

## **The complaint**

Mr H, represented by a family member, Mrs G, complains that the car he acquired through a conditional sale agreement with Moneybarn No. 1 Limited wasn't of satisfactory quality.

## **What happened**

Mr H entered into a finance agreement with Moneybarn in August 2019 to acquire a used car. At the time of acquisition, the car was over five years old. There is dispute about the mileage, but the sales invoice shows a mileage of 69,000 and the evidence supports it being at least this amount.

In February 2020, the car broke down and hasn't been able to be used since. It was suggested the issue was caused by the timing chain failing. An independent inspection was carried out on the car. Mrs G says this was inconclusive and that the comment that Mr H had driven the car for 700 miles with the oil light on wasn't correct. She said Mr H had maintained the car well having monthly oil and tyre checks and had bought oil for the car on 8 January 2020. She provided a report from a breakdown company from two weeks prior to the engine failure saying no fault was found. She said there were photographs showing oil all over the road when the car broke down. She also said that although Moneybarn said the car had been driven 5,000 to 8,000 miles, the mileage on the sales invoice was wrong and should have been around 72,700 miles meaning Mr H had only driven 4,200 miles.

Mr H provided a record of services carried out before he acquired the car which showed that the services had not taken place on time.

Moneybarn says that the car had driven 69,000 miles when Mr H acquired it and when the complaint was raised it was told the mileage was 77,000 suggesting Mr H had been able to drive the vehicle for six months and 8,000 miles. It says it arranged for an independent inspection report to take place and this said that the suspected cause of the issue with Mr H's car was wear and tear and drive-on damage. The report said that it didn't consider the issues were present or developing at purchase and the repairs weren't the responsibility of the selling agent. It noted Mr H's comments about the mileage but also that he didn't raise this issue within the first six months and that the MOT from November suggested a mileage of just over 75,000. Given this, Moneybarn didn't uphold Mr H's complaint.

Mr H didn't agree with Moneybarn's assessment and referred his complaint to this service.

Our investigator upheld Mr H's complaint. He considered the durability of the car and said that if parts failed prematurely this could indicate that there was a problem with the car at the point of supply. He said the timing chain had failed and that the manufacturer had said the timing chain should last the lifetime of the vehicle but could be reduced if the car wasn't properly maintained.

Our investigator noted Moneybarn's comments about Mr H driving with the low oil pressure light on for 700 miles and that Mr H had disputed this. He didn't think this was the main contributing factor to the failure and instead didn't think the part was reasonably durable. He was satisfied that Mr H had maintained the car well and noted that before Mr H took

possession of the car the previous services had been consistently overdue. On the balance of probabilities, our investigator thought the car wasn't of satisfactory quality when it was supplied to Mr H.

Moneybarn didn't accept our investigator's view. It reiterated the comments in the independent inspection report which said the faults were not considered to have been present or developing at purchase and that the fault was related to wear and tear and maintenance issues since purchase.

### *My provisional conclusions*

I issued a provisional decision on this complaint. I concluded in summary:

- Mr H's car was around five years old at acquisition. There was conflicting evidence provided about the mileage of Mr H's car at acquisition and so I assessed the complaint based on the mileage at acquisition being around 70,000. Given the age and mileage of the car at acquisition I found it reasonable to accept that the car would have suffered some wear and tear. I also noted that used cars can experience issues shortly after acquisition even if they weren't present or developing at acquisition.
- Mr H's car failed in February 2020, around six months after acquisition and Mr H had been able to drive over 4,200 miles. Given this I found it reasonable that an independent inspection took place to establish whether the issue that caused the car to fail was due to a fault that was present or developing at the point of supply.
- The independent inspection report confirmed there was a large hole in the sump and noted the comments about the loss of oil at break down and the underside of the vehicle being contaminated with oil. It suspected the issue was due to the oil pump chain. The report attributed the issues with the car to wear and tear and maintenance issues since acquisition. It said it suspected drive-on damage as a fault code was found 'engine oil level low' and this was registered at 76,304 miles, suggesting the car had been driven with this code for 700 miles.
- Given the age and mileage of the car at acquisition and the use Mr H had of the car before it failed, I didn't find that I had enough to say that the issue that caused Mr H's car to break down was due to a fault that was present or developing at the point of supply.
- I considered whether the car was sufficiently durable. There was a comment that the timing chain should last the lifetime of the vehicle but if not properly maintained or subject to heavy driving it could fail earlier. Mr H provided evidence to show that he had looked after the car - carrying out monthly tyre and oil checks - and had topped the oil up in January 2020 before the car broke down. He also provided a copy of a report from two weeks before the car failed which didn't report any faults. I acknowledged Mr H's comments about how he had looked after the car and his comments about the car's previous service history showing that services were undertaken late before he acquired the car. However, on balance I didn't think I had enough to dispute the findings of the independent inspection report about the fault code being registered 700 miles before the issues with Mr H's car occurred. I therefore didn't think I could say that the car wasn't sufficiently durable at acquisition.

