

## The complaint

Mr W complains about the quality of a used car that was supplied to him through a conditional sale agreement with Money Barn No.1 Limited (MBL).

The complaint has been brought to us by Mr W's representative, Mrs W, however to keep things simple, I've referred to Mr W throughout my decision.

## What happened

The circumstances surrounding this complaint and my initial findings were set out in my provisional decision which said:

*On 18 July 2019 Mr W acquired a second-hand car through a conditional sale agreement with MBL. The car was registered in December 2011, which means it was about seven years and seven months old at the time of supply. The purchase price of the car was £8,999 and the mileage was 57,581. Mr W put down a deposit of £229 which meant that the credit agreement was for £8,770 payable over 52 months with interest.*

*Mr W has explained that since acquiring the car he's experienced a number of oil leaks which has resulted in him losing faith in the car and wanting to reject it.*

*Mr W has also complained that the car wasn't in the condition he'd expected when he collected it. Mr W says the dealer painted the alloys when he expected them to be powder coated, and that the service, water pump and timing belt replacements hadn't been carried out when the dealer said they would.*

*Mr W complained to MBL in September 2019 about the issues he was having with the car. MBL provided Mr W with their final response (FRL) in October 2019. MBL didn't uphold Mr W's complaint. MBL explained that a successful repair for an oil leak had been carried out on the car, and that Mr W had confirmed there were no further issues following the last repair.*

*MBL also explained that should the last repair fail, they'd then consider if a rejection of the car would be a possible outcome for him.*

*Mr W says his car has experienced further oil leaks since receiving MBL's FRL, which he says has been brought to the dealer for repairs.*

*In February 2020 Mr W brought his complaint to our service. One of our investigators looked into Mr W's concerns and contacted the supplying dealer for further information. The dealer explained that they'd repaired an oil leak on Mr W's car on two occasions in 2019. Once to replace the oil filter and the other occasion was to replace a seal.*

*Mr W has provided us with a customer assistance report dated 8 March 2020, from a roadside recovery company, which I'll refer to as 'B'. Mr W says he called B out because his car had broken down and had a suspected oil leak.*

*The report supplied by B, identified the following diagnostic warnings:*

- *Neutral position sensor, implausible signal*
- *No communication with steering wheel*
- *Exhaust gas recirculation Sensor "A" Circuit Range/Performance*
- *EGR valve*
- *Electrical heating sidemirror, driver side*

*Mr W told us that during the recovery, B advised him that a safety function had been disabled by the previous owner, which enabled the diagnostic warning, no communication with steering wheel, to display. Mr W believes this is a safety issue which needs to be fixed.*

*In an email sent to our investigator in August 2020 Mr W confirmed the car had no other oil leaks.*

*In October 2020 our investigator completed his review of Mr T's complaint and concluded that the car was not of satisfactory quality when it was supplied to him. However, as the repairs appeared to have been successful, the investigator decided there were no grounds for Mr W to reject the car. The Investigator asked MBL to investigate and repair the diagnostic warning, no communication with steering wheel, as identified in B's report from March 2020, pay any repair costs incurred by Mr W beyond fair wear and tear, and compensate Mr W £250 for the distress and inconvenience caused.*

*Mr W wasn't satisfied with the investigator's view. He wanted to reject the car and felt he should be compensated for loss of work due to having to take the car into the dealer for repairs. So, the complaint was referred to an ombudsman for a final decision.*

*In May 2021 Mr W explained to us that he had called B out to attend to his car for a suspected oil leak. The fault report supplied by B, dated 11 May 2021 came with the following comments:*

- *Inspected fuel leak found loose union under bonnet lift pump. Re-secured union no visible contamination on belts. Advised will need a under bonnet wash to clear any standing fuel. Ran ok*
- *Engine oil and coolant levels had been checked – OK*

*In July 2021 I issued a provisional decision in which I said:*

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

*In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.*

*The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory, fit for purpose and as described". To be considered as satisfactory, the CRA says the goods would need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances.*

*So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.*

*My starting point is that MBL supplied Mr W with a second-hand car that had travelled 57,581 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be visual signs of wear and tear due to its usage. Having said that, the car was priced at £8,999 which isn't insignificant. So, I think a reasonable person would expect it could be used free from any major issues for a reasonable period of time.*

*From the information provided it's clear that the car had some faults. This is apparent from Mr W's description of events, the diagnostics supplied by B, the invoice provided by the dealer outlining works carried out and the phone call with the dealer who confirmed the car had an oil leak repaired in 2019. Having considered the car had some faults, I've had to consider whether it was of satisfactory quality at the time of supply.*

