

## **The complaint**

Mr K complains that a car he acquired via a conditional sale agreement with Moneybarn No.1 Limited wasn't of satisfactory quality.

## **What happened**

In October 2020 Mr K entered into a 60-month conditional sale agreement with Moneybarn for a used car. The car was around four years old and it had a mileage of about 42,000. Under the agreement Mr K paid an initial payment of £753.73 and then there followed 59 monthly payments of £663.43.

Mr K says that in February 2021 the car broke down and he had to call out a roadside assistance company. The engineer who attended undertook a diagnostic and reported that there were fault codes showing relating to the glow plug. They said they suspected that the turbocharger was leaking oil and the car would need to be taken to a garage for repairs. The mileage at this point was around 46,000.

Mr K says he was able to recover the car and take it to a local garage where he was informed the turbocharger needed to be replaced as well as some further faults needing repair. The total invoice for works was over £3,600. Mr K paid for the car to be repaired and complained to Moneybarn.

Moneybarn sent both the roadside assistance company's report and the repair invoice to an independent engineer for them to assess and report on. The independent engineer said due to the time passed since inception of the agreement and the number of miles driven, the fault wouldn't have been present at the point of supply. They said the fault with the turbocharger had arisen through wear and tear.

Moneybarn didn't uphold Mr K's complaint. It said that the evidence didn't indicate the car had either been suffering from or developing the fault when supplied to Mr K. It said on the evidence it was satisfied that the issue had arisen through wear and tear.

Mr K was unhappy at Moneybarn's response and complained to this service. He said the car still had faults despite the repairs and he'd been unable to drive it since February 2021. Mr K said that he had been advised by the repairing garage that a car of this age and mileage shouldn't have developed this fault and he thought it hadn't been of satisfactory quality. Mr K said he either wanted the repairs to be covered by Moneybarn or to be able to return the car and unwind the agreement.

Our investigator didn't recommend that Mr K's complaint should be upheld. She said on the evidence she'd see she thought the fault with the turbocharger had arisen through a reasonable level of wear and tear.

Mr K disagreed with our investigator's view. He said that the car still didn't run despite his having paid for a number of repairs. He said he'd now been advised the car required further extensive repairs. He said he wanted to reject it and cancel the agreement.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along these following lines.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the conditional sale agreement entered into by Mr K is a regulated consumer credit agreement this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price, and all other relevant circumstances.

The relevant law also says that 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 can be aspects of the quality of the goods.

Here, the car wasn't new being around four years old and with a mileage of around 42,000. I thought that, taking into account these things, a reasonable person would have expected there to be issues with maintenance and repair over time since components of the car would have been subjected to wear and tear through use. So, unlike a new car, there wouldn't be expectation that the car was fault free.

Looking at the evidence I didn't think I could reasonably say that the fault with the turbocharger was present or developing at the point of sale taking into account that the issue had been described by the independent engineer as being "*in the early stages*". However, just because a fault wasn't present when the car was supplied doesn't mean that a subsequent issue can't call into question the car's durability. And durability is part of whether or not goods are considered to be of satisfactory quality.

I'd seen that the car was in Mr K's possession for around four months and in that time, he'd driven it for around a further 4,000 miles. I didn't think a reasonable person would reasonably expect a car of four years old with a mileage of around 46,000 to develop a major issue with its turbocharger. I thought it was reasonable to have expected that part to have lasted longer and the car to have been driven further before such a major issue arose. A fault with a turbocharger can have a substantial impact on a car's engine. I'd seen that the independent engineer accepted that the additional items that had been repaired at the same time as the turbocharger would have arisen from this fault. This included the DPF filter needing to be cleaned and issues with NOX sensors etc.

I'd also seen that the independent engineer hadn't addressed the issue of durability in their report.

