

The complaint

Mr R complains about the quality of a car he acquired through a conditional sale agreement financed by Moneybarn No.1 Limited (Moneybarn).

What happened

In October 2022 Mr R acquired a used car through a conditional sale agreement financed by Moneybarn.

Mr R said he was told by the dealership that the car had failed its MOT when he acquired it, and a bulb was replaced. He said there were other failure reasons on this MOT that weren't disclosed to him.

Mr R said he noticed faults with the car as soon as he acquired it, the airbag light was illuminated, the power steering warning light was on, and he was having to top up the coolant on a weekly basis. Mr R said he took the car to a local third-party garage in March 2023 when an indicator bulb and the dipped headlights failed.

Mr R said the garage told him there was corrosion to the wires that'd been there since before he acquired the car, and suggested he take it to an auto electrician. Mr R took the car for further investigation and said the electrician told him the car had been in an accident previously.

Mr R said the repair work appeared to have been completed cheaply, with no insurance claim because the HPI check on the vehicle was clear. Mr R said he found paperwork with the car showing repairs had been completed to the nearside door and wing, and to both bumpers, and this was sufficient to show the car had been in an accident previously.

Mr R complained to Moneybarn about the quality of the vehicle, and he said he wasn't told that the car had been in an accident previously, and he wouldn't have acquired it if this had been disclosed to him.

Moneybarn sent Mr R their final response to his complaint in June 2023. They said there was no evidence of the vehicle having been a total loss, the MOT history showed repairs had been completed shortly after Mr R acquired the car, and as Mr R hadn't given permission for an independent inspection to take place, they didn't uphold Mr R's complaint.

Unhappy with this, Mr R brought his complaint to this service. He said he knew the accident wasn't on the HPI check for the car, and this formed part of his complaint as it appeared the repairs had been completed outside of any insurance process. Mr R said he didn't refuse to have an independent inspection completed, and he thought the car was misrepresented to him when he acquired it. Mr R wanted to reject the car.

An inspection was completed by a third-party company in November 2023. The engineer concluded that there were no leaks in the coolant system, and there were fault codes found in respect of the warning lights, but any faults were a result of in-service wear and tear.

Our investigator gave his view that he wasn't persuaded that there were faults with the car, and so, he thought it was of satisfactory quality at the time it was supplied to Mr R, and so he wasn't able to reject it. Our investigator thought Moneybarn had caused distress and inconvenience to Mr R in the delay in completing the inspection, and so asked them to pay him £150 compensation.

Mr R didn't agree. He said his main issue, that the car was misrepresented to him, hadn't been addressed. He said the car had clearly been in an accident prior to him acquiring it, and if he'd been given this information, he wouldn't have entered the agreement. Mr R said whilst a reasonable person might expect some damage to a second-hand car, they wouldn't expect an accident to not be disclosed, or for the repairs to have been completed poorly.

I issued a provisional decision on this complaint in June 2024 recommending that it was upheld. I made the following provisional findings:

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated conditional sale agreement – so we can consider a complaint relating to it.

It seems to me that there are two areas for me to consider in Mr R's case, that is whether the car was misrepresented to him, and whether it was of satisfactory quality when he acquired it.

Misrepresentation

In order to be satisfied that the car was misrepresented to Mr R, I'd need to say that there was a false statement of fact, and that false statement of fact induced Mr R into entering into an agreement that he otherwise wouldn't have.

Mr R said there was paperwork with the car which shows it was in a previous accident, as repairs have been completed, and the third-party garage confirmed this to Mr R.

I'm persuaded that Mr R's car was more likely than not repaired as a result of accident damage prior to him acquiring it. The HPI check showed that the car had not been written off previously, suggesting that either the accident was minor, or insurance companies were not involved in the repair. But it would not be unusual in the case of a second-hand car for repairs to have been completed for any number of reasons, or for these to have been completed privately.

Considering the circumstances, I don't think the dealership that sold the car to Mr R would've necessarily been aware that the car had suffered previous damage, and I don't think they needed to disclose the previous repairs to him prior to him acquiring the car. So, I'm not persuaded that there was a false statement of fact, and so I find that the car was not misrepresented to Mr R.

Satisfactory quality

Moneybarn as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory" To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will

include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £9,000. It was about eight years old and had travelled approximately 95,000 miles at the time of supply.

When a person acquires a used car like Mr R it's reasonable to say that the expectation of quality is lower than that of a new or younger/lower mileage second-hand car. The price for the vehicle is lower, and this is reflective of the fact that the car is more road-worn. The chance of encountering a serious issue sooner, is higher.

I've seen evidence of an inspection completed by an engineer in November 2023, whilst a test drive couldn't be completed, it did identify fault codes relating to some of the issues Mr R said he'd experienced. So, I'm persuaded that there were faults with the vehicle.

So, I've gone on to consider whether these faults made Mr R's car of unsatisfactory quality at the time it was supplied.

I've seen evidence that Mr R's car was repaired in early 2018 and that these repairs included some work to the seat pad sensors. The car then passed an MOT in early 2022 before Mr R acquired it in late 2022. I can see that some work was completed to some advisories that were noted in late 2022, and the car passed another MOT in late 2022 shortly after Mr R acquired it.

I'm satisfied that the repairs completed in 2018 were successful, as there's no evidence of these failing prior to Mr R acquiring the car some four years later. The MOT advisories prior to Mr R acquiring the car all relate to general in-service wear and tear items, and so I'm satisfied they didn't make the car of unsatisfactory quality at the time it was supplied to Mr R.

When the car was inspected in November 2023 Mr R had been able to travel around 7,000 miles in it, and the engineer noted that the faults were considered to have developed within that time.

I think, that at eight years old and having covered around 95,000 miles, Mr R's car was around the age when a reasonable person might start to expect that some relatively serious repairs may be needed, or that the car might have been repaired in the past and those repairs might require some upkeep. I haven't seen any evidence that the repairs were substandard, or that any of the faults relate to anything other than general age-related wear of the vehicle. As a result, I find that it was of satisfactory quality at the time it was supplied to Mr R. Whilst what has happened is unfortunate, it is the risk of owning an older and higher mileage second-hand car like this one. I appreciate that having a car that requires some repairs is stressful, and may be an expensive, experience for Mr R. That doesn't mean that Moneybarn are responsible for the cost of repairs.

Our investigator said Moneybarn should pay Mr R £150 compensation for the delay in arranging for the vehicle to be inspected, and Moneybarn accepted this recommendation.

I'm satisfied that Moneybarn could have instructed an inspection of the vehicle much sooner than it did, and that Mr R suffered distress and inconvenience in this process being delayed.

All things considered; I think £150 fairly reflects the distress and inconvenience caused.

Mr R didn't respond to my provisional decision.

Moneybarn responded to my provisional decision to say they accepted it.

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.

As neither party has raised any new arguments, or sent me new information to consider, for the same reasoning that I set out in my provisional decision, I've decided to uphold this complaint.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint, and Moneybarn No.1 Limited must pay Mr R £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 July 2024.

Zoe Merriman
Ombudsman