#### *oil leaks*

*Mr W first reported issues with an oil leak about five days after the car was supplied to him. He explained that over the following eight months the car had to go in to the dealer for repairs around five times, all of which Mr W says included repairs for an oil leak. This is detailed in the timeline of events provided by Mr W, in July 2020. However, during a conversation with our investigator the same month, Mr W said that his car was repaired on at least three occasions. The same month the dealer explained to our investigator that Mr W's car was only attended to, on two occasions by them in relation to an oil leak, and both of those occasions were in 2019.*

*MBL confirmed to us in March 2021 that they were unable to obtain any job cards from the dealer in relation to any repairs on Mr W's car. In MBL system notes, ranging from July 2019 to July 2020, there are two entries in August 2019 and again in October 2019, relating to an oil leak. Both entries are phone calls between MBL and Mr W. The notes for one of the calls advise that Mr W said the car has been into the garage nine times previously.*

*I think it's fair to say there's been conflicting information from both parties in relation to the number of oil leaks Mr W has experienced, and there's limited evidence to demonstrate what the actual position is.*

*From the information provided it's not in dispute that Mr W's car experienced an oil leak in 2019 which had been repaired by the dealer, this is supported by both parties. Mr W confirms this in the timeline of events he provided the investigator, and the dealer confirms this during a phone call with our investigator. However, beyond this I have no evidence, besides what Mr W has said, to confirm that the oil leak had recurred. This position is further supported by both reports provided by B which do not mention an oil leak, despite Mr W saying this was part of the reason why B had been called out. In B's report from May 2021 B commented that the engine oil had been checked and were okay. So, in the circumstances, and from the information provided I'm satisfied that repairs for an oil leak carried out by the dealer have been successful.*

*I recognise that W has said as a result of the problems he's experienced, he's lost faith in the car and has asked to reject it. However, as the oil leak, and other issues, which I'll address later, have been successfully repaired, which Mr W accepted, I don't think it's fair to ask MBL to allow a rejection of the car. So, I won't be instructing them to do so.*

*the repair to the alloys*

*Mr W also complained about the condition of the alloys, the water pump and the timing belt not being replaced when he was told they would be, prior to him collecting the car.*

*Section 56 of the Consumer Credit Act 1974 explains that in certain situations finance providers are liable for what is said by a supplier before the consumer takes out a credit agreement. So, if the dealer incorrectly told Mr W certain components in the car had been replaced, it's taken as if MBL told Mr W the same.*

*I can't say for sure what was originally agreed prior to supply. In an email to our investigator, Mr W confirmed that the alloys had been re-painted when they brought the car back to the dealer, after realising the paintwork was flaking. However, Mr W remains unhappy with the dealer's method of repair because he believes the alloys should have been powder coated, as opposed to just re-sprayed.*

*Having looked into alloy refurbishment, I'm aware that both methods of treating and repairing alloys are considered as acceptable and viable. I haven't seen any evidence that suggests the dealer promised a specific method of refurbishment to the alloys. However, Mr W has confirmed they were repaired, he also said that the dealer re-sprayed them. I've already established that this is an acceptable method in which alloys can be repaired; and Mr W hasn't complained about the failure of the repairs rather the method in which the dealer repaired them. So, I won't be asking MBL to do anything further in relation to the alloys.*

*the water pump and timing belt*

*Mr W provided our investigator with an invoice dated 7 August 2019, detailing that the timing belt and water pump had been replaced. So, although this had caused some dissatisfaction for Mr W, I can see that within about a week of realising the issues, they'd been rectified under the warranty as confirmed by Mr W. So, I won't be asking MBL to take any action in regard to this.*

*the EGR*

*On the invoice for the repair completed in March 2020 the EGR had been reported as being replaced. This was following B's diagnostics detailing a fault with it earlier that month. EGR's are components that suffer from wear and tear and are likely to need replacing throughout the life of a car. In Mr W's case, his car had over 64,000 miles when the EGR had been replaced. So, in the circumstances I'm not persuaded that the failure of the EGR renders the car as being of unsatisfactory quality. That being said, even if I did reach the opposite conclusion, this has now been repaired. So, either way, MBL don't need to take any further action here.*

*steering wheel fault code*

*There was also the steering wheel warning code on the customer assistance report produced by B, in March 2020 which Mr W said the dealer hadn't looked into or fixed. Mr W also explained that at the time B said it was caused by a deactivated safety feature. B hasn't provided any further information on this fault code. For example, there's no mention of it on their customer assistance report, or a separate comment containing their opinion. So, I don't*

*have any evidence in relation to the cause of the fault code besides what Mr W has said to us. However, in B's latest fault report, produced in May 2021, the steering wheel fault code isn't present, despite a full diagnostic being carried out.*

