

The complaint

Mr H complains about a car supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited ('Moneybarn').

What happened

Mr H entered into a conditional sale agreement with Moneybarn in January 2019 for the supply of a used car. The car cost £9,079, was 7 and a half years old and had around 91,000 miles on the odometer. Mr H sourced the car from a dealer I shall refer to as 'M'.

Mr H has said in February 2020 he noticed the passenger wing mirror would not fold in and the traction control button wouldn't work. He said the car was taken to a local garage and the garage has confirmed the car was presented to it with those faults at this time. Mr H has said the faults were not fixed as M said it would pay for the repairs but never authorised them.

In July 2020 Mr H said the car began losing power and would drop from 70mph to 40mph. He reported the issue to Moneybarn with a view to them repairing the car or taking it back. Moneybarn commissioned an inspection by an independent engineer in August 2020. The engineer provided a report which noted the following:

- There was a misfire noted immediately on start up.
- There was evidence of excessive black soot around the tailpipe area.
- A diagnostic run on the car's internal system revealed error codes relating to engine oil pressure, a misfire on two cylinders, the passenger wingmirror, a wheel speed sensor on the ABS and some other sensors relating to fuel.
- The oil pressure was low.

The engineer suggested that Mr H refrain from driving the car to avoid causing any consequential damage to it. The engineer concluded that although there were faults with the car, they would need to be investigated in more detail to discover their exact nature and root cause. He said the faults were not likely present at the time the car was supplied to Mr H given the time he'd had it and the mileage he'd covered.

Moneybarn concluded following this that the car was not faulty when it was supplied to Mr H so didn't agree to pay for any of the repairs or take the car back.

Our investigator didn't think Mr H's complaint should be upheld. He said there wasn't enough evidence to suggest that any faults with the car were present when the car was supplied to Mr H.

Mr H didn't agree with the investigator and asked for an ombudsman to review his complaint.

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.

The car was supplied to Mr H under a regulated consumer credit agreement so our service can look at complaints about it. Moneybarn is the supplier of goods under this kind of agreement and is responsible for dealing with complaints about their quality.

The Consumer Rights Act 2015 ('CRA') implied a term in Mr H's agreement with Moneybarn that the goods supplied would be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid and other relevant circumstances. In this case I think other relevant circumstances would include things like the age and mileage of the car.

In Mr H's case, the car was used, with a cash price of around £9,000. It had covered around 91,000 miles and was seven and a half years old. It is fair to say the expectations of this car would not be as high as they would for a brand new car. And, it could be reasonably expected that parts might require repair or replacement – even within a reasonably short period of time after supply.

The garage that looked at the car for Mr H in February 2020 wrote a letter to confirm the car was presented with faults with the wing mirror and traction control that could not be turned off. It looks like M may have agreed with Mr H to pay for these things to be repaired but for whatever reason this did not happen. I'm looking here at a complaint about Moneybarn and I can't consider the actions of M after Mr H entered into the hire purchase agreement. I have nevertheless considered whether I think Moneybarn were responsible for these repairs – keeping the implied term about satisfactory quality in mind.

Our investigator asked Mr H if he had any job sheets from when the car was taken to the garage but he told us he didn't. This means I don't have a lot of information about what went wrong with the traction control or why. Moneybarn's contact notes do show a conversation with M where it was discussed the traction control did work but a part was required to fix the button to show whether it was on or off. The wing mirror not folding in on the other hand seems like a more straightforward fault.

Having thought about these issues and the information available about what might have caused them, I've not seen enough to make think they were faults that would make the car of unsatisfactory quality. I think these are the kind of repairs a reasonable person might ordinarily expect to carry out on a car of this age and mileage, even shortly after being supplied with the car.

Mr H complained of further issues in July 2020 when he said the car was losing power and dropping from 70mph to 40mph. He took the car to the same garage again. The letter the garage wrote says Mr H presented the car advising it was suffering from a loss of power with no Engine Management Light on. Mr H has said he was quoted a lot of money to put the car right. I've not been provided with any quotations however or any further detail from the garage about what was wrong with the car or what may have been causing a loss of power.

The issue was considered by the independent engineer that examined the car in August 2020. He identified a misfire in the engine which was corroborated by a misfire fault code identified in two cylinders by the diagnostic. There were other faults identified with oil pressure, fuel sensors and ABS sensors. The engineer concludes however that further investigation is required to establish the full nature of the faults and what caused them. No link between what was discovered and a loss of power is established in the report. The report further concludes that based on the amount of time the consumer had the car and the

mileage that had been covered, any faults that had been identified were not likely to have been present at the time the car was supplied to Mr H.

So, looking at the available evidence, it's clear enough that something isn't right with the car. What's not clear enough however is what has caused this or what the full extent of the problem is. With this considered, along with the fact Mr H did not experience a loss of power until a number of months after he was supplied with the car, there isn't enough evidence to show there was a fault present at the time the car was supplied and which would mean it was not of satisfactory quality.

I've considered also whether the car was sufficiently durable as this is also an aspect of satisfactory quality. The car however had high mileage and was relatively old so I don't find the things that have been identified in the engineers report mean the car was not durable. I find they are problems a reasonable person might expect to need to repair after driving 5,000 miles in a seven and a half year old car with 91,000 miles on the clock.

Mr H has said he hasn't made any repayments on the car for a while. Moneybarn should ensure it treats Mr H with due consideration and forbearance in dealing with any financial difficulties Mr H may be facing, including discussing appropriate termination options should that be necessary.

My final decision

My final decision is that I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 July 2021.

Michael Ball
Ombudsman