £1,800 already paid was for dismantling the car engine and gear box and for repairing the gear box. The £1,080 estimate is the cost of reassembling the car now the gear box has been repaired. He has no issue with not being reimbursed for the serviceable items he had previously referred to and has provided a revised invoice that does not include the cost, or fitting, of the serviceable items. The revised invoice is for £810 and this is the labour cost of reassembling the car.

Mr M said he is concerned that he has had to pay for the car for a long period while he has been unable to use the car. He feels he should expect to be able to use the car if he is having to make all of the agreed repayments due under the finance. He also feels the car will now be less valuable because of the amount of repairs that have been completed.

Moneybarn responded to say, again in summary, that it was disappointed by my provisional decision and it is surprised that the decision is different to the opinion or view expressed by the original adjudicator.

It is unaware of any requirement of the supplier to inform Mr M of any damage repairs that have been completed before he bought the car. It also feels it is unfair to expect the supplier to notify Mr M about something (i.e. the prior damage repairs) it was not actually aware of. It does not believe there is any evidence to demonstrate the car was damaged before it was supplied to Mr M and in the circumstances asks whether this case would be better suited to court.

It questions the repairs that Mr M is seeking reimbursement for and feels it is unreasonable for it to be held liable for repair costs when considering the mileage that Mr M has travelled. It thinks the invoices Mr M has provided are merely estimates and are not actually evidence of the work done on the vehicle. It believes it is inappropriate to expect it to pay interest for the time the complaint has been with our service and the 8% rate is 'particularly penal' when considering the Bank of England base rate is 0.5%.

I then considered the additional submissions from Mr M and Moneybarn and asked the adjudicator to contact the parties on my behalf. The adjudicator explained that I would respond in detail to the points that had been raised in response to my provisional decision. However, having considered Mr M's further response to the costs he incurred I was minded to instruct Moneybarn to make an additional payment to what I had already set out in my provisional decision. Mr M has provided a revised invoice for the remaining repair costs but has removed the serviceable items I had referred to. The revised invoice is £810 (rather than £1,080) and I was minded to find that Moneybarn should also pay this amount to Mr M, in addition to the award already set out in my provisional decision.

Moneybarn swiftly responded to this additional proposal but reiterated some of its previous comments and that it still does not believe it should be required to reimburse Mr M for the costs he says he has incurred.

### **my findings**

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint, including the parties' responses to my provisional decision. Having done so, I have come to the same overall conclusions as my provisional decision, for what are broadly the same reasons.

As my provisional decision sets out the reasons why I consider this complaint should be upheld I see little benefit in restating all of those reasons again here. I will simply again say that I have come to the same conclusions as my provisional decision. I will however refer to the additional points raised by the parties when responding to my provisional decision.

When considering complaints I am required to consider all of the information afresh and come to a conclusion that I believe is appropriate based upon the information provided. I am not bound by the conclusions reached by the adjudicator and our rules allow me to reach a conclusion that is different to that reached by the adjudicator.

Where some information is incomplete or contradictory our rules also allow me to reach a finding that is based on the balance of probabilities. I am satisfied that I have done this in this complaint. There is conflicting evidence from Mr M and the supplier about exactly what was discussed at the time of the sale and it is after weighing up these submissions, along with a number of others that have been presented in this complaint, that I found Mr M's submissions plausible.

One of the things the parties do agree on is that Mr M was not told of any accident damage when he bought the car and I was therefore satisfied that Mr M was not informed of any damage caused by a prior accident. The guidance I previously referred to is the Office of Fair Trading's 'Guidance for second hand car dealers'. Page 17 of the guidance refers to 'Providing consumers with important information prior to the sale' and amongst other things it states under 5.26 that the supplier should inform the purchaser of any accident damage it should have been aware of. Having considered the nature of the fault I felt the supplier

should, and would, have been aware of the previous damage repairs. It should therefore have made Mr M aware of this when he was agreeing to buy the car.

I accept there is no conclusive evidence to demonstrate the accident damage was present on the car when Mr M bought it. There is however no conclusive evidence to demonstrate the damage was caused by Mr M after he took possession of the car. The independent reports noted that the repairs had been there for some time and this was evident from the rust and corrosion on the electrical connectors. This is something that builds up over a period of time and it was after considering this that I felt it more likely than not that the damage was from before Mr M bought it.

Mr M also took the car to a franchised dealer when he first had problems with it and it is clear the repairs were substandard and unlikely to have been completed by a [manufacturer] authorised repairer. Had Mr M caused the damage, taken it to a non-franchised repairer and then suffered further problems I think it unlikely that he would then visit a franchised dealer to repair the substandard repairs he had already paid for. This is a further reason why I still feel it unlikely that Mr M was responsible for the damage as his actions indicate to me he did not cause the damage.

