

## **complaint**

Mrs S complains about a car supplied to her under a conditional sale agreement with Moneybarn No. 1 Limited ('Moneybarn').

## **background**

Mrs S was supplied with a used car in November 2017 having entered into a conditional sale agreement to finance the cash price of £4,000.

In August 2018 Mrs S says the gearbox failed and the car had to be taken to a nearby garage. The garage replaced the gearbox at a cost of £2,550.36.

Mrs S complained to Moneybarn and asked it to contribute towards the cost of the gearbox. Moneybarn said it was only liable for the cost of the repair if the fault with the gearbox was present at the point of supply and it didn't think there was enough evidence to show this.

Our investigator thought Mrs S's complaint should be upheld. He thought there was enough evidence the gearbox was faulty at the point of supply as the garage which replaced it had confirmed there was a previous fault which hadn't been properly repaired. He asked Moneybarn to pay Mrs S the cost of the replacement gearbox.

Moneybarn didn't respond to the investigator's assessment so the complaint was passed to an ombudsman for 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.

Moneybarn supplied Mrs S with the car under the conditional sale agreement it had with her. There was a term implied in the agreement that the car would be of satisfactory quality. What is satisfactory is determined by what a reasonable person would consider satisfactory given the price, description and other relevant circumstances. In this case I think this would include things such as the age and mileage of the car.

Mrs S paid £4,000 for the car and while it was only four years old it had driven a considerable number of miles in that time. So, a reasonable person might expect to have to repair or replace some of the parts of the car over time.

Moneybarn says that this – combined with the fact Mrs S travelled a fair distance in the car in the nine months before it broke down – shows it was unlikely the fault with the gearbox was present at the time it supplied the car to Mrs S. It said the failure of the gearbox was most likely down to wear and tear which wouldn't be unexpected given the age and mileage of the car.

The garage that replaced the gearbox commented on what it saw when it took the gearbox out of the car. It said it found *'two studs broken and one wrong size bolt fitted and loose to the mounting. The gearbox had been removed before and studs drilled out but out of alignment. All bell housing bolts were loose and two had to be re-tapped and new bolts fitted*

The report went on to conclude that *'a prior fault on this gearbox had occurred and not been properly repaired'*.

I recognise that a car with the mileage of this one may have had repair work carried out during its lifetime and this isn't unusual. However, in this case the garage which replaced the gearbox has said that the reason the gearbox failed was because of a previous fault which hadn't been repaired properly.

I've not seen anything in this case to suggest the repair work mentioned by the garage was carried out while Mrs S had the car. She has provided plausible testimony it wasn't and Moneybarn has not provided anything to say it was.

Also, I don't find it implausible given the loose fittings in the gearbox that it could have taken as long as it did after supply for the gearbox to fail. And again I've not been provided with any persuasive evidence to suggest otherwise.

So overall, I see no reason to depart from the conclusion reached by the investigator that there was a fault with the gearbox which was most likely present at the time the car was supplied. And given the consequences of the fault not being properly repaired i.e. the complete failure of the gearbox nine months after supply; this meant the car was not of satisfactory quality when it was supplied to Mrs S.

Mrs S has of course already paid to have the gearbox replaced by a third party garage. Given I've concluded the fault meant the car was not of satisfactory quality; one of the things it might have been fair to expect Moneybarn to do was repair the fault. And it seems likely it would have had to carry out the same replacement as the third party garage given what the garage's report concludes. So, in the circumstances I think the fair thing to do here is for Moneybarn to pay Mrs S the cost of the replacement gearbox plus interest.

### **my final decision**

For the reasons I've explained, my final decision is that I uphold Mrs S's complaint. To put things right Moneybarn No. 1 Limited must:

- Pay Mrs S £2,550.36 for the replacement gearbox plus 8% simple interest per year from the date it was paid until the date of settlement\*.

\*If Moneybarn No. 1 Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs S how much it's taken off. It should also give Mrs S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 17 February 2020

Michael Ball  
**Ombudsman**