

The complaint

Mr H complains that a used car Moneybarn No. 1 Limited supplied under a conditional sale agreement (CSA) is of unsatisfactory quality.

Mr H was assisted in bringing this complaint by a relative, but I'll refer to anything that's been said on his behalf as if Mr H said it himself, to keep things simple.

What happened

Mr H took out this CSA at the end of 29 January 2019. He got the car a few days later and an engine management light (EML) came on a few days after that. Mr H contacted the dealer, who told him to take the car to a third party garage (that I'll refer to as B), that the dealer used for repairs. B told Mr H that the problem was a faulty sensor and this had been replaced but the EML illuminated again on the way home. Mr H tried to contact the supplying dealer but got no response and he took the car to a local garage (that I'll call E) where it was inspected.

E says the car had covered nearly 93,000 miles on 28 March 2019, according to the odometer. E found a knocking sound could be heard from the engine, diagnostic checks showed a running fault when the car was idling, NOx and O2 sensors were faulty, the exhaust leaked, a rear brake was missing a spring and there was a combustion misfire on several cylinders. Mr H was told that repairs would cost about £2,000 and this wasn't covered under a warranty he got with the car. He tried to contact the supplying dealer again but he'd gone out of business.

Mr H complained to the broker that arranged the finance and an independent expert was engaged to inspect the car, in June 2019. The mileage recorded at the inspection was just over 97,300. The expert considered the MOT history didn't reveal any major issues. He found whilst the EML was on the engine oil pressure light was not illuminated and the car didn't show any evidence of reduced performance – although engine speed at idle was uneven, indicative of a slight misfire. He noted that E found one cylinder was low on compression, the exhaust system was leaking and the car had underlying issues with emissions.

The expert didn't see the oil pressure warning light that Mr H said illuminates intermittently but he thought it prudent for the car to have an oil engine flush and filters replaced - as a preventative measure. He considered exhaust and emissions issues could have occurred at any time - due to age-related general wear and tear. Given the time that had elapsed since supply, the expert didn't think there was enough evidence to show that these issues were present at the outset - or indicate that the car was unfit for purpose at that stage. He concluded that it was probably in a satisfactory condition at the point of supply.

Moneybarn rejected Mr H's complaint. It didn't accept the car was of unsatisfactory quality at the outset - given the expert's conclusions and the fact Mr H was able to travel about 8,300 miles by the date of the inspection. Moneybarn said any issues present were likely to have developed over that time so it shouldn't be held responsible or have to do anything further.

The car broke down in July 2019. E told Mr H that the crankshaft had failed, a knocking sound heard in March was probably an early sign of this issue, the car couldn't be driven and it was uneconomic to repair. Mr H contacted Moneybarn who indicated that the expert would be informed, to see if this changed his view but didn't provide anything further.

Mr H was unhappy that Moneybarn didn't accept the car was faulty and allow him to reject it. He was unable to drive the car and struggled to maintain his monthly finance payments. Moneybarn agreed to accept reduced payments for a time but Mr H thinks it was wrong to continue to chase him for payment. He wants Moneybarn to take the car back and provide a refund and compensation.

One of our investigators considered the evidence and recommended the complaint should be upheld. She was satisfied that

- the mileage recorded on the sale invoice of 89,000 miles is probably wrong - as the MOT certificate some three months earlier records a higher mileage - so Mr H wasn't able to drive the car as far as Moneybarn suggests;
- Mr H reported the EML not long after collection and the same EML was still illuminated when the expert inspected the car about four months later;
- E checked the car just a month after supply and identified several faults;
- the mechanic considered these were significant, unlikely to be wear and tear related on a car of this age and mileage and probably present when Mr H got the car - in light of the relatively short time he had it and the distance travelled;
- the car broke down in July 2019 – within six months of supply – due to a problem with the crankshaft
- E considers the knocking sound heard in March was probably related to the crankshaft failure, suggesting the car had a much bigger problem even at that stage.

On balance, she doesn't think Moneybarn has done enough to show that these faults weren't present at the point of supply. She thinks it is more likely than not the car had significant faults at the outset. She recommended Moneybarn should:-

- end the CSA and arrange to have the car collected at no cost to Mr H;
- refund any payments Mr H made from July 2019 when he had no use of the car;
- refund the cost of diagnostic tests incurred by Mr H;
- pay interest at 8% simple a year on any refund from the date each payment was made to the date of settlement;
- remove any adverse information recorded on Mr H's credit file; and
- pay Mr H £150 for the trouble and upset caused

Moneybarn didn't respond at first and then, after requesting some further information, it agreed with the outcome the investigator proposed, in March 2021. Mr H feels he should receive more compensation for everything that's happened but he accepted the investigator's recommendations to see an end to the matter last month.

Moneybarn didn't contact Mr H to arrange to take the car back and action the agreed resolution for several weeks so he asked for the matter to be referred to an ombudsman for a 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.

Where evidence is incomplete, inconclusive or contradictory – as some of it is here- I reach my decision on the balance of probabilities. This means I consider what's most likely to have happened in light of the available evidence and the wider circumstances. I make my decision based on what I consider to be fair and reasonable but I must have regard to relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) good industry practice at the relevant time. I'm satisfied the Consumer Rights Act 2015 (CRA) is relevant here.

Moneybarn supplied this car under a CSA. Under the CRA, there's an implied term in a contract to supply goods that they will be of satisfactory quality. This means the goods need to meet the standard a reasonable person would expect. And the quality of the goods includes their general state and condition as well as fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. In the case of a used car, it's generally reasonable to take into account the age, price and mileage at the point of supply.