*In the circumstances I'm not persuaded that the issue with the steering wheel is still present in Mr W's car, or what had caused it to display in March 2020. So, I won't be asking MBL to do anything in relation to this.*

*other issues with the car*

*The other issues detailed on B's diagnostics report included the electric heating in the side mirror and a faulty neutral position sensor, although it's difficult to provide a life expectancy on these components, these are parts which I don't think it unreasonable that they'd necessarily require attention or maintenance at this point; particularly in consideration of the age and mileage of the car. As explained above there would be an expectation for some wear and tear, and I think it's reasonable that these parts would come under this. So, in the circumstances I'm not persuaded that the maintenance of those parts necessarily points to the car being of unsatisfactory quality.*

*Mr W has raised concerns about the cleanliness of the car when it was supplied to him, the shortage of fuel and increased mileage after repairs were carried out. As my decision is focused on Mr W's concerns about MBL, I haven't considered these as part of my decision.*

*loss of earnings*

*Mr W explained that he had to take a number of days off work to bring the car back and forth from the dealer for repairs. As a result of this he says he's lost out on around £100- £150 per day of potential earnings. Mr W has said he believes he should be compensated for this.*

*Although I'm able to consider loss of earnings, Mr W hasn't been able to provide any evidence to support this claim. So, I won't be asking MBL to reimburse Mr W for loss of income in relation to this complaint.*

*putting things right*

*Although Mr W's car has been repaired, I acknowledge the inconvenience that would have been caused to Mr W with needing an oil leak repaired soon after supply, So, I think it's fair the Mr W is compensated to some degree. In March 2021 Mr W confirmed to our investigator that he's not had to pay for any repairs in relation to any issues with the car, identified in his complaint, so I've not considered any reimbursement costs. In the circumstances I'm satisfied that £100 is a fair recognition of the inconvenience that has been caused to Mr W.*

I invited both parties to make any further comments.

MBL didn't respond to my provisional decision. However, Mr W made some further comments which I'll address below.

Now both sides have had an opportunity to comment, I can go ahead with my 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.

Within his response Mr W made the following points:

- 1. The photos Mr W provided and the latest report from B prove the car had a leak*
- 2. B's first report proves there's an issue with the car's computer*

The above points are a summary of what I considered to be the main themes raised in Mr W's response to my provisional decision. To be clear, I've considered all the information provided in relation to this complaint, however I've focussed on what I've considered to be the main issues here.

*the photos Mr W provided and the latest report from B prove the car had a leak*

Mr W provided photos, some which were date stamped, which appeared to show oil patches on the ground and a low oil light on a car's dashboard. However, besides what Mr W has said, I haven't seen any further evidence which links the images to Mr W's car or confirms that they're the result of an oil leak from Mr W's car.

As explained in my provisional decision the report from B, produced in May 2021, advised that the engine oil had been checked and was okay. So, I think this fairly demonstrates that the car didn't have an oil leak at that point. However, in addition to this B's report advised:

- *Inspected fuel leak found loose union under bonnet lift pump*
- *Re-secured union no visible contamination on belts*
- *Advised will need a under bonnet wash to clear any standing fuel*

Although the report says a fuel leak had been inspected, it suggests that specific issue had been resolved after securing the union. The report doesn't say that further investigation or significant works are required in relation to this. In addition, the car's mileage was recorded as 67,563 miles, which shows that Mr W had travelled around 10,000 miles since acquiring the car. I think it's reasonable to expect that some of the issues noted on B's report are likely to have been caused by a degree of wear and tear due to usage, rather than through an inherent issue with the car. So, from the information provided I don't think B's report proves that this issue was present when it was supplied to Mr W.

*B's first report proves there's an issue with the car's computer*

Mr W said the steering wheel fault code (loss of communication with the steering wheel) noted on B's first report proves a fault exists with the car's computer. I haven't seen anything which suggests the steering wheel fault code is an indication of a fault with the car's computer. I've not seen any evidence to explain the cause of the fault code or why it hadn't shown on B's second report. So, from the information provided I can't see that this is an issue with the car, or proof that the initial repairs had failed.

I still consider my provisional decision to be fair and reasonable in the circumstances. Neither party has added anything which gives me cause to change these. Therefore, for the reasons as set out above and in my provisional decision, my final decision is the same.

### **My final decision**

Having thought about everything along with what is fair and reasonable in the circumstances, my final decision is that I instruct Moneybarn No.1 Limited to:

- Pay Mr W £100 in compensation for the inconvenience caused as a result of the repairs carried out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 October 2021.

Benjamin John  
**Ombudsman**