

The complaint

Mr C and Mrs M are unhappy that a car supplied to them under a conditional sale agreement with Moneybarn No.1 Limited was of an unsatisfactory quality.

What happened

On 3 November 2020, Mr C and Mrs M were supplied with a used car through a conditional sale agreement with Moneybarn. The agreement was for £14,141 over 60 months; with monthly repayments of £443.83. At the time the car was just over five years old and had done 40,840 miles.

The car broke down in April 2021 due to a turbocharger fault. And Mr C and Mrs M were told it would cost them £3,478.91 for the repair, only £1,000 of which would be covered by the warranty due to the policy limits. Mr C and Mrs M were unhappy with this and complained to Moneybarn.

Moneybarn arranged for an independent engineer to inspect the car. Based on this report, Moneybarn said the car wasn't faulty when it was supplied, and they didn't think they needed to do anything more. Mr C and Mrs M weren't happy with Moneybarn's response, and they brought their complaint to us for investigation. They also arranged to have the car repaired independently, at the cost of £870.

Our investigator said, from what he'd seen, there was a fault with the car. And the independent engineer had said turbocharger failure below 80,000 miles was usually caused by factors other than normal wear and tear – the car had only done 41,879 miles at the point of failure.

The investigator also said that the independent engineer couldn't determine the reason for the turbocharger's failure. So, he thought that, given this, the fault must've been present when the car was supplied to Mr C and Mrs M. And this made the car of an unsatisfactory quality. So, he said Moneybarn should do something to put things right.

The investigator recommended that Moneybarn reimburse Mr C and Mrs M for the cost of the repair, plus interest; and refund the payments they'd made between 19 April 2021 (when the car broke down) and 15 July 2021 (when the car was repaired), plus interest. He also said that, because Mrs C relied on the car for hospital appointments due to her medical condition and to take care of an elderly parent, Moneybarn should also pay £250 for the distress and inconvenience that'd been caused.

Moneybarn didn't agree with the investigator. They said that, while Mr C and Mrs M had only done 1,139 miles since the car was supplied, the independent engineer said the fault wasn't developing when the car was supplied to them. They also said that Mr C and Mrs M has purchased a used car and *"durability was a question of luck ... not a quality that a reasonable person would demand of such a vehicle."* So, they don't feel there's enough evidence to question the findings in this case.

Because Moneybarn didn't agree, this matter has been passed to me 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr C and Mrs M was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale; and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also says that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed that the fault was present when the car was supplied, unless Moneybarn can show otherwise. But, where a fault is identified after the first six months, it's for Mr C and Mrs M to show that it was present when the car was supplied. So, if I thought the car was faulty when Mr C and Mrs M took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

I've seen a copy of the independent engineer's report, dated 11 May 2021. At the time of this report the car had done 41,979 miles – 1,139 miles more than when it was supplied to Mr C and Mrs M. The engineer said that *"we would conclude that the vehicle was suffering from in use wear and deterioration, resulting in a failed turbocharger unit. There was no evident staining in or around the turbocharger unit itself to indicate any blown oil seals, however the vehicle when started did display an engine management light was [a] fault code [which] would indicate there was a fault coming from the turbocharger."*

The engineer went on to explain that *"the window of wear induced failures is wide due to variables and can often range from 40,000 miles to 120,000 miles, above 80,000 miles a primary factor is just normal deterioration below other factors are normally major influences. The primary cause of most turbocharger wear induced failures can be traced back to the engines lubrication system and the oil condition generally."* The engineer had already pointed out that *"both the oil and coolant levels were correct"* and that there was no sign of an oil leak around the turbocharger unit.

The engineer concluded that *“the vehicle will require further striping and the turbocharger removed from the vehicle and further investigated, to confirm the exact cause of the fault and extent of the damage caused to the turbocharger unit in-situ.”* But the engineer also concluded that *“the vehicle has been on hire for 170 days and covered 1,139 miles ... taking into consideration the time and mileage since finance inception, the fault would not have been present at that time.”*

The engineer has said that the cause of the turbocharger failure is unknown, and that the usual cause of such failure (lubrication) doesn't seem to be the case. He also said that the turbocharger failed at the earliest point it could be expected to fail (40,000 miles), so the failure would usually be caused by more than general in-use wear and tear. And, to determine why the turbocharger failed would require further investigation. Given all of this, I find the conclusion that the turbocharger definitely wasn't developing any issues just 1,139 miles earlier isn't logically supported by the engineer's other comments.

The other evidence I've seen shows that the car had an MOT on 3 November 2020 – the day it was supplied to Mr C and Mrs M. And the warranty booklet shows that the car was serviced, and the oil was changed the same day. The previous service and oil change were done on 23 December 2019, just short of a year earlier.

Based on the above, I'm satisfied the car was generally well maintained, and this included oil changes. And, as the main cause of turbocharger failure was due to the oil, I don't think this was the cause of the breakdown. And, given the overall comments made by the engineer, I'm satisfied that the fault with the turbocharger was more likely than not developing at the point the car was supplied. This made the car of an unsatisfactory quality.

However, if a strip down of the turbocharger was to show this wasn't the case, I also need to consider durability. I'm aware that Moneybarn consider durability to be a matter of luck, but I don't agree. I think a reasonable person would expect a car to be reasonably durable, regardless of whether they were the first owner or not. And a turbocharger to fail on a regularly maintained car, at the earliest point it could be expected to develop a fault, and where there's no obvious underlying reason except in-use wear and tear, wouldn't be considered reasonably durable. And this lack of durability would also make the car of an unsatisfactory quality.

So, given the above, I think Moneybarn need to do something to put thing right.

Putting things right

As the car has been successfully repaired, it wouldn't be reasonable to allow Mr C and Mrs M to be able to reject this. But I would expect Moneybarn to cover any costs of this repair that weren't covered by the warranty. And, because Mr C and Mrs M weren't able to use the car between failure and repair, I also think that Moneybarn should also refund any payments they made during this time.

What's more, due to her medical condition, Mrs M was inconvenienced by the lack of available transportation for essential hospital and other journeys. Which meant she had to arrange, and pay for, alternative transport such as taxis. So, I think Moneybarn should also compensate her for this.

So, Moneybarn should now arrange to do the following:

- upon receipt of proof of what Mr C and Mrs M paid, refund the cost of the repair to the turbocharger in July 2021;
- refund any payments Mr C and Mrs M paid between 19 April 2021 and 15 July 2021;

- apply 8% simple yearly interest on the refunds, calculated from the date Mr C and Mrs M made the payments to the date of the refund [†]; and
- pay Mr C and Mrs M an additional £250 to reflect the trouble, upset and inconvenience they've been caused.

[†]HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mr C and Mrs M a certificate showing how much tax they've taken off if they ask for one.

My final decision

For the reasons explained, I uphold Mr C and Mrs M's complaint. Moneybarn No.1 Limited must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs M to accept or reject my decision before 11 March 2022.

Andrew Burford
Ombudsman