

## **complaint**

Mr L complains that the car he acquired using finance from Moneybarn No. 1 Limited (Moneybarn) was of unsatisfactory quality at the point of sale.

## **background**

I issued my provisional decision in early January 2019 (copied below). I explained I had carefully considered all of the available evidence and arguments from the outset, in order to decide what was fair and reasonable in the circumstances. I had also taken into account relevant regulatory rules as well as the law and good industry practice.

Having done so, I explained I intended to uphold the complaint and to make a number of instructions to Moneybarn to put things right.

Mr L has accepted my provisional decision. Neither party has provided any further evidence to consider. The deadline for further submissions has now passed.

## **my findings**

Having reconsidered the complaint again in its entirety, I have reached the same decision as before, and for the same reasons. It follows that I uphold this complaint, and instruct Moneybarn to put things right as set out below.

## **my final decision**

I uphold this complaint and instruct Moneybarn No. 1 Limited to put things right as follows:

- repair the gearbox/mechatronics unit at no cost to Mr L.
- ensure that Mr L is given a courtesy car to use (at no cost to him) until the repairs are completed.
- refund Mr L any monthly payments made since the car became unusable in May 2018 until the date that he's provided with a courtesy car, plus simple interest at 8% from the date of each payment until the date of settlement.
- refund Mr L the £35 charge from the car servicing and repair company and the £66 charge for the diagnosis report, plus simple interest at 8% from the date Mr L made each payment until the date of settlement.
- pay Mr L £200 for the trouble and upset he has experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 4 March 2019.

Clair Bantin  
**ombudsman**

## **copy of provisional decision**

### **complaint**

Mr L complains that the car he acquired using finance from Moneybarn No. 1 Limited was of unsatisfactory quality at the point of sale.

### **background**

Mr L acquired a car for £6,850 using a conditional sale agreement on 14 July 2017. The car was seven years old and had done 45,612 miles at the point of sale.

Mr L says that within a couple of weeks he began to experience problems with the car. He initially contacted the seller, who directed him to Moneybarn. Mr L contacted Moneybarn on 3 August 2017, and explained he had experienced problems with the engine management light coming on and it felt like he was *“driving through a pothole when changing gear”*. Mr L has told us that Moneybarn asked him to provide evidence of this.

Mr L visited a car servicing and repair company, who did an inspection and reset the code to turn off the light. I understand Mr L was charged £35 for this. However, shortly afterwards the engine management light came on again, and the problems with the gearbox persisted.

Mr L took the car to his nearest dealer, who quoted him approximately £1,500 to repair the gearbox. I understand this quote was based on a £130 per hour labour cost charge, and the parts being covered under warranty.

Mr L spoke to his warranty company, and established that his cover for labour costs was limited to a maximum £30 per hour. He was also told he would be provided with a list of approved garages, but that this never arrived. Mr L says he contacted numerous garages, but most were unwilling to take on the job. Of the two garages he found who quoted for the work, Mr L has told us that the labour costs were significantly outside the warranty's maximum claim limits. Mr L says he wasn't in a position to cover the cost himself, so this work was not carried out.

It appears from call notes supplied by Moneybarn, that further conversations took place with Mr L during September and early October 2017 in which Mr L said he would continue to pursue the matter under the warranty (which had an expiry date of January 2018). On 10 October 2017 Moneybarn issued a final response saying it had closed the complaint as it understood Mr L intended to pursue the matter under the warranty instead.

Mr L says he continued to have problems with the car after receiving the final response letter. In November 2017, having been unable to find a garage that could repair the car within the warranty claim limits, Mr L went back to Moneybarn and asked what to do next as the car still wasn't working properly.

Moneybarn asked Mr L to provide evidence of the faults, so Mr L provided a report setting out a fault with the mechatronic unit. I understand Mr L paid £66 for this diagnosis and report.

Following further email correspondence during January and February, Moneybarn issued another final response letter on 2 March 2018, in which it explained it wasn't upholding Mr L's complaint. Moneybarn acknowledged it had received confirmation from the garage regarding problems with the mechatronic unit, as identified in late 2017. But Moneybarn didn't accept this was evidence of a failing at the point of sale, and said it thought it was more likely that the car had suffered a sudden electrical failure, or had been subject to normal wear and tear.

Moneybarn also noted that it had been willing to help Mr L in August 2017 when he first raised his concerns. But, as he didn't provide further information at the time, and as Mr L had continued to drive

the car after this point (potentially making the fault worse), Moneybarn said it was no longer responsible. Mr L didn't agree, so he brought his complaint to us. I understand the car has not been driveable since May 2018.

Our investigator thought that the problems with the car were most likely present at the point of sale. He pointed out that Mr L first mentioned problems with the gearbox in August 2017, only shortly after the sale. He accepted that Mr L didn't provide Moneybarn with diagnostic evidence at this time, but said that the later information from the garage in December 2017 supported Mr L's initial concerns, as it identified problems with the mechatronic unit – a unit located inside the gearbox.

