

## **The complaint**

Mr R complains that the car he acquired from Moneybarn No. 1 Limited (“Moneybarn”) was not of satisfactory quality.

## **What happened**

Mr R acquired a used car from Moneybarn through a conditional sale agreement in February 2020. The car had a cash price of around £4,000 and was around 7 years old. It had travelled around 84,000 miles when it was supplied.

Mr R told us that the engine management light came on in the car in the first 2 or 3 weeks and he heard a knocking sound from the engine. There was also a smell of fuel. He has told us he took the car back to the supplying dealership but before they inspected it, the national lockdown due to coronavirus occurred.

He raised his concerns with the broker for his finance in April 2020, and they arranged for a complaint to be raised with Moneybarn. Towards the end of May 2020, when they had re-opened, Mr R took the car back into the dealership and they carried out some repairs. The finance broker has said that the dealership replaced some sensors.

However, in July 2020 Mr R has said he was still experiencing the same problems, so he contacted Moneybarn again (through the finance broker) to say the car was still having the same issues. He said the dealership hadn’t test driven the car properly when they repaired it and when he got it back, he took it on the motorway and found it still misfired and the engine management light came on again.

An independent inspection was arranged by the finance broker. This took place in August 2020. The report says that the previous repairs included a sensor which was affecting the engine management light. It says that the car was in generally good condition for its age and mileage, and the only faults they identified were an uneven idling, and an oil leak from the cam cover area which may have been creating the smell of burning fuel the customer had mentioned. The engineer attached the diagnosis equipment to the car, and no fault-codes were recorded, or present.

The report said there was no evidence of an engine knocking noise, no misfire, and nothing else of concern was identified. The engineer felt that because the car had passed its MOT shortly before Mr R had acquired it, with no mention of an issue with an oil leak or seepage, that fault must have developed after the point of sale. He said it was not a significant issue and estimated it would probably cost around £60 to repair.

The conclusion was that the vehicle was road worthy and had no other issues but suggested the oil leakage should be dealt with as it could be a fire risk.

At this point, Moneybarn issued a second final response letter. They had issued one in May 2020 not upholding the complaint because they’d been unable to investigate the concerns or get hold of Mr R to get any more information about the problems.

So, when Mr R had contacted them again in July 2020 saying there were still problems, they re-opened an investigation and issued a further final response letter. This said that the independent report said there were no faults evident that had been present or developing at point of sale, so did not uphold his complaint.

Unhappy with this, Mr R said that he felt the car was unsafe, and he voluntarily terminated the finance agreement and gave the car back. After this, he brought his complaint to our service. The investigator here who looked into it did not uphold the complaint. They felt that there wasn't any evidence of the issues Mr R said he had experienced, and the problems identified in the independent report were wear and tear issues for a car of this age and did not make the car of unsatisfactory quality.

Mr R didn't agree with this and asked for the case to be reviewed by an Ombudsman. He said that the Citizens Advice Bureau had told him about a 30 day rule from when he'd acquired the car, and it wasn't fair that national lockdown had meant the garage hadn't looked at the car inside 30 days, when he had first identified the faults, because he felt that would make a difference to the outcome of his complaint.

### **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.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So, it seems likely in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

Before I look at the issue of whether the car was of satisfactory quality, I will first look at Mr R's concerns that because the faults had appeared within the first 30 days, he was unfairly treated because the dealership didn't look at the car in a timely fashion and then national lockdown prevented them doing so.

If it is shown there was an issue with the quality of the car, the impact that the timing could have here would be on how the complaint could be resolved. If it was shown that the car was not of satisfactory quality within the first 30 days, the consumer would have the immediate right to reject the vehicle. This would apply without having to give the business the opportunity to repair the issues.

The car was taken for repairs in May 2020, and it seems one or two sensors were replaced, potentially including one which affected the engine management light coming on. This would fit with the testimony that Mr R has provided about the engine management light coming on in the first few weeks, so I am satisfied that there may well have been an issue he noticed within the first 30 days.

But that issue would need to make the car of unsatisfactory quality. I don't agree that replacing a sensor to ensure the warning light works correctly would make the car of unsatisfactory quality in a car of this age. Alongside this, Mr R accepted the repairs provided

by the dealer, and has provided text messages showing these conversations and that he agreed to bring the car in to be repaired without asking to reject it.

Mr R has said that also within that first 30 days, there was a knocking noise, a smell of fuel and the engine misfired. He felt the problem might be connected to a head gasket failure and there might be issues with the cam shaft cover.

The business has not said that any of these issues were identified and repaired in May 2020, and Mr R has said that the issues remained after those repairs, hence he complained again in July 2020.

So, I think it's fair to say that when the independent report was undertaken in August 2020, if any of these issues were evident, they could be linked back to the first 30 days when Mr R acquired the car. So the fact the car wasn't inspected in the first 30 days doesn't mean any faults can't be shown to have been present at this time.

However, the independent report does not identify any issues other than an oil leak. The report says that if an oil leak had been present when the car was supplied, it would most likely have shown up in the MOT carried out shortly before the car was supplied. This is plausible, and I agree this is most likely to have been the case.

Alongside this, a small oil leak like this would not in my view be considered an issue which made the car of unsatisfactory quality. From the details provided in the independent report, it is most likely this was just a wear and tear issue, and not something which made the car of unsatisfactory quality.

So even if it had developed inside 30 days, because of the age and mileage already covered by the car when it was supplied, this wouldn't make the car of unsatisfactory quality. The car was 7 years old and had covered 84,000 miles already. It would be reasonable to expect that a car of this age and mileage might suffer from some wear and tear, and some of these parts might need fixing or replacing quite soon after it was supplied.

Unfortunately, Mr R has not been able to provide any evidence of an engine knock, or any issues with the head gasket or the cam shaft cover. And the independent engineer who inspected the car did not find any issues with these things (other than the oil leak onto the cam cover which may have caused the smell which concerned Mr R). I appreciate that sometimes it can be difficult to evidence issues with a car, and sometimes they can be intermittent and appear at times and not at others. But I have to base my decision on the balance of probabilities where there is any contradictory evidence.

I give the independent report significant weight here in considering the evidence. The car had only done around 1000 miles since it had been supplied when the inspection was carried out in August 2020. So, if the report had identified any significant issues, I would be satisfied that they were most likely developing at point of sale. Ultimately, whether the car had been inspected within 30 days, or later on as was the case, wouldn't make a difference here as to the outcome of the complaint. Whether the car was of satisfactory quality when it was supplied is the key issue, and when this was identified isn't important.

The report carried out in August 2020 did not find any significant issues with the car which would make it of unsatisfactory quality. As there is no similar or more persuasive evidence that contradicts this independent report, I am satisfied that on the balance of probabilities, the car was of satisfactory quality when it was supplied to Mr R. I won't be asking the business to do any more here.

### **My final decision**

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 January 2022.

Paul Cronin  
**Ombudsman**