Mr M did have the car for some time before the problems with the car became apparent but the way the car had been previously repaired meant that the problems would take some time to materialise. Had the repairs been correctly carried out to the required standard the wires and connectors would not begin to corrode and eventually fail. This corrosion does not occur immediately and the failure of the components did not therefore happen until Mr M had use of the car.

Mr M may have settled the conditional sale agreement in full but Moneybarn is responsible for the quality of the goods at the time they were acquired by Mr M. The final settlement of the conditional sale agreement does not however mean that Moneybarn has no liability for the conditional sale agreement.

The information provided in this complaint sets out the nature of the faults and it is after very careful consideration that I am satisfied that the initial problems with the wiring led to the failure of the gear box. Moneybarn argues that the gear box is a wear and tear item but it is clear in this complaint that the previous repairs are connected to the gear box and I do not think the failure of the gear box is unconnected and merely because of wear and tear. Moneybarn also argues that there is no independent evidence that the gear box had to be replaced but I think it unlikely that the garage simply decided to carry out repairs that were unnecessary.

Mr M provided copies of invoices and estimates from the franchised repairer and although one of these is headed 'estimate', like the two invoices it also notes that it has been paid. Mr M has said that these were paid and I am satisfied that these are costs that he has actually incurred. The franchised dealer accepted at the time that the repairs may not fully resolve the issues and they were completed on that understanding with Mr M. The alternative, at that time, would have been a considerably more costly repair and Mr M was clearly trying to avoid this and mitigate any costs.

The more recent repair work has been undertaken by a non-franchised garage but I do not think the invoices or receipts should be discounted simply because they are hand written. It is not uncommon for a garage to produce hand written receipts or invoices and I am satisfied that these are costs that Mr M has and will incur.

The £1,800 relates to the costs associated with dismantling the car to remove the engine and gear box, and the resulting repair of the gear box. The £1,080 (now revised to £810 after the serviceable items' labour costs were removed) is for reassembling the car after the repairs have been completed to the gear box. The repairing garage has previously said that the air conditioning hose was damaged as a result of the previous accident and it is for this reason that I think Mr M should be reimbursed for its cost. The serviceable items previously referred to are not things that I think that Moneybarn should be liable for and I have excluded these items from my award.

The hand written receipt states that it *received the sum of...* from Mr M and I am satisfied that this is sufficient evidence that Mr M has paid this amount. I am also satisfied with Mr M's explanation about the costs incurred and what they actually relate to. I am still of the view that Moneybarn is liable for the costs that Mr M has incurred and it should reimburse him for these amounts.

Moneybarn is unhappy about the rate of interest I have said should be added to the money it should pay Mr M and for the period it has to apply interest to. Mr M did refer his complaint to Moneybarn before he referred it to our service and had it upheld his complaint at that time, as I believe it should, settlement could have been arranged much sooner. The interest rate of 8% simple per year is the rate awarded by the courts and is appropriate in the circumstances here.

When considering what award I felt was appropriate I did consider the amount of time that Mr M has been without use of the car. Mr M has now settled the conditional sale agreement and he now owns the car. I appreciate it has been an inconvenient time not having use of the car but once the repairs are complete he will own a car that is of satisfactory quality – which is the position he would have been in had the car not had the substandard repairs. My award for distress and inconvenience has taken into account the problems Mr M has had and I do not think an additional award should be made.

Mr M is concerned about the resale value of the car once the repairs have been completed but I do not think the repairs will have a detrimental effect on the resale value of the car. It could be argued that the future sale value could actually be increased by the repairs.

For the reasons explained above and in my provisional decision I still believe that the car was not of satisfactory quality at the time it was supplied to Mr M and it is more likely than not that the car had some prior accident damage repairs. I am satisfied that Moneybarn is responsible for the repair costs that Mr M has incurred and I do not share Moneybarn's reservations about the authenticity of the receipts and invoices.

I appreciate that Moneybarn, and possibly Mr M, may not be entirely happy with the conclusions that I have reached but having given great consideration to all of the submissions in this complaint I believe the outcome is fair and reasonable in all the circumstances here.