I therefore intended to uphold Mr K's complaint. I'd seen that Mr K had originally sought reimbursement of the costs of repairing the car but was now seeking to reject it. It appeared that despite some expensive repairs the car was still not usable and in light of that I thought it would be fair for Mr K to now reject it. A recent quote for the required work had been in excess of £10,000 and I thought that might raise an issue of

whether this car was economical to repair. I also thought that there had been an attempt to repair, but this hadn't been successful so I thought it would be fair and reasonable for this agreement to now be cancelled and arrangements made for the car to be collected.

Mr K had been unable to drive the car since February 2021. I thought it would be fair for him to be reimbursed any payments he had made under the agreement since then. However, as he had been able to drive around 4,000 miles before the car's breakdown, then I thought it was fair he paid for that usage. I wasn't going to ask Moneybarn to refund the initial payment or the monthly payments made up until February 2021.

I'd seen Mr K had paid for a number of repairs to the car and I thought that it would be fair for Moneybarn to reimburse those amounts. From the invoices produced by Mr K, I'd seen he'd paid £3,655.88 and £92.70 for repairs in May 2021 and £552.04 for repairs in June and October 2021. This made a total to be reimbursed of £4,300.62.

I also thought that Mr K had been distressed and inconvenienced by having to deal with this faulty car. He'd had to arrange for a number of inspections and repairs and not been able to make use of it for several months. I thought compensation of £250 would be fair to address the impact this has had on him.

Mr K agreed with my provisional view. Moneybarn hasn't asked that I look again at any parts of my provisional 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.

Although neither party has asked me to look again at my provisional decision, I have still reviewed it carefully. I haven't changed my view.

Looking at the evidence, although I don't think the fault with the turbocharger was present or developing at the point of supply, I still don't think the car was of satisfactory quality when Mr K acquired it. That's because I'm satisfied the car wasn't as durable as a reasonable person would have reasonably expected. The turbocharger appears to have failed after Mr K had the car for around four months and driven about 4,000 miles in it. The car had been around four years old and had a mileage of around 42,000 at its point of supply.

The independent engineer has said that a number of the faults that have required repairs would have been likely to have been linked to the issue with the turbocharger though in their opinion the engine hadn't suffered catastrophic damage. However, despite the number of repairs that have been undertaken the car hasn't been driveable since February 2021 and still requires further potentially very expensive repairs. I haven't seen any evidence that the issues with the car were due to poor repairs being undertaken at any point

The independent engineer's report was based on the invoices for the repairs up until June 2021, they did not inspect the car. This report didn't address the question of durability when setting out that they considered the car was of satisfactory quality at its point of supply. I'm also unclear as to whether, when they gave their opinion, they were aware the car had not yet been fixed. So, it's for these reasons I'm not accepting the independent engineer's opinion about the car and I'm upholding Mr K's complaint.

## **Putting things right**

I'm asking Moneybarn to do the following:

- Arrange for the car to be collected at no cost to Mr K.
- Cancel the agreement with nothing further to pay.
- Remove any adverse information about this account from his credit file.
- Reimburse Mr K any monthly payments made under the agreement after February 2021. Interest is to be added to that amount at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Reimburse Mr K for the repairs carried out on the car in May, June and October 2021 amounting to £4,300.62. Interest is to be added to that sum at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Pay Mr K £250 as compensation for the unnecessary distress and inconvenience caused by dealing with the faulty car.

## **My final decision**

For the reasons set out above I'm upholding Mr K's complaint. I'm asking Moneybarn No.1 Limited to do the following:

- Arrange for the car to be collected at no cost to Mr K.
- Cancel the agreement with nothing further to pay.
- Remove any adverse information about this account from his credit file.
- Reimburse Mr K any monthly payments made under the agreement after February 2021. Interest is to be added to that amount at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Reimburse Mr K for the repairs carried out on the car in May, June and October 2021 amounting to £4,300.62. Interest is to be added to that sum at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Pay Mr K £250 as compensation for the unnecessary distress and inconvenience caused by dealing with the faulty car.

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

Jocelyn Griffith  
**Ombudsman**