Overall I didn't find I had enough evidence to say that Mr H's car wasn't of satisfactory quality at the point of supply and so I didn't think I could uphold this complaint.

Mrs G, on behalf of Mr H, provided the following information in response to my provisional decision.

- The last service before Mr H took ownership of the car was in June 2018 and the next service wasn't due until June 2020 (or 80,025 miles) and so there had been no lack of maintenance by Mr H.
- The last MOT was carried out in November 2019 and there were no issues or advisories about coolant or oil leaks.
- On 8 January 2020, the oil light came on and Mr H bought oil and topped up the car at that time. On 24 January 2020 the breakdown report showed no warning lights were illuminated on the dashboard. No issues were found at that time.
- Mrs G said that the inspection report showed the car's oil level being low 700 miles before the car failed. She said this was when Mr H bought the oil and topped it up. She says the oil pressure light wasn't lit at the time the car failed.
- She said the comment in the inspection report about the coolant tub being empty was probably due to the coolant being lost when the engine was damaged when the car failed.
- Mrs G said that the lack of maintenance occurred before Mr H acquired the car and that while Mr H had the car there was no evidence of oil or coolant leaks. She reiterated that she didn't think the car was fit for purpose at the point of supply.

### **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.

Mr H acquired a used car through a conditional sale agreement with Moneybarn. Under the regulations, specifically the Consumer Rights Act 2015 (CRA 2015), Moneybarn can be held liable if the car wasn't of satisfactory quality at the point of supply. Satisfactory quality takes into account factors such as the age and mileage of the car and what a reasonable person would expect taking into account all the circumstances. It includes consideration of the general state and condition of the goods, the fitness for purpose and whether the goods are sufficiently durable.

In this case the car was registered in June 2014. As I noted in my provisional decision there was conflicting evidence about the mileage at the time of acquisition, but it appears to have been around 70,000. Given this it would be reasonable to accept that the car would have suffered some wear and tear.

I note the comments that have been made about how Mr H maintained the car and I do not dispute that he took care of the car by having regular tyre and oil checks. However, for me to uphold this complaint I have to be satisfied that the car wasn't of satisfactory quality at the point of supply.

The information initially provided suggested that the issue that caused the damage to Mr H's engine was due to the timing chain. The independent inspection report records the issue as being the oil pump drive chain and it says that this was what the garage had suspected had caused the issue,

Mr H was able to drive the car for six months after acquisition and over 4,200 miles. A MOT was carried out in November 2019 which didn't raise any concerns. Therefore, I find it reasonable to accept that the car was roadworthy at the point of supply. Had there been a fault present at the point of supply with the oil pump chain or timing chain I wouldn't have expected Mr H to have been able to drive the mileage he did and as the MOT didn't raise any concerns I do not find I have enough to say the car was faulty at the point of supply.

I have considered whether the failure of the oil pump drive chain meant that the car wasn't sufficiently durable. I have sought further information about the expected life of both oil pump drive chains and timing chains and I understand these should have a reasonably long life but that the actual life will depend on how the car is maintained. Parts of a car will be subject to wear and tear and so I have considered whether the issues Mr H's car experienced after being driven 77,000 meant the car wasn't sufficiently durable.

When acquiring a used car, it is important to assess the service history. In this case Mr H has said the service history showed the car was serviced late. I have looked at the service history and noted that services did take place but as these were late, it is also possible that the car wasn't maintained to the standard required to ensure the full life of its parts. The price of a used car will reflect its age, mileage and condition. In this case I do not find I can say it would be reasonable to expect no wear and tear on the car at acquisition. Given the age and mileage of the car at acquisition and the mileage Mr H was able to drive I find it more likely than not that the reason for the car's failure was wear and tear rather than a fault.

Mr H drove the car for six months before the issue arose. I note the comment he has made about how he maintained the car I also note the comment made in response to the points raised in the inspection report about possible drive on damage. I can see Mr H bought oil in early January 2020 and the car failed a month later. Given Mr H's comments about his mileage this would support the oil issue being raised and him then driving around 700 miles. However, based on the comments made it doesn't appear that Mr H was aware that there was an ongoing issue with the oil after he had topped this up in January.

However, while I have considered the points that have been raised I still don't find that I have enough to say the car wasn't of satisfactory quality at the point of supply. This is because there is no evidence that the car was faulty when supplied and while the part failed this appears to be due to wear and tear. Given the mileage of the car and the mileage covered by Mr H I do not find I have enough to say the car wasn't sufficiently durable or not of satisfactory quality at the point of supply.

I know this will be a disappointment to Mr H and understand this issue has caused stress and upset. I would expect Moneybarn to work with Mr H to ensure that he is provided with the options available to him and that the payments towards an outstanding finance are managed in a way that is sustainably affordable for Mr H.

**My final decision**

My final decision is that I do not uphold this complaint against Moneybarn No. 1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 April 2021.

Jane Archer  
**Ombudsman**