Our investigator also spoke to the garage that completed the report, who were unable to confirm a definitive link between their findings and the concerns Mr L raised shortly after the sale. However, they did confirm that the only fault they had identified was linked to the gearbox. Overall, our investigator thought it was likely that the problems with Mr L's car were linked to a defect that was present at the point of sale, rather than a sudden electrical failure or normal wear and tear.

Our investigator thought a fault of this significance meant the car wasn't of satisfactory quality, given the price, age and mileage at the point of sale. So the investigator said that Moneybarn should be responsible for funding the repairs.

Furthermore, although our investigator accepted that Mr L had used the car since August 2017, he didn't think any unrelated problems had been identified since that point. He pointed out that any further damage appeared to have been limited to the gearbox, which already required repair. As such, he argued that Moneybarn isn't in a worse position now in having to repair the car, despite Mr L's continuing to use the car in the interim period.

Our investigator therefore recommended that Moneybarn repair the gearbox/mechatronics unit at no cost to Mr L, and ensure that Mr L was given a courtesy car to use until the repairs were completed. Moneybarn didn't agree, and so the complaint was passed to me for a decision.

### **my provisional findings**

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

I'm intending to uphold this complaint, but I'm proposing slightly different redress from that set out by our investigator. I've explained my approach below.

There's no dispute that Mr L complained about problems with the gearbox shortly after getting the car in July 2017. And the December 2017 report from the garage indicated the only fault with the car was its mechatronic unit, which is located inside the gearbox.

Moneybarn has said it thinks the fault wasn't present at the point of sale, and that the car has either suffered a sudden electrical failure, or had been subject to normal wear and tear. Moneybarn also notes that Mr L has driven around 13,000 miles since he first got the car. It says this wouldn't have been possible if there was a fault present at the point of sale. I disagree. A fault doesn't necessarily mean a car can't be driven, although a persistent fault may lead to this outcome. And Mr L first reported a suspected gearbox fault shortly after the sale, before this mileage was completed.

Moneybarn hasn't provided any further evidence to support its view that the gearbox problems resulted from an electrical failure or wear and tear, and overall I'm not persuaded by this argument. I find it more likely that the fault with the mechatronic unit was present when the car was sold and persisted until the point it was diagnosed by the garage.

It seems to me that, despite the fact Mr L was able to continue to use the car for some time, the gearbox fault was significant. Even though the car was second hand, given the price he paid for the

car and its age and mileage at the point of sale, I don't think this represents satisfactory quality. So I think Moneybarn should take steps to repair the fault.

Moneybarn has said it would've been willing to assist Mr L in August 2017, had this route been pursued earlier, and I have no reason to doubt this. I have also considered whether Mr L has acted unreasonably or failed to mitigate his loss, thus putting Moneybarn in an unfair position in terms of the repair work now due. But I don't think he has and I'll explain why.

Mr L reported his concerns in the first few weeks and attempted to pursue the matter through the appropriate channels. He took steps to get the car repaired at an early stage, although this wasn't successful. When he later contacted Moneybarn he was told to provide evidence and so he took the car to a garage which confirmed the gearbox problems.

So it seems to me that Mr L has acted in good faith throughout this process. In any case, any additional damage that may have been done appears to have been limited to the gearbox, which was in need of repair from the outset. And I haven't seen any evidence that the gearbox will cost more to repair now than it would've done earlier.

Mr L has also incurred various temporary repair and diagnosis charges during the course of this complaint, which he would've avoided had the fault not been present. As such, I'm minded to ask Moneybarn to refund both the £35 Mr L was charged by the car servicing and repair company, and the £66 cost of the diagnosis report that Moneybarn asked him to provide.

Furthermore, I think Mr L has incurred trouble and upset as a result of all the difficulties he's experienced with his car and the stress and inconvenience of attempting to resolve the faults. So I'm intending to award £200 compensation for this.

In summary, I intend to instruct Moneybarn to put things right as follows:

- repair the gearbox/mechatronics unit at no cost to Mr L.
- ensure that Mr L is given a courtesy car to use (at no cost to him) until the repairs are completed.
- refund Mr L any monthly payments made since the car became unusable in May 2018 until the date that he's provided with a courtesy car, plus simple interest at 8% from the date of each payment until the date of settlement.
- refund Mr L the £35 charge from the car servicing and repair company and the £66 charge for the diagnosis report, plus simple interest at 8% from the date Mr L made each payment until the date of settlement.
- pay Mr L £200 for the trouble and upset he has experienced.

### **my provisional decision**

My provisional decision is that I intend to uphold this complaint and order Moneybarn No. 1 Limited to pay Mr L compensation in line with the instructions set out above.

If either party has anything further to add, they should do so by the date specified above. I will then reconsider the complaint before reaching a final decision.

Clair Bantin  
**ombudsman**