

## **The complaint**

Mrs N complains about the quality of a car she has been financing through an agreement with Moneybarn No. 1 Limited ("Moneybarn"). She also complains that the supplying dealership confirmed that the car met the London low emission standards.

## **What happened**

Mrs N entered into a conditional sale agreement with Moneybarn in April 2019 for a used car costing £14,500. The car was around seven years old and had travelled approximately 116,000 miles. Everything else being equal, Mrs N undertook to make an advance payment of £4,500 followed by 47 monthly payments of £365.88 making a total payable of £21,696.36 at an APR of 34.9%.

Mrs N says that shortly after she collected the car there were problems with it, culminating in the engine management light being illuminated, an oil leak, turbo problems and then complete engine failure.

Mrs N complained to Moneybarn about the problems she was experiencing with the car and Moneybarn arranged for it to be inspected by an independent third party. An inspection was carried out in both September and October 2019.

On receipt of the inspection reports Moneybarn wrote to Mrs N in November 2019 to say that it didn't believe the problems she had been experiencing with the car were inherent or developing at the point of sale, so it wasn't upholding her complaint about the same. It also said that it hadn't seen sufficient evidence to uphold her complaint that she was advised (by the dealership) that the car met the London low emission standards.

Mrs N's complaint was considered by one of our investigators who concluded that it shouldn't be upheld. In summary he said he accepted that Mrs N had experienced problems with the car but based on the two independent third party inspection reports these problems wouldn't have been present, or developing, when the car was supplied and responsibility for the same didn't fall on the supplying dealership (or Moneybarn). He also said that he had seen insufficient evidence to conclude that Mrs N was advised that the car met the London low emission standards. But in any event, this was something Mrs N could and should have checked for herself.

Mrs N didn't agree with the investigator's conclusions and so her complaint has been passed to me for review and 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.

First, I would like to point out I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Secondly, I would add that where the information I've got is incomplete, unclear or contradictory, as some of it's here, I've to base my decision on the balance of probabilities.

Mrs N acquired her car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant legislation says that Moneybarn are responsible for supplying Mrs N with a car that is of satisfactory quality. But what's considered satisfactory will depend on a range of factors. These would include things like the age and mileage of the car when it was supplied, its overall condition and the price paid.

The car was around seven years old at the point of sale and had covered significant mileage. This was reflected in the cash price which was a lot less than what it would have cost brand new. So, what would be considered satisfactory for this car would be very different to a brand new one.

You'd still expect a second hand car to be free from faults. But you would expect certain components to be more worn and in need of replacement sooner. There might also be a reasonable expectation that more regular maintenance might be required and that some parts would be more prone to failure as they were nearer the end of their expected life cycle.

I'm satisfied that since taking delivery Mrs N has experienced problems and there is currently one or more faults with the car. But like the investigator I'm not persuaded that these faults were present or developing at the point of sale. I say this because:

- The first independent inspection report dated 3 September 2019 states (amongst other things): *"...However after 3,974 miles the fault is most likely a new issue and not related to a previous defect."*
- The second independent inspection report dated 28 October 2019 states: *"We do have to take into consideration the time and mileage which we are advised, have elapsed since the point of purchase. On this basis, on the balance of probability, the present defects could not have been present at that time and have likely progressed and developed thereafter. The eventual failure has clearly been sudden in the vehicle's last journey."*
- Although Mrs N got her own report undertaken dated 20 August 2019, I don't think this helps her. This report doesn't contradict the second independent inspection report and it also suggests that further diagnosis is required to confirm the damage and the cause of it. It also makes no comment on whether the fault, or faults, were likely to have been present or developing at the time the car was purchased.
- In my view the most recent issues with the car are, on balance, unrelated to repairs undertaken by the supplying dealership in June 2019 (at no cost to Mrs N) or the three items marked on the MOT test certificate as advisories, this test being undertaken (and marked as passed) shortly before Mrs N took delivery.
- It would appear, based on what all the parties have said and submitted, that the car may well have been driven without the correct amount of oil in it and for some period of time. And, in my view, this may have caused the latter problems, or certainly contributed to them and/or made them worse.

I appreciate it will come as a disappointment to Mrs N, but given what I say above I find that on the balance of probabilities its more likely than not that she was supplied with a car that was, at the material time, of satisfactory quality for its age, the miles travelled and the price paid and the current fault(s) weren't present or developing at the point of supply.

I can see that Mrs N says that she was advised by the supplying dealership that the car met the London low emission standards. Now I can't say for certain that Mrs N wasn't misled as she submits. But other than Mrs N's testimony, I've seen nothing to suggest she was misled. So, on the balance of probabilities, I'm not persuaded Mrs N was misled into believing the car met the London low emission standards. I also agree with the investigator that regardless of whether Mrs N was misled about the car meeting the London low emission standards, this is something that she could and should have checked for herself direct with Transport for London.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 15 June 2021.

Peter Cook  
**Ombudsman**