

## **The complaint**

Mr B complains about the quality of a car supplied to him under a conditional sale agreement with Moneybarn No.1 Limited.

## **What happened**

In January 2020 Mr B entered into a conditional sale agreement with Moneybarn, for a used car. The cash price for the car was £10,495, it was seven years old and had travelled 41,464 miles. Mr B purchased a separate 12-month warranty shortly after he got the car.

Mr B tells us he experienced issues with the car in the first few months of getting it. He noticed scratches to the bonnet and in March 2020 he noticed a burning smell. He was unable to take the car to a garage at the time, due to the Covid-19 lockdown restrictions. Mr B says he first noticed smoking from the exhaust in October 2020. Mr B took the car to several garages to try to get to the bottom of the problem. In February 2021 a garage repaired the turbo and went on to identify damage to a piston. The garage said the engine needed to be replaced. Mr B made a claim for the cost of the repairs under his warranty, but it was not accepted. The car remains at the garage, with the engine stripped.

Mr B wants Moneybarn to allow him to either reject the car and get back the money he has spent on diagnosis tests or for it to pay for it to be repaired.

Mr B complained to Moneybarn in April 2021. Moneybarn said that as the issues arose nine months after the car was supplied, the onus was on Mr B to show there was a fault that was either present or developing at the time of supply; And that fault was not a result of normal wear and tear. As Moneybarn did not think Mr B had done this, it didn't uphold his complaint.

Unhappy with Moneybarn's response Mr B brought his complaint to our service. Our investigator looked into the complaint. She didn't think there was enough evidence to show the fault was either present or developing when the car was supplied to Mr B. She invited him to get an independent inspection report to conclude on whether the car was defective when it was supplied, he hasn't provided one.

Mr B disagreed, he said it's not reasonable for a car that had only travelled 48,681 miles, to require a new engine. For this reason, he says the car was not of satisfactory quality when it was supplied.

The complaint has been passed to me to make a final decision. I contacted the garage that currently has Mr B's car for more information about the fault.

## **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.

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 raised by Mr B or Moneybarn, 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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – that is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

Because Moneybarn supplied the car under a conditional sale agreement, there's an implied term that the car is of satisfactory quality. The Consumer Rights Act 2015 (CRA) says the quality of goods includes their general state, condition and other things like their fitness for purpose, their appearance and finish, freedom from minor defects, safety, and durability. 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 B to have a degree of wear and tear and to require repair more often than, say a brand-new car. In order to uphold Mr B's complaint, I 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 CRA, where a fault occurs within the first six months, there's a presumption that the fault was present or developing at the point of supply and it is up to the business show otherwise. After six months, it's up to the consumer to show that the car wasn't of satisfactory quality when it was supplied.

Mr B has provided photos of scratches on the car bonnet. He said he didn't notice these until around a week after getting the car. Mr B purchased a seven-year-old car, with over 40,000 on the clock, so I wouldn't expect the paintwork to be in perfect condition. And I would have expected the scratches to be noticeable when Mr B got the car. So, I'm not satisfied the scratches mean the car wasn't of satisfactory quality, when it was supplied.

Mr B also says there is white paint on the underside of the bonnet, he says this indicates the car was repaired after an accident. But he hasn't provided any car history to confirm the car was in an accident. And given the age and mileage of the car, I don't think it is unreasonable that the car may have had some cosmetic repairs undertaken, without having been in an accident. So, I don't think this means the car was of unsatisfactory quality, when it was supplied.

Mr B says that within just two months of getting the car his friend reported there was a burning smell from his car when he overtook them. Mr B says he was unable to get the car to a garage at the time due to the Covid-19 lockdown restrictions. In October 2020 Mr B says he first noticed smoking from the exhaust when the engine was idle.

Mr B's car passed its MOT when he was supplied the car in January 2020. And whilst MOT's do not cover the condition of engines, they do include an exhaust checks and I can't see there is anything in the advisories to indicate there was any smoking from the exhaust or a burning smell at the time. I can see Mr B took the car for a free vehicle health check (VHC) in October 2020, at this point the mileage is recorded as 47,008. Whilst a VHC is a basic check of a car, and not a specialist diagnostic test, VHC's usually include a check of the exhaust. But again, there is nothing in the report to indicate there was either a burning smell or smoking from the exhaust. I would've expected the VHC to pick up these problems if either were present at the time.

Whilst I acknowledge what Mr B has told us about the burning smell starting in March 2020 and the smoking from the exhaust in October 2020, the earliest supporting evidence of any

issues being raised with the car is on 3 November 2020, where I can see Mr B's warranty company emailed him to request that he gets the garage to call it once it has identified why the car is running lumpy, this was over nine months after the car was supplied. Mr B stopped making payments towards his agreement in November 2020.

