

The complaint

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

What happened

In July 2020 Mr T was supplied with a car and entered into a conditional sale agreement with Moneybarn.

Mr T experienced issues with the car, which included;

Misfiring

Steering vibrating

Undisclosed previous repairs

Noisy engine and brakes

Oil and water mixed in the cooling system

Engine management and oil pressure lights illuminated

In August 2020 the car went into limp mode. Mr T had the car recovered to a local garage who identified a misfire fault and cleared it. Following this, Mr T took the car to the garage again because the brakes were juddering. The garage identified warped brake discs.

In October 2020 the car went into limp mode again. Mr T took the car to the garage who diagnosed engine failure.

Mr T complained to Moneybarn. It arranged for an independent inspection. This found that there had been oil contamination and catastrophic failure of the engine. The engineer said that because of the time and mileage elapsed since the point of supply, the fault would not have been present at the point of supply.

Moneybarn said it wouldn't accept a rejection of the car. Mr T wasn't happy with the response and complained to this service.

Our investigator upheld the complaint. he said that despite the engineer's report, he didn't think it was reasonable to experience so many faults within such a short time of the point of supply.

Moneybarn didn't respond to the investigator's view so I've been asked to make a final 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.

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 to require more repairs than a brand new car. So, in order to uphold the complaint, I would need to be satisfied that the car had a fault at the point of supply, as opposed to a fault which occurred due to wear and tear.

Under the Consumer Rights Act 2015, where a fault occurs in the first 6 months, there's a presumption that it was present or developing at the point of supply and it's up to the business to put things right. 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.

An independent engineers report can help to decide whether a car was of satisfactory quality at the point of supply. I've looked at the engineer's report in this case. He found that although the coolant level was correct, there was evidence of oil contamination throughout the engine and the diagnostics identified five fault codes relating to the cylinder pressure and crank/cam position. The engineer's opinion was that the car had suffered from engine overspeed which caused catastrophic engine damage. He said he didn't think the fault would have been present at the point of supply due to the time and mileage elapsed.

When the car was supplied it had covered around 78,000 miles. I can see from the engineer's report that the oil pressure switch malfunctioned at around 81,000 miles in October 2020. This is consistent with Mr T reporting that the car went into limp mode in October 2020. So, at the time of engine failure, Mr T had had the car for around 3 months and had covered around 3000 miles.

I've also taken into account that the car previously went into limp mode in August 2020. The garage who looked at the car at this time identified a misfire fault.

Although the engineers report says that the fault wouldn't have been present at the point of supply, I've got concerns that the car went into limp mode and had a misfire fault so soon into the agreement. Further, I don't think that 3 months/3000 miles is very long in terms of time and mileage before a major failure occurred. On balance, I don't think the engineers report is enough to rebut the presumption that the fault was present or developing at the point of supply.

I've also thought about the issues with the brakes. The issues occurred around a month into the agreement. The garage identified warped brakes and excessive wear. Although, as I've said, I'd expect some wear and tear in a second hand car, I think this level of damage to the brakes is more than a reasonable person would expect so early on into the agreement. I think it's more likely than not that the brakes were in an unsatisfactory condition at the point of supply.

Taking everything into account, I'm of the view that the car wasn't of satisfactory quality at the point of supply.

Putting things right

Mr T has paid for repairs to the car. If he hadn't done so, I would expect Moneybarn to arrange for repairs and bring the car back up to a satisfactory condition. In the circumstances, Moneybarn should refund the cost of repairs.

Following the engine failure, Mr T wasn't able to drive the car for several months until he could afford the repairs. I don't think it's fair to expect him to make payments under the agreement when he was unable to use the car. Moneybarn should refund these payments.

Further, Mr T's use of the car was impaired because of the issues with the brakes. Moneybarn should refund 10% of payments made by Mr T for the period when the brakes weren't functioning as they should have done.

The faults with the car have impacted on Mr T. He's had to return the car to the garage more than once and has suffered distress and inconvenience as a result. Moneybarn should compensate Mr T for this.

My final decision

My final decision is that I uphold the complaint. Moneybarn No 1 Limited should:

Refund the cost of repairs in the sum of £4640

Refund all payments made by Mr T from 7 October 2020 to 12 March 2021

Refund 10% of payments made by Mr T from 27 August 2020 to 1 October 2020

Pay 8% simple interest on all sums refunded from the date of payment to the date of settlement

Pay £150 compensation (in addition to any compensation already paid) to Mr T for distress and inconvenience

Remove any adverse information from Mr T's credit file relating to the agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 January 2022.

Emma Davy
Ombudsman