

The complaint

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

What happened

In February 2021 Mrs E was supplied with a car and entered into a conditional sale agreement with Moneybarn. At the point of supply the car was around 5 years old and had covered around 96,500 miles.

In August 2021 the car broke down. An inspection concluded that the timing belt had failed.

Mrs E complained to Moneybarn. She said the timing belt was meant to last 10 years or 150,000 miles and that it had failed prematurely.

Moneybarn arranged for an independent inspection. The inspector found that the car was fitted with an upper and lower timing belt and that the lower belt, a wet belt, had failed. The inspector concluded that the deterioration to the wet belt was due to wear and tear and wouldn't have been present at the point of supply.

Based on the findings of the report, Moneybarn rejected Mrs E's complaint.

Mrs E remained unhappy and complained to this service.

Our investigator upheld the complaint. She said that because the car hadn't been serviced for 27 months prior to it being supplied to Mrs E, it was likely that this had led to the premature failure of the timing belt. The investigator said the that car wasn't reasonably durable, and therefore wasn't of satisfactory quality. She recommended that Moneybarn allow Mrs E to reject the car.

Moneybarn didn't respond to the 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.

The Consumer Rights Act 2015 is relevant to this complaint. It says that goods must be of satisfactory quality when supplied. 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. The legislation says that the quality of the goods includes their general condition and other things including fitness for purpose, appearance and finish, freedom from minor defects, safety and durability. I would expect a second hand car – such as that supplied to Mrs E - to have a degree of wear and tear and to require repairs and maintenance more often than a brand new car. So, in order to uphold this complaint I would need to be satisfied that the car wasn't of satisfactory quality at the point of supply, and that it didn't fail as a result of a fault which was due to general wear and tear.

Where a fault occurs in the first 6 months which makes the car of unsatisfactory quality, there's a presumption that the car was of unsatisfactory quality at the point of supply. 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.

In this case, the timing belt failed 6 months and 12 days after the point of supply. The car had covered around 5,450 miles since the point of supply. I need to have regard to the burden of proof as explained above. But I also need to consider whether the car was durable, because of the timing belt failed prematurely, this might mean that there was a fault with the timing belt at the point of supply.

Mrs E has said that the timing belt shouldn't need to be replaced until the car has covered 150,000 miles. The independent inspection report verifies this – it says that the replacement schedule for the timing belt is 150,000 miles / 10 years. At the point when the timing belt failed, the car had covered around 102,000 miles and was around 6 years old. So, I think it's fair to say that the timing belt failed sooner than a reasonable person might expect.

The independent inspection stated that the car's service history should be checked to see whether this contributed to the fault. The inspector didn't check the service history because it wasn't made available to him.

I've reviewed the service history. The manufacturer's recommendation is that the car should be serviced every 12 months or 12,500 miles, whichever comes first. I can see that the car was serviced in line with this between May 2017 and October 2018, but after this, the car wasn't serviced until February 2021, and during this time it covered 41,000 miles.

This is a significant length of time and mileage to elapse without a car being serviced. Taking into account the comments in the independent inspection report, and having regard to the fact that the timing belt failed earlier than a reasonable person would expect, I think it's more likely that the failure to service the car prior to the point of supply led to the fault with the timing belt. I'm satisfied that the car wasn't of satisfactory quality at the point of supply because it wasn't sufficiently durable.

Putting things right

Based on what I've seen, I think that repairs will cost more than the value of the car. So I don't think it would be fair to ask Moneybarn to carry out repairs. Instead I think Moneybarn should allow Mrs E to reject the car.

Mrs E hasn't been able to use the car since the timing belt failed. In August 2021. I don't think she should be expected to make payment for a car she can't use, so I'm asking Moneybarn to refund all payments made since August 2021. Prior to then, Mrs E was able to use the car, so I won't be asking Moneybarn to refund anything prior to this date.

It's clear that Mrs E has been caused distress and inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. I think it's fair to ask Moneybarn to pay compensation for this.

My final decision

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

End the agreement with nothing further to pay

Arrange for the car to be collected at no cost to Mrs E

Refund all payments made by Mrs E since 14 August 2021 plus 8% simple interest from the date of payment to the date of settlement

Pay compensation of £100 for distress and inconvenience

Remove any adverse information from Mrs E's credit file in relation to the agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 31 May 2022.

Emma Davy
Ombudsman