### **my final decision**

My final decision is that I uphold this complaint and I direct Moneybarn No. 1 Limited to:

- refund to Mr M the £1,771 he paid for repairs along with interest at 8% simple per year from the date of payment until the date of settlement;

- refund the £1,800 Mr M paid to the second garage for the repairs along with interest at 8% simple per year from the date of payment until the date of settlement;
- pay Mr M the £810 he has to pay to the second garage for repairs;
- pay Mr M the £87 costs of recharging the air conditioning unit; and
- pay Mr M a further £300 for the distress and inconvenience he has suffered.

If Moneybarn considers tax should be deducted from the interest element of my award it should provide Mr M with a tax deduction certificate so he can reclaim the tax if he is eligible to do so.

Moneybarn should settle the complaint within 28 days of Mr M accepting my final decision. If settlement is not made within this time interest, at the same rate above, should be added to the £300 payment.

Mark Hollands  
**ombudsman**

## ***Copy - PROVISIONAL DECISION***

### **complaint**

Mr M complains about a car he acquired through a conditional sale agreement with Moneybarn No. 1 Limited. He says he was misled into buying the car as he was told it had not been in an accident, but he then realised the car had in fact been involved in a previous accident. He is unhappy about the previous repairs as they have now caused problems with the car and he has had to pay for those substantial repairs. He would like to be reimbursed for the costs he has incurred.

### **background**

In September 2009 Mr M bought a used car through a conditional sale agreement with Moneybarn. The car was at the time approximately three years old and had travelled around 5,000 miles. Before buying the car Mr M says he asked if the car had been involved in an accident, as the car was very competitively priced, and he says he was told it had not been in an accident. He says he was told the price of the car was lower than normal as it had been prepared for export to Japan.

Mr M took possession of the car and had no issues with it until July 2010 when he experienced a coolant leak. Mr M paid to have this repaired. In November 2010 Mr M experienced further problems with the car, and in particular with the gear box. It was while the car was being inspected that Mr M was then told by the technician that the car had previously been involved in an accident. The technician had referred to the previous repairs that had been completed and felt the repairs were inadequate and had caused the current problems that Mr M was experiencing.

Mr M contacted Moneybarn at that time as he was unhappy and Moneybarn said it offered to try and find out more about the car's history by contacting the previous owner. It was however unable to contact the previous owner and it explained to Mr M that it did not feel that it should now be liable for any repairs as there was no proof the damage occurred prior to purchase.

Mr M paid for the repairs at that time but the problems reoccurred around January 2012. He again contacted Moneybarn about the problems he was experiencing and he also referred his complaint to our service. Mr M has now paid for the further repairs to the car and the additional costs he says were required as the car had been off the road for so long.

One of our adjudicator's reviewed Mr M's complaint but felt there was insufficient evidence to uphold the complaint. Mr M asked for the complaint to be reviewed by an ombudsman and the complaint has therefore been referred to me for consideration.

### **my provisional findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having considered all of the evidence that has been submitted by the parties so far in this complaint, I am minded to uphold the complaint.

When looking at the car Mr M says he had specific discussions about whether the car had been involved in a previous accident. The advertised price of the car was lower than what Mr M had expected for a model of that age, mileage and specification and this is what prompted the discussion. Mr M says he was told the car had not been in an accident and the lower price of the car was because the car had been prepared for export to Japan. He says he was not concerned by the import/export issue as he had previously had an imported car and had no issue with it.

The supplying dealership has told us that Mr M was aware that the car had actually been imported from Japan and it accepts that it was for this reason that the car was so competitively priced. It says however that when it bought the car through an auction no damage had been declared and it could

not see any previous accident damage when it inspected the car. It says that had there been any prior damage it could have returned the car to the auctioneers.

There are clearly differing recollections of what was discussed at the time Mr M took possession of the car. I cannot be certain exactly what was discussed between the supplying dealer and Mr M before he took possession of the car. Mr M says he specifically asked about whether the car had been involved in an accident as he was concerned about the lower price of the car. The dealership says it was unaware of any damage at the time and it had not been told of any damage when it bought the car from the auctioneers. The dealership was required to notify Mr M of any previous significant damage or repairs that had been completed and as it says it was unaware of any repairs, it seems clear that Mr M was not told of the previous repairs.

It has not been established where the car actually had an accident and this could have been while the car was in Japan. If this was the case it would explain why there is no record of the accident on any HPI searches that have been carried out on the car. It could however also be that the damage did not cause the car to be classed as a write off and this is why no HPI marker exists.

It is possible that the dealership was correct and that there was no damage to the car at the time it was supplied to Mr M. Mr M could have had an accident himself, repaired the car poorly, and then tried to reclaim any costs when the repairs did not last. Having considered the circumstances of this complaint, I think this is however unlikely.

