

The complaint

Mr W complains about the quality of a car he has been financing through an agreement with Moneybarn No. 1 Limited ("Moneybarn").

What happened

I issued my provisional decision on this complaint in December 2021. An extract from that provisional decision is set out below.

Mr W took receipt of a used car in January 2020. He financed the deal through a conditional sale agreement with Moneybarn. At the point of supply the car was about seven years old and had completed 75,000 miles.

Coronavirus restrictions meant that Mr W had limited use of the car in the first few months but thereafter noticed white smoke coming from the exhaust and had problems revving the engine beyond 4,000 revs. He called breakdown services and they explained there was a problem with the air mass flow sensor. By this time the three-month warranty had expired on the car, so Mr W had the sensor replaced.

But problems persisted and Mr W eventually called Moneybarn to complain. A couple of independent engineering assessments were completed. The first assessor ("S") looked at the car in early July 2020 and noted the mileage was 77,071. He thought the mass air flow sensor was faulty but explained that could happen at any time. He wasn't persuaded the fault was present when Mr W had taken receipt of the car.

But subsequently the turbo seized, and Mr W complained to Moneybarn again. They arranged a further independent engineering inspection in early September 2020 and by a different company who I'll call "A". The car, at that point had travelled 77,079 miles. "A" agreed that the turbo had seized and said they "suspect a possible re-mapping. At this stage, we do consider the turbo would have been in an advanced state of wear at the time of finance inception..."

Moneybarn agreed to consider a refund of the costs to repair the turbo and our investigator thought that was a reasonable resolution.

But Mr W disagreed. He said it wasn't fair for him to have been paying for a car that had been sitting on his drive for 18 months and he thought it reasonable to expect it to have lasted more than six months. He asked for an ombudsman to make a final decision and the complaint has therefore been passed to me to consider.

What I've provisionally 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 know it will disappoint Moneybarn, but I don't agree with the investigator's opinion. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

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 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.

Mr W acquired his car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it. The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then Moneybarn, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr W. The car here was about seven years old and had already completed 75,000 miles. So, I think a reasonable person would expect some wear and tear, but I don't think they'd think the car was of satisfactory quality if the turbo was failing when supplied.

The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply, when Moneybarn were responsible for the car's quality, unless they can demonstrate otherwise. I'm persuaded that there isn't enough evidence to suggest the mass air flow sensor was faulty when the car was supplied. That's because "S" suggested the fault could happen at any time and without warning.

But I think there is evidence that on the balance of probabilities the turbo on this car was failing when the car was supplied. I say that because:

- "A" thought that it was most likely to be because of remapping. If the car had been remapped I think that's very unlikely to have happened in Mr W's tenure.*
- Mr W has explained that he'd already replaced the mass flow sensor before "S" inspected the car. "S" explained that the mass air flow sensor had failed again, and I think that suggests it was likely that there was also an underlying and, as yet, undiagnosed problem with the car in July 2020.*
- The car completed eight miles between the inspection by "S" and the inspection by "A". I think it's reasonable to suggest that the turbo was seizing at the point of the inspection by "S" in July, but only a few miles later it had failed completely and that was the likely underlying problem.*

I can see that Moneybarn have been prepared to accept some responsibility for the failed turbo. They've said they "may be prepared" to consider refunding the cost of the turbo repair because they note "A's" comments about potential remapping.

As the fault with the turbo was, in my opinion, referred to Moneybarn within the first six months it is for them to demonstrate the fault was not present when the car was supplied. I'm not persuaded they've been able to do that and I think they are therefore responsible for putting things right.

The relevant legislation says that, in those circumstances, they should be given an opportunity to repair the car.

It's not fair for Mr W to have been paying for a car that he's had no use of since it failed after only about 2,000 miles of driving, in July 2020. Moneybarn should therefore refund any finance instalments he's paid since July 2020 and they'll need to add interest to that refund as Mr W has been deprived of that money.

They should also arrange to have the car repaired. I can see Mr W has already provided a couple of quotes for that work which suggest costs in the region of £1,000.

I think Mr W has been inconvenienced by these matters. He's had to make arrangements to make the car available for inspection and he's also had to call out breakdown services on a couple of occasions. I think the complaint could also have been resolved earlier without the need to escalate it and that would have added to the inconvenience Mr W has experienced. But I also take into account Moneybarn's handling of the situation. They have been prepared to consider refunding the turbo repair costs and have arranged and paid for inspections to identify any concerns.

On balance I think the impact has been more than just minimal and this has taken Mr W a reasonable effort to sort out over a reasonable period. In those circumstances I think Moneybarn should pay Mr W £150 in compensation.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to tell Moneybarn No. 1 Limited to:

- Repair the turbo at no cost to Mr W or refund the cost of that repair if Mr W has had that completed already. If the costs are refunded Moneybarn will need to add 8% simple interest per year to that refund from the date of payment to the date of settlement.*
- Refund any finance instalments paid from, and including, July 2020 in respect of the lack of use Mr W has experienced. Add 8% simple interest per year to that refund from July 2020 to the date of settlement.*
- Pay Mr W £150 to compensate him for the distress and inconvenience caused.*

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.

Moneybarn and Mr W didn't provide any further comments other than to explain that the repairs hadn't, as yet, been completed. So, I've not been provided with any information that has led me to change my provisional decision on this complaint.

Putting things right

That provisional decision therefore becomes my final decision.

My final decision

For the reasons I've given above I uphold this complaint and tell Moneybarn No. 1 Limited to:

- Repair the turbo at no cost to Mr W.
- Refund any finance instalments paid from, and including, July 2020 in respect of the lack of use Mr W has experienced. Add 8% simple interest per year to that refund

from July 2020 to the date of settlement.

- Pay Mr W £150 to compensate him for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 February 2022.

Phillip McMahon
Ombudsman