From what I've seen, the diagnosis of the fault has been far from straightforward. I can see Mr B liaised with a number of garages between December 2020 and January 2021 to get to the bottom of the smoking and burning smell. And a garage in January 2021 was also investigating the issue of the car consuming two litres of oil in under three weeks. The garage confirmed there was a mechanical rather than electrical problem, but it did not know the cause of the problem. I can see Mr B was charged £89 for a diagnostic test and was quoted another £178 for further investigations. I can see Mr B gave the garage the details of his warranty company, but it isn't clear whether Mr B or the warranty company covered the costs.

Mr B took his car to another garage in February 2021, where his car remains to date, this garage investigated the smell, juddering and smoking issues. It initially diagnosed a turbo fault. The turbo was removed and sent to a turbo specialist. The invoice dated June 2021 confirms the turbo tube seal and shaft were replaced. Mr B tells us that when the turbo was returned and re-fitted, the car broke down within minutes of a test drive. The garage then removed the cylinder head, and ultimately a burn hole in a piston was identified as the cause of the problems. The invoice shows the cost of the turbo repair and the stripping of the engine was £861.55, the mileage is recorded as 48,681. The garage advised Mr B the engine needed to be rebuild or replaced.

Mr B's warranty company has not agreed to cover the cost of the repair. As he did not take the warranty out under his agreement, we are unable to consider any concerns he may have about his warranty.

I've seen the photos of the damage to the piston and the garage invoice, so I'm satisfied Mr B's car has a fault. However, to uphold Mr B's complaint I also need to be satisfied that the piston fault was either present or developing when the car was supplied to him. To get a fuller picture, I spoke with the garage who has had Mr B's car since February 2021. It said that if the hole in the piston was either developing or present when Mr B got the car in January 2020, it would have been immediately obvious as the car would've been smoking, have excessive oil consumption, would judder and have very little power for acceleration. The garage did not think it would be likely that Mr B could cover over 7,000 miles since he got the car, if a hole in the piston was there or developing at the point of supply.

Mr B says the car is not durable as it is not reasonable for a seven-year old car with a mileage under 50,000 to experience major engine failure. And whilst I accept that the engine is part of a car that generally should not need to be replaced so early on in a car's lifetime, like any other moving component in a car it is subject to wear and can be damaged. Engines are made up of many component parts, failure of anyone of which can have a catastrophic effect, which is why manufacturers don't provide indefinite guarantees against engine or component part failure.

Whether something is durable is linked to whether it is defective at the point of supply, the criteria is 'durability' not 'duration'. If something is not durable, that is, it doesn't last as it is expected to, then it is indicative of something being inherently wrong with it. The defect will, therefore, have been present or developing at the point of sale. Mr B's car was seven-years old when he got it, and from the evidence provided the problems didn't start to manifest until some nine months after the car was supplied and after Mr B had travelled over 6,000 miles. The last recorded mileage is 48,681, and I think it is reasonable to expect that problems

might occur when a car reaches that age and mileage. So, I don't think this means Mr B's car wasn't durable.

There are a number of reasons the piston may have failed, for example; use of contaminated fuel, low oil or use of low-grade oil. Any of which could have occurred whilst the car was in Mr B's possession and he has not demonstrated that the piston damage was due to a manufacturing defect or an underlying problem.

Taking everything into account, including the information provided by the garage about what symptoms would have been immediately obvious if the piston was defective at the point of supply, I don't think Mr B would have been able to travel over 6,000 miles within nine months if there was a piston fault when he got the car. To uphold Mr B's complaint, I would need to see compelling evidence that the car was defective in January 2020. Mr B was invited to get an independent inspection, he hasn't done this and without any persuasive evidence that the car was defective at supply, I can't say the car was of unsatisfactory quality when it was supplied to him.

I do have a great deal of sympathy for the position Mr B now finds himself in. I understand he has been quoted in the region of £2,000 to £3,000 to replace the engine, in addition to the cost of the investigations completed. I do not however find the required repair is the result of the car being of unsatisfactory quality at the point of supply, therefore I'm unable to direct Moneybarn to either cover the costs of those repairs, and any costs he has incurred or to allow him to reject the car. I would suggest that Mr B contacts Moneybarn to discuss his current arrears and any exit options he may have under the conditional sale agreement.

More recently Mr B has told us that he noticed the spare key was damaged when he got home from collecting the car. I can't see that Moneybarn has had the opportunity to look at this aspect of complaint. So, Mr B will need to raise this with Moneybarn, before this service can comment on this.

### **My final decision**

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 January 2022.

Karen Dennis-Barry  
**Ombudsman**