When the car was inspected by the franchised dealer, something which I will refer to in more detail below, it was not that the repairs had, *'been there for some time'*. It refers to connections that had snapped and corroded and although this was not until more than a year after Mr M took possession of the car, I think it suggests the repairs had been done before Mr M acquired the car.

Although there are contrasting recollections from Mr M and the supplying dealer, Mr M's submissions throughout this complaint have been consistent and I find his arguments plausible. On the balance of probabilities, I am minded to find it more likely than not that the car was involved in a previous accident and had been repaired before it was supplied to Mr M. I also find that Mr M was not made aware of this previous accident or the resulting repairs that had been completed.

Regardless of what Mr M was, or was not told, by the supplier of the car Moneybarn is responsible for the quality of the car at the time it was supplied to Mr M. Conditional sale agreements are covered by the Sale of Goods Act 1979, which says that, in a conditional sale agreement, there are implied conditions including a condition that the goods will be of satisfactory quality (s.14).

The concept of 'satisfactory quality' is expanded by the Sale and Supply of Goods Act 1994 and includes; fitness for purpose; appearance and finish; freedom from minor defects; safety; and durability.

In this instance the issue is whether or not the car was of satisfactory quality when considering the repairs that had been previously completed. It is not known exactly when the repairs were completed to the car. They could have been immediately after the car was bought by the first owner, or at some other time during the three years before Mr M acquired the car. I am not convinced however that this is particularly relevant and it is the quality of those repairs that is being questioned here.

When the car was inspected by the franchised dealer it looked at the repairs and noted:

*'damaged plugs had been inadequately sealed...wires had been inadequately soldered together...various wires had corroded or snapped...'*

The franchised dealer stated that they were *'non-standard repairs'* and in its opinion the repairs were of *'poor quality'*. There were also other components or fixings that were bent and should have been repaired or replaced at the time of the previous repairs.

I am satisfied that the comments from the franchised dealer are impartial and I see no reason to doubt that they are an accurate and qualified opinion of the quality of the car and the repairs that had been undertaken. I am also satisfied, based mainly on the submissions of the franchised dealer, that the repairs were inadequate and below the standard of reasonableness.

The franchised dealer has also explained why the repairs are not deemed to be standard repairs. This is because when the various wires have been connected they have not been properly or adequately sealed. This failure to seal the connections allows moisture to penetrate and this in turn causes the metal in the connections to start to corrode. The corrosion then causes connections to snap or have poor connectivity and it is this that has caused the problems Mr M has experienced. Had the connections been sealed correctly when the repairs were completed, or better still the whole wiring loom replaced, then it is likely that Mr M would not have experienced the problems.

Mr M did have the car for more than a year before the issues became apparent but as the problems were caused by corrosion, which does not occur instantly, this explains why the problems took so long to materialise. The fact that Mr M had the car for a year does not necessarily demonstrate the car was of satisfactory quality, but it merely shows it took this time for the corrosion to take effect. Having considered the inferior way the repairs were completed I think it was only a matter of time before the connections became corroded and caused problems with the connections or related parts. The poor repairs meant that car was always going to have a problem with the repaired wiring, or associated parts, even though an exact timescale could not be determined.

I think that the repairs were likely to have been completed before the car was supplied to Mr M and that those repairs were substandard and were always likely to cause problems at some point in the future. Because of this, I am minded to find that the car was not of satisfactory quality at the time it was supplied to Mr M.

I have therefore gone on to consider what, if any, redress is appropriate in this instance.

Mr M has now had the car repaired and he has said that he is happy to keep the car going forward. In the circumstances here I do not think that instructing Moneybarn to allow Mr M to reject the car is appropriate. However, Mr M has incurred significant costs in repairing the faults that have materialised as a result of the unsatisfactory repairs that were completed to the car before he acquired it.

Mr M took the car to the franchised dealer in November 2010 and the invoices from that time show that Mr M paid £1,771.84 to have the repairs completed. These included correcting the inadequate previous repairs and the connected consequences that occurred as a result of the previous poor repairs. Mr M, and the franchised dealer, accepts that these repairs would not completely resolve all of the issues going forward but they were sufficient to repair the problem at that time. Although Mr M would have known that the repairs may not have completely resolved the issues I think he had little choice but to proceed with the repairs to get the car running again. He had no real positive response from Moneybarn at that time.

