

The complaint

Mr K complains that a car acquired with finance from Moneybarn No 1 Limited trading as Moneybarn wasn't of satisfactory quality.

What happened

In April 2020 Mr K was supplied with a car and entered into a conditional sale agreement with Moneybarn. At the point of supply, the car was around 7 years old and had covered around 55,500 miles.

Mr K experienced issues with the car in the first few months. These included chip marks and a poor paint repair on the bonnet, the heater blowing cold air and the engine overheating, loss of coolant due to a crack in the expansion tank and engine failure due to issues with the cylinders.

Following the failure of the engine, Moneybarn arranged for an independent inspection of the car. The inspection concluded that there had been wear and deterioration of the cylinder 2 gudgeon pin which resulted in the piston skirt breaking. The inspector said that due to the time and mileage elapsed since the point of supply, he didn't think the fault was present at the point of supply.

Based on the findings of the inspection, Moneybarn rejected the complaint.

Mr K remained unhappy and complained to this service. He says he's incurred expenses as a result of not being able to use the car and that the cost of a new engine was £2500. He wants Moneybarn to pay for the repairs.

Our investigator didn't uphold the complaint. She said that based on the evidence she'd seen, she was unable to say that the fault was present or developing at the point of supply and didn't think there were grounds for rejection.

Mr K didn't agree. He felt that the cracked coolant tank had caused damage to the engine. He said he didn't know how long he'd been driving the car with the cracked coolant tank because it didn't become apparent until it was sufficiently serious. Mr K didn't feel that the inspection had addressed this point. He also said he didn't think it was reasonable to replace an engine after such a short time of owning the car.

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.

Because Moneybarn supplied the car under a conditional sale agreement, there's an implied term that it is of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid.

I would expect a second hand car – such as that supplied to Mr K – to have a degree of wear and tear and to require repair more often than, say, a brand new car. In order to uphold this complaint, I would need to be satisfied that there was a fault with the car at the point of supply, as opposed to a fault due to general wear and tear.

Under the Consumer Rights Act 2015, where a fault occurs in the first 6 months of the point of supply, there's a presumption that it was present or developing at the point of supply and it's generally up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can reject the car. After 6 months, the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality at the point of supply.

The first fault experienced by Mr K related to the expansion tank which was found to have a crack in it, causing coolant to leak and the engine to overheat. I can see that the dealership carried out repairs and that Moneybarn reimbursed Mr K's costs of recovering the car to the garage. It also paid compensation of £155 for trouble and upset. This is what I would've expected the business to do in these circumstances.

I've had regard to Mr K's concerns that the crack in the expansion tank may have caused damage to the engine. There's nothing in the AA report, or either of the two inspection reports, to suggest that this is the case. Both inspectors would have been aware of the previous issue with the cracked tank and if there had been any possibility of a link between the two issues, I think it's likely that the inspector would've identified it and commented on it.

I've carefully considered both inspection reports. The first report identified a noise in the engine and found that the number 2 piston skirt was broken. The second report is more detailed and concludes that the piston skirt failure was caused by wear and deterioration of the cylinder 2 gudgeon pin displaying free play. The inspector stated that because of the time and mileage elapsed since the point of supply, he didn't consider this to be a point of supply fault.

Based on everything I've seen, there isn't enough evidence for me to safely conclude that the car wasn't of satisfactory quality. I appreciate that Mr K doesn't think it's reasonable to have to replace the engine after driving only 11,000 miles since he got the car. However, the engineering evidence suggests that the fault was one which could've presented itself at any time and any mileage due to operating conditions and car usage. The fault appears more likely to be a sudden failure of a component part, as opposed to a fault present at the point of supply.

Finally, and in relation to the paintwork, there isn't enough evidence for me to say whether the chips and poor paintwork were present at the point of supply. But even if the chips were present at the point of supply, I'm not persuaded that this would render the car of unsatisfactory quality, as it is cosmetic damage.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 October 2021.

Emma Davy
Ombudsman