

## **complaint**

Mr M had a conditional sale agreement with Moneybarn No. 1 Limited – he doesn't think the car was of satisfactory quality when he got it. He wants it to unwind the agreement, refund all payments he's made and amend his credit file to reflect this. He also wants compensation for the impact this has had on him and his family.

## **background**

Mr M entered into a conditional sale agreement with Moneybarn in September 2015. He says he returned to the dealership the next month with concerns about the car's gearbox but was told it was fine.

Mr M says that in January 2016 it worsened and the car started to breakdown when he was driving. He says he went back to the dealership and was told the three month warranty had expired. So Mr M took it to a local garage which recommended reconditioning the gearbox.

Mr M then contacted Moneybarn about this and it arranged an independent engineer's inspection. It says the car was of the condition you'd expect given its age and mileage, but recommended a gearbox oil service to address the symptoms described by Mr M.

Moneybarn offered to pay £60 for the gearbox oil service as a goodwill gesture but Mr M didn't arrange this. The MOT had expired so he'd have needed to pay for recovery to a garage - he didn't think it would be worth the cost when he'd been told by his garage this wouldn't fix the problem.

Mr M made no payments after January 2016 and so from May that year Moneybarn began formal steps to recover these. It then terminated the agreement, recovered the car and sold it at auction in August 2016.

The investigator upheld the complaint. She thought the car wasn't of the quality you'd expect a fully serviced car to be at the time of sale. Moneybarn didn't agree so the matter was passed to me to decide.

I issued my provisional findings on 6 January 2017, which explained why I didn't think I'd uphold the complaint. Mr M's representative said Mr M hadn't received the £60 from Moneybarn and reiterated that there wasn't any cosmetic damage when the car was recovered. Moneybarn has confirmed it has nothing further to add.

## **my findings**

I've considered all the available evidence and arguments – including the comments from Mr M's representative on 1 February 2017 – to decide what's fair and reasonable in the circumstances of this complaint.

Was the car of satisfactory quality at the time of sale?

When considering if the car was of satisfactory quality when Mr M got it, we have to take this in the context of what it would be reasonable to expect given its make, age and mileage. The car's been checked by both Mr M's local garage and an independent engineer. I understand they undertook different checks and have recommended different levels of repair. The independent engineer recommended a gearbox oil service, whereas Mr M's garage recommended reconditioning the whole gearbox.

I think it's fair to accept the issues are linked to, or stem from, the quality of the gearbox oil which needed replacing. This is consistent with both professional's findings and the gradual escalation of the problems Mr M has described with the car.

Both professionals have told us they couldn't be sure whether this was an issue at the time of sale. And that it's a service issue which has gradually developed and so is essentially "wear and tear".

They've also confirmed that it's not unusual for a car of this age and mileage to need an oil service. At the time of sale, the car's mileage was about 73,000 and it was about 76,000 when Mr M stopped using it.

Based on the above, whilst it's possible the car may have benefitted from (or been close to needing) a gearbox oil change when Mr M got it, I'm not persuaded that it was defective.

However, even if this issue was present at the time of sale and shouldn't have been, in the specific circumstances here it would've been fair to let Moneybarn repair it before it might've become appropriate to reject it.

In terms of what repairs were needed, I think it's fair to give weight to the findings of the qualified independent engineer because they are experienced independent experts. It's provided reasoning for why it would recommend replacing the gearbox oil first – it could then test the oil and the car once the oil had been replaced to assess if this fixed the problems or further repairs were needed.

Moneybarn offered to pay for this on a goodwill basis, so I think it's acted fairly in the circumstances. Unfortunately, as Mr M didn't arrange to replace the gearbox oil, we can't know if this would've been enough to address the issues he's described. I understand Moneybarn didn't pay Mr M £60, but I wouldn't have expected it to in the circumstances – as he hadn't arranged for the work this money was for to be done.

Was the car sold as fully serviced?

I understand there's some disagreement here about whether the car was sold as fully serviced. It does appear from the sale invoice and Mr M's testimony that it was sold with this. The car's service history says the car hasn't been serviced since 2010, so I've considered whether the position would be different if it had been serviced by the dealership.

Mr M's representative has said they don't understand why the engineer's statement has changed. However, it's actually that the independent engineer has clarified a gearbox oil service isn't part of a normal service. So, even if the car had been serviced before it was sold, the gearbox oil would be in the same condition. This is why I don't think a service by the dealership would've changed what's happened here.

### The outstanding debt

I understand that Mr M couldn't afford the repairs his garage recommended and didn't see the value in paying for an MOT when he didn't think it would pass. But among other things, he had an obligation to keep the car serviced and maintain payments.

Mr M hasn't made a payment since January 2016, so Moneybarn has taken steps to recover the money owed as set out in the agreement; it initially sought payment, then recovered and sold the car. As it's done so in line with the terms of the agreement and at a reasonable pace I think it's acted fairly.

Moneybarn says the car was recovered in a poor condition which affected its re-sale value, but Mr M doesn't agree. Moneybarn has provided a report of the car's condition which shows several elements of cosmetic damage. It made the decision that it wouldn't be economical to repair the cosmetic damage. As the cost of repairing this damage would've been passed on to Mr M, I think it's acted fairly in deciding to sell the car without further repair work.

Moneybarn has calculated the outstanding balance in line with the terms of the agreement, so it's entitled to seek payment for this. If Mr M is experiencing financial difficulties then I would urge him to discuss this further with Moneybarn. I remind Moneybarn that if Mr M is experiencing financial difficulties it should treat him in a positive and sympathetic manner. This doesn't, however, mean it would be required to write off some or the entire amount due. It might mean coming to a reasonable repayment plan.

### **my final decision**

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 March 2017.

Stephanie Mitchell  
**ombudsman**