I am satisfied that the repairs required in November/December 2010 were a consequence of the prior poor accident repairs and I think it is unreasonable for Mr M to be expected to suffer those costs. As the car was not of satisfactory quality when it was supplied to Mr M, I think that Moneybarn should reimburse him for the £1,771 he paid. Mr M should also receive interest, at 8% simple per year, on this amount from 1 January 2011 to the date of settlement. Copies of the invoices from the franchised dealer will be sent alongside this provisional decision to ensure that all parties have had sufficient opportunity to consider and comment on them before I issue my final decision.

Mr M then experienced further problems with the car in January 2012 and these were again related to the previous electrical connection problems. The previous repairs a year earlier were known to have been unlikely to fully rectify the problems and I think it would be unreasonable to suggest that these further problems were a consequence of any poor work undertaken by the franchised dealer in



December 2011. I am satisfied that they are likely to be as a result of the original poor accident damage repairs.

The car required substantial repairs to the car's gear box and because of the greater repair costs quoted by the franchised dealer Mr M took the car to an independent specialist instead. This greatly reduced the cost of the required repairs but these were still considerable. As the car was off the road for a considerable time waiting for the repairs further work was then required to ensure the car was roadworthy. Mr M has provided a hand written note from the garage referring to various parts that were replaced and these include, amongst other things, brake pads and disks, filters and a change of oil.

I understand that the brakes had seized because of the time the car had been waiting for repairs but I do not see that this would have required new brake pads and discs to be fitted to the car. It is likely that the brake mechanism, such as the brake callipers, would have needed some work if they were seized and I am not, at this point convinced that Moneybarn should be responsible for those items being replaced. Filters were also replaced, along with the oil, and this again is a servicing item that is not specifically linked, in my view, to the issue of previous poor repairs. The cost of recharging the air conditioning was linked to the previous repairs as it has been noted that one of the hoses was damaged from the accident. I think the £87 cost related to this should be reimbursed to Mr M. At this point, but subject to any further submissions on the matter, I am not persuaded that Mr M should be reimbursed for the other costs associated with replacing the brake pads, discs and other items listed on the hand written invoice. A copy of this invoice is attached.

Mr M says that he paid the garage £1,800 for the main repairs to the gear box (a copy of this invoice is attached) and a further £1,474 for labour costs and other parts needed, but unrelated to the original problems. I think that Moneybarn should reimburse the £1,800 repairs costs that Mr M paid to fix the gear box and wiring issues. Interest should also be added to this amount. Had the car been of satisfactory quality when supplied to Mr M he would not have incurred this cost.

The note from the garage indicates a further £1,080 is due in labour costs and £394 is the cost of the other parts. I have referred to the £394 costs above and that I am minded to conclude that only £87 should be reimbursed from this. It is not entirely clear however whether or not the £1,800 Mr M says he paid actually includes the £1,080 labour costs and I would ask Mr M to clarify this when responding to my provisional decision.

Although I am minded to find that Moneybarn should reimburse Mr M for the further cost of essential repairs as a result of the original problem, I must be completely satisfied that these are costs Mr M has incurred and has paid. I am satisfied that Mr M has incurred further costs repairing the damaged gear box but it is simply the exact amount of those repairs that I am still uncertain about. It is quite possible that any final award will include an amount in addition to those mentioned above but that amount is not yet clear. To be completely clear about what costs Mr M has incurred and paid, I would ask him to provide clear documentary evidence of the amounts he has paid the garage for the repairs and what those costs relate to. I should make it clear that without this clear evidence I will be unable to make any further award or instruct Moneybarn to reimburse Mr M for those costs. Should Mr M be unclear about what he can provide to demonstrate what he has paid for the repairs he should contact the adjudicator who will be able to advise him.

I also think that Mr M has suffered some distress and inconvenience as a result of the problems he has experienced with the car and I think Moneybarn should make an additional payment in respect of this. Having considered the circumstances here I am minded to instruct Moneybarn to make an additional payment of £300.

### **my provisional decision**

Subject to any further submissions I received from the parties in this complaint, my provisional decision is that I uphold this complaint as I do not think the car was of satisfactory quality when it was supplied to Mr M. I am minded to instruct Moneybarn No. 1 Limited to:

- refund to Mr M the £1,771 he paid for repairs and interest should be added at 8% simple per year from 1 January 2011 until the date of settlement;
- refund the £1,800 Mr M paid to the second garage for the repairs;
- refund the £87 costs of recharging the air conditioning unit, and,
- pay Mr M a further £300 for the distress and inconvenience he has suffered.

I may be inclined to make a further award but this is subject to receiving clear evidence from Mr M setting out exactly what he has paid the repairing garage and what this relates to. Details of any further award will be set out to the parties here before I issue my final decision.

Mark Hollands  
**ombudsman**