

## **complaint**

Mr G complains that the vehicle he acquired through a conditional sale agreement financed by Moneybarn No.1 Limited was not of satisfactory quality. He wants it to pay for the necessary repairs.

## **background**

Mr G tells us he acquired the vehicle through a dealer I'll refer to as "K" in early April 2018. He says he reported a problem with the brakes in May and this was dealt with by K. But later he started to experience gearbox problems and the gears wouldn't engage. He said he took it for a gearbox service in August - but soon afterwards the same problem occurred. Mr G says Moneybarn refused to assist and so he ended up having to have the vehicle repaired himself - at a cost of £2,220.

Moneybarn told us the agreement with Mr G had started on 5 April 2018. It said the vehicle had been nine years old and had covered just less than 39,000 miles when acquired by Mr G. It said Mr G had complained about a problem with the brakes - which had been repaired by K. And he'd also told it the automatic gearbox was faulty and would need replacing with a reconditioned item at a cost of between £1,500 - £2,000.

Moneybarn said it had instructed a firm of independent vehicle examiners, A, to inspect the vehicle. And A had reported the vehicle was faulty as it failed to change up the gears. But it said A had concluded that the fault was not present or developing at the time of supply. In those circumstances Moneybarn did not consider it was liable.

Our investigator recommended the complaint should be upheld. She thought the vehicle had probably not been of satisfactory quality when supplied. She didn't think the report by A was definitive. She didn't consider a reasonable person would expect to be able to drive a vehicle for so few miles (around 2,700 since supply) before a significant failure of a vital part. Or to expect repair bills of nearly half the original cost within such a short time. She thought Moneybarn should refund the cost of the repairs Mr G had arranged after it had refused to assist. And that Mr G should also have monthly payments refunded for when he was unable to use the vehicle and £150 compensation for the inconvenience.

Moneybarn didn't agree and re-emphasised its reliance on the findings of A. But it said it would offer £500 towards the repair costs as a gesture of goodwill. As it's not been possible to resolve the complaint an ombudsman has been asked to make the 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.

I'm sorry that Mr G has experienced the problems he's encountered with this vehicle. Whilst it was by no means new when acquired - at nine years old - the recorded mileage of just under 39,000 was well below average. So it was reasonable to expect the vehicle had a considerable lifespan left - a fact supported by the agreement being for three years.

In trying to resolve complaints, we listen to what the parties tell us, and we look to documentary and other evidence to help us reach a decision. This is in combination with our fair and reasonable remit. And where evidence is unclear, or contradictory - as some of it is here - I have to make my decision on the balance of probabilities.

Whilst I don't apply the law - directly - I do take it into account. And relevant law here includes the Consumer Rights Act of 2015 (CRA). And as the supplier of the vehicle and finance, Moneybarn is responsible for the vehicle being of satisfactory quality at the point of supply.

Broadly summarised, the CRA says that if a fault with an item arises within the first six months following supply it's presumed to be present at the point of supply - unless it's established otherwise. And this would potentially give a consumer certain rights to either reject the item or have it repaired.

It's not disputed that Mr G had reported faults with the vehicle in May 2018 (brakes) - which seem to have been repaired to his satisfaction. But a new issue with the gearbox arose in September - the invoice of the service is dated 10 September 2018 - not August as Mr G believed. But as that's within six months of supply it doesn't alter the basic situation.

The vehicle was examined by A on 14 November 2018. And it confirmed the fault described by Mr G was present - the gears failed to change up. I'd describe the conclusion reached by A as non-committal - indeed it seems to seek to have a foot in both camps. It said the vehicle would require further inspection under workshop conditions. But it went on to say that given the mileage and time since supply it didn't think the fault would have been developing at the time of supply. But that if the hirer (Mr G) could provide documentary evidence to show the issue had been ongoing since supply that would, on a balance of probabilities, suggest it had been developing at that point.

A's report suggests there's a duty upon Mr G to supply evidence that the issue has been ongoing since supply. But I don't agree with that interpretation. Mr G reported gearbox faults in August 2018 - and A confirmed those faults were present. Given the legislative presumption that those faults were present at the point of supply - unless it's established otherwise (A's report does not do this) - I think it's probable the vehicle was not of satisfactory quality when supplied.

Nor do I agree with Moneybarn's characterisation of this gearbox "*issue*" as a wear and tear item. I accept the lifespan can vary dependent upon mileage, maintenance and manner of driving. But the same can be said of almost every component part of any vehicle. It can't fairly be said that a reasonable person would routinely expect have to replace a gearbox on a typical vehicle after little more than 41,000 miles.

Whilst Mr G arranged and paid for repairs to be undertaken - Moneybarn refers to these as "*unauthorised*" - it seems to me he was left with little choice. Moneybarn had issued a final response letter on 21 November 2018 which had not upheld Mr G's complaint. It said the liability for the repairs fell upon him.

So Mr G was faced with the equally unappealing options of being without transport for several months whilst his complaint was investigated or having repairs done at his own expense. He chose the latter and I think it was reasonable for him to do so.

Indeed, with the benefit of hindsight, it can be seen that in making that choice he substantially mitigated any loss Moneybarn might face as the result of my decision. In the light of my findings - and if the repairs had not been done - I'd have ordered the return of all monthly deposits from September until such time as they had been completed. Given the date of this decision, that would probably have been an additional six monthly payments. At the relevant monthly rate this equates to just under £900.

I'm aware it's possible that Moneybarn could have had the repairs done at a lesser cost - but it had the opportunity and decided not to do so. So given my previous comments about the effect of Mr G's choice I think it's fair and reasonable he should have the cost of these repairs refunded in full. I note he used the same company for these repairs as K had engaged for the gearbox service. So I think it's probable the price was reasonable.

I also think he should be refunded payments for those periods when the vehicle was not able to be used and £150 for distress and inconvenience.

### **my final decision**

For the reasons given above my final decision is I'm upholding this complaint.

I'm ordering Moneybarn No 1. Limited to:

1. Pay the cost of repairs - £2,220.
2. Refund £99 - being the contribution to the transmissions service paid by Mr G.
3. Refund monthly payments from 10 September 2018 to 10 December 2018 (pro rata for any period of less than one month).
4. Pay £150 compensation for distress and inconvenience.

Simple interest at the rate of 8 % per year should be added to items 1, 2, and 3 above from date of payment to date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 16 June 2019.

Stephen D. Ross  
**ombudsman**