

The complaint

Mr H is unhappy that a car supplied to him under a conditional sale agreement with Moneybarn Limited was of an unsatisfactory quality.

What happened

On 18 March 2019, Mr H was supplied with a used car through a conditional sale agreement with Moneybarn. He paid a deposit of £499 and the agreement was for £4,000 over 36 months; with monthly repayments of £148.30. At the time the car was almost nine years old and had done 92,444 miles.

The cam belt on the car was replaced by a garage of the supplying dealership's choice, whom I'll call 'K', before the car was supplied to Mr H. Mr H said the air conditioning (air-con) wasn't working and he returned the car to the dealership to have this fixed. K replaced the air-con pump under warranty. And, because of the warranty limits, a reconditioned pump was used.

However, when the car was returned to him, Mr H complained of a noise that wasn't there before, and which got worse. Mr H took the car to a local garage, whom I'll call 'G', and they said the problem was with the replacement air-con pump. On 2 June 2019, Mr H asked the dealership for permission for G to replace the air-con pump, at a cost of £410 plus VAT. But the dealership refused this, saying that K would need to do any repairs. Mr H wasn't happy with this but agreed. The car was collected for repair on 17 June 2019 and Mr H was provided with a courtesy car by the dealership.

The dealership arranged for the car to be inspected by a different garage, whom I'll call 'C', who were a manufacturer's specialist. And, on 27 June 2019, C said there were issues with the tensioning of the cam belt, the alternator pulley, the air-con pump, and the injector washers. And they estimated £1,386.81 for the costs of these repairs.

Mr H asked the dealership if these repairs could be carried out by C, but the dealership again said that K would need to do the work under warranty. They also told Mr H that, if he wasn't prepared to allow K to do the work, then he'd have to bear the cost of the repairs.

Mr H wasn't happy with this, and he independently instructed C to do the work. He also complained to Moneybarn. In response, Moneybarn said it was fair for K to complete the work. But they would arrange for an independent engineer to inspect the car, after the work was done, to ensure it was all carried out to a satisfactory standard. They also said they wouldn't cover the costs if Mr H had the work done by C, and he'd need to pay for this himself.

Mr H rejected Moneybarn's offer, returned the courtesy car to the dealership, and C successfully completed the repairs. Mr H also told C that he didn't need a courtesy car while the car was being repaired, and he hired a car instead. Mr H then complained to us that Moneybarn wouldn't cover the cost of C repairing the car or the cost of a hire car.

Our investigator said its common practice for car finance providers and dealerships not to allow or accept third-party repairs because, if there were any problems with the repairs, they wouldn't be able to take liability for these. And she said that Moneybarn had offered to repair the car; provide Mr H with a courtesy car while the repairs were being done; and have the car independently inspected after the repairs had been done, to ensure that the repairs had been carried out to an acceptable standard.

Because she said this goes beyond what we'd normally recommend in the circumstances, the investigator thought this was a reasonable offer. And, if Mr H had accepted the offer, then the repairs could've been carried out at no cost to him. However, as Mr H rejected the offer, and went ahead with the repairs himself, the investigator said Moneybarn didn't need to do anything more.

Mr H didn't agree with the investigator. He said he wasn't comfortable with K carrying out the work, as they'd used second-hand parts when completing the initial repairs. And he said the dealership recommended that C do the repairs. But now they won't pay the bill. He also said that he'd been told by C that the car was unsafe to drive, which is why he hired a car.

Because Mr H didn't agree with the investigator, this matter has been passed to me to make a final decision.

What I've decided – and why

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

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr H was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also says goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Moneybarn can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr H to show it was present when the car was supplied. So, if I thought the car was faulty when Mr H took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

When Mr H took possession of the car, it was almost nine years old and had done 92,444 miles. I'd expect to see substantial wear and tear in a vehicle of that age and mileage. And I think that any reasonable person would expect major components to need replacing much sooner than with a low mileage car, and for there to be costs associated with this.

The cam belt and the air-con pump are items that I wouldn't expect to last the lifetime of the car, and I'd expect these to need replacing given the age and mileage of the car. Because of this, and without any evidence to the contrary, I'm satisfied these needed replacing due to normal in use wear and tear. So, the need for the repairs doesn't mean the car was of an unsatisfactory quality when the car was supplied. And I'd expect the costs of the work to be covered by the warranty taken out by Mr H, and isn't something I'd say Moneybarn are responsible for under the CRA.

It's clear from the evidence that the cam belt, fitted by K before the car was supplied to Mr H, was incorrectly tensioned. And the reconditioned air-con pump K fitted to fix the air-con was the source of the increased noise after the repair had been completed. So, I can understand why Mr H was reluctant to let K do any further repairs.

As these were warranty repairs, and I think it's reasonable that the dealership who supplied the warranty asked K, their preferred garage, to undertake the repairs. And I also think it's reasonable that K were given an opportunity to rectify the problems caused by the cam belt and air-con pump they fitted. And I don't think the fact that the dealership had C inspect the car, to independently confirm what work (if any) needed doing changes this.

On 1 July 2019, the dealership told Mr H they wouldn't cover the cost of the repairs if these weren't done by K. But Mr H said that, on 4 July 2019, he decided to get C to repair that car anyway, and then claim back the costs from Moneybarn. This was because C had told him the car wasn't safe to drive, and because Moneybarn would take too long to deal with his complaint and the car needed to be repaired. So, he returned the courtesy car he had to the dealership and took out a hire car instead. And he told C *"I will not require the use of one of your load [sic] cars."*

I haven't seen any evidence that the car was unsafe to drive. And I also think that Mr H also had a duty to mitigate any potential costs. So, I don't think taking out a hire car at this stage was reasonable, and it would've been more appropriate to wait for Moneybarn to respond.

Moneybarn replied to Mr H on 10 July 2019, offering to have the car repaired and then independently inspected after the repairs, to ensure they'd been done to a satisfactory level. And they offered to provide Mr H with a courtesy car while the repairs were being done. This offer was made seven days before C were booked to undertake the repairs.

Moneybarn were aware how Mr H felt about K, and I think their offer was reasonable in the circumstances. And Mr H had sufficient time to accept this offer before C started work.

Both the dealership and Moneybarn told Mr H, before C undertook any work, that they wouldn't cover the costs of any repairs if he insisted on using C to do them. But, knowing this, Mr H went ahead and instructed C to do the work. He also refused the offer of a courtesy car, choosing to pay for a hire car instead. Given this, I'm satisfied that Mr H's decision was taken in the full knowledge that he would be responsible for the cost of both the repairs and alternative transportation while the repairs were taking place. While I appreciate that this will come as a disappointment to Mr H, it's for these reasons why I don't think that Moneybarn should now reimburse him for these costs. And I won't be asking them to do so.

My final decision

For the reasons explained, I don't uphold Mr H's complaint about Moneybarn Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 April 2022.

Andrew Burford
Ombudsman