This car was over nine years old and cost about £5,000 when Mr H got it. It's unclear what the exact mileage was at that point. The CSA and the sale invoice both record the car had 89,000 miles on the clock but that's not consistent with the mileage recorded at an MOT some three months before, of 89,842. I don't think there's necessarily anything suspect about that - it's possible the dealer simply "rounded down" the mileage on the odometer when he recorded it in the sale paperwork. But, the accuracy (or otherwise) of this figure is important here because it impacts on the calculation of how far Mr H was able to drive the car after supply.

Like our investigator, I consider the mileage recorded at the MOT is more likely to be accurate. I also think the car's likely to have been driven between the MOT in October 2018 and the sale in February 2019. I can't be certain how far that might have been but I think Mr H would probably have noticed if the mileage recorded in the sale paperwork was significantly lower than the clock in the car showed. On balance, I find it unlikely that the car had significantly more than 90,000 miles on the clock when Mr H got it.

I think it's fair to say a reasonable person wouldn't expect a car like this to meet the same level of quality as a brand new vehicle. Undoubtedly some parts would be worn and need to be repaired or replaced sooner or later - which is reflected in the lower price paid for a used car. But, that doesn't mean an older car with higher mileage can be supplied without any regard for quality – it still has to meet the level of quality that a fair minded person would consider satisfactory for the price, age and mileage.

Looking at the expert's report, I don't think there's any dispute that the car had faults when he inspected in June 2019. I accept the expert didn't think there was enough evidence to conclude that these were present when Mr H got the car but I don't think that's right, on the balance of probability. I say this because I'm satisfied that an EML came on just days after Mr H collected the car. I think the dealer acknowledged that was unacceptable and that's why he arranged for a repair at no cost to Mr H. It looks however as if that repair didn't work – Mr H says the EML light came on again on his way home the same day.

In the usual course of events I think a reasonable person would expect the dealer to sort this out - and Mr H says he tried to contact the dealer again but there was no response. The dealer is no longer trading so we haven't been able to get any information from him about these events. But, Mr H has gone to some trouble to supply information from his phone - such as copies of text messages and call logs. I'm satisfied these show several calls were made to the dealer and the third party garage at the relevant time. I think that's consistent with the chain of events that Mr H describes. And I find it is more likely than not this car had an ongoing issue within days of supply that the dealer failed to resolve despite attempts at repair.

I appreciate Moneybarn may well say this issue may not have been significant. And I accept an EML can mean all sorts of things from a relatively minor issue to a much more serious problem. But I'm satisfied E saw the car the following month - by which time Mr H had probably driven it less than 3,000 miles. I've seen paperwork from E which identifies several issues including a leak from the exhaust. The mechanic that checked the car also told us he heard a knocking sound at that time. I can't be certain if that noise was related to the subsequent crankshaft failure a few months later. But, on balance and based on the evidence I've seen, I'm satisfied that this car had significant issues which required costly repairs in March 2019 and I think it's more likely than not the car was of unsatisfactory quality when it was supplied.

Putting things right

It's reasonable that Moneybarn appears, ultimately, to have accepted the car was of unsatisfactory quality and agreed to put things right. I've considered the outcome recommended by our investigator and I find this seems fair and reasonable overall.

I say this because I'm satisfied Mr H reported problems here early on, but the repairs arranged by the dealer didn't resolve things - and E told us it would be uneconomic to carry out further repairs. Like our investigator, I don't think it's fair for Mr H to have to keep the car in this situation. I agree it is fair and reasonable for Moneybarn to take the car back and provide a refund. According to the CSA he didn't pay a deposit but I've seen two invoices (for about £100 each) in respect of work, including diagnostic checks, that was undertaken by E in March and July 2019. Mr H wouldn't have had to pay for this if the car was of satisfactory quality when it was supplied so I think it's fair that Moneybarn should provide a refund.

Mr H told us he stopped driving the car in July 2019 on E's advice that the car was unroadworthy (and E has confirmed that). I don't think it's reasonable to expect Mr H to pay for a car that he couldn't use so I agree Moneybarn should refund any payments Mr H made towards the finance from July 2019, after he stopped using the car - and remove any adverse information recorded on Mr H's credit file.

I understand Mr H feels that he and his family should receive more compensation for the time they've spent dealing with the faulty car and the complaint, in particular. But, as our investigator has explained, we don't normally require compensation to be paid for time spent bringing a complaint and, whilst I appreciate Mr H and his family have been upset and inconvenienced by what happened, I'm unable to require Moneybarn to compensate anyone apart from Mr H - who is the customer and party to the CSA.

I'm satisfied that Mr H was put to some inconvenience having to take the car back and forth to more than one garage for investigations and repairs. I think it was probably also very frustrating and stressful to find this car had problems so soon after supply and then to have to drive it in limp mode at times. Taking everything into account I think it is fair for Moneybarn to pay Mr H £150 compensation for the distress and inconvenience he experienced.

My final decision

For the reasons I've given, my decision is I uphold this complaint and require Moneybarn No 1 Limited to:-

1. end the CSA and mark the agreement as settled;
2. arrange to collect the car from Mr H at no cost to him;
3. refund any monthly payments made from July 2019 onwards, after Mr H was unable to use the car;
4. refund the cost of diagnostic checks and other work undertaken by E (as referred to above);
5. pay interest on the refunds above at 8% simple a year from date of payment to date of settlement
6. pay Mr H £150 compensation for inconvenience and distress caused
7. remove any adverse information recorded about the CSA on Mr H's credit file.

If Moneybarn does not pay the £150 compensation awarded for inconvenience and distress within 28 days of the date on which we tell it that Mr H accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

If Moneybarn considers that it is required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr H how much it's taken off and give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 May 2021.

Claire Jackson
Ombudsman