

The complaint

Mr L complains about the quality of a car he acquired under a conditional sale agreement with Moneybarn No.1 Limited.

What happened

In October 2020 Mr L acquired a used car under a five-year conditional sale agreement with Moneybarn. The car was five years old and had covered around 75,500 miles. Mr L paid a deposit of £200 and part-exchanged his existing car. The cash price of the car he acquired in October 2020 was around £6,700.

Mr L experienced several problems with the car and took it to a garage (who I'll call 'F') in February 2021. F noted that both front anti roll bar links had excessive play in the lower ball joints and that both upper joint gaiters were split. F also noted that the brake fluid was excessively contaminated, the front wheel alignment was out causing uneven wear to the front tyres and the filters and oil from the engine were in very poor condition.

The car then suffered a mechanical failure while Mr L was driving it causing him to lose steering which resulted in the car veering across traffic on the opposite side of the road. Mr L says the car cabin filled with thick smoke and that this resulted in him being hospitalised for smoke inhalation and caused him to lose time off work sick.

Mr L complained to Moneybarn who then commissioned an independent report into the condition of the car. The engineer noted that the handbrake was unusable, and the petrol cap had snapped off. He also noted that the turbocharger was rattling and suspected that the car had run on its own oil and had heavily smoked before the car had been starved of oil and had then switched off. The engineer said that he wasn't able to look at the condition of the oil and air filters, however he noted there was no oil shown on the dipstick and concluded that the car had likely failed because the car had starved itself of oil. The engineer said he thought the faults with the car wouldn't have been developing at the point Mr L acquired it and didn't think Moneybarn was liable as a result.

The engineer did though note that the car needed to be stripped and investigated further to confirm the extent of the damage caused and the cause of the fault.

Moneybarn didn't uphold Mr L's complaint as they felt there was no evidence of an inherent fault with the car and that it had failed because of a lack of engine oil. Mr L disagreed and said that he had made sure the oil level had been topped up sufficiently. He said that there was evidence that the car hadn't been serviced by the supplying dealership prior to him acquiring it.

One of our investigators looked at Mr L's complaint but she didn't uphold it. In summary, she said that she thought that the car was of satisfactory quality when it was supplied to Mr L and felt the faults with the car happened due to wear and tear.

Mr L didn't agree and so his complaint has been passed to me to review.

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.

Mr L acquired the car using a regulated conditional sale agreement, and our service is able to consider complaints relating to these types of agreements. Moneybarn is the supplier of the goods under the agreement and is responsible for dealing with a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr L entered into. The CRA implies terms into the agreement that the goods supplied are of satisfactory quality, fit for their intended purpose, and as described. The CRA says that goods will be considered to be of satisfactory quality where they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid and other relevant circumstances. In a case involving a car, these circumstances might include things like the age and mileage at the time of supply and the car's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

The car Mr L acquired was around five years old, had covered around 75,500 miles and had a cash price of around £6,700. My starting point is therefore that it would be reasonable to expect the car to likely need more maintenance than a brand-new car and have components which have suffered some wear and tear already.

The independent inspection that was carried out, and to which I referred above, didn't give a definitive reason for why the car broke down as it did. The engineer thought it likely that the car had run on its own oil and this ultimately led to oil starvation. However, I note that the engineer mentioned that the car needed to be stripped for further investigation to be carried out. So, while he felt it likely there wasn't something inherently wrong with the car when it was supplied to Mr L, I think it does open the possibility that further investigation might have led to a different conclusion.

That being said though, the car is no longer available for further inspection as I gather it was sold at auction. That does present a problem as a more thorough examination of the fault and the cause of the fault cannot now happen.

Having carefully considered the evidence, I can't discount the possibility that the car failed as it did due to the lack of servicing that had occurred prior to the point of supply. I've seen the service history of the car and note that the last service was carried out in July 2017 at around 33,350 miles. This was over two years prior to Mr L acquiring the car and by the time he did acquire it, the car had covered a further 40,000 miles. F carried out what they described as a 'short service' in February 2021. However, it's possible that the lack of servicing prior to that still led to the car's components wearing and failing.

I've not seen how the supplying dealership advertised the car prior to Mr L acquiring it. So I can't be satisfied that they misrepresented the car to Mr L as being fully serviced in line with any of the manufacturer's requirements or recommendations. Nor was there any legal requirement for the dealership to have ensured this was carried out prior to advertising it for sale. Mr L of course had the opportunity to ask the dealership about the service history, but I've not seen sufficient evidence that this was asked and that the dealership gave a misleading answer.

Clearly what happened to Mr L when the car failed was extremely frightening for him and the impact of this on Mr L cannot be understated. However, my consideration of this case centres on the quality of the car when it was supplied to Mr L. For the reasons I've given above, I can't be satisfied that the car was of unsatisfactory quality at that time. So, while I appreciate that this will be very disappointing for Mr L, I will not be upholding his complaint.

My final decision

My final decision is that I do not uphold this complaint.

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

Daniel Picken
Ombudsman