

The complaint

Mr C and Miss O complain that a used car they got with finance from Moneybarn No. 1 Limited is of unsatisfactory quality.

What happened

Mr C and Miss O acquired this car under a conditional sale agreement (CSA) in February 2020. They replaced the battery within a few days of supply and they also had concerns about safety. They found the supplying dealer was unhelpful and asked a specialist third party garage (TPG) to inspect the car. The TPG found a number of issues including a door latch fault, inner drive shaft gaiter split, front to rear brake pipes heavily corroded/dangerous, tyres worn below the legal limit and bald on the edges, air suspension bag dust cover perished, uneven wear to front brake pads, battery insecure/clamp missing, upper suspension arm slight play, multiple sensor faults and the timing belt needed replacing.

Miss C and Mr O complained to Moneybarn who arranged for an independent expert to provide a desktop assessment in May 2020. He considered the car had numerous defects, the majority of which were only advisory but would require attention in the near future. He thought the cost of repairs would not be considered acceptable so soon after supply and the supplier would be responsible.

Moneybarn upheld the complaint and sent a final response letter (FRL) to Mr C and Miss O on 6 July 2020 offering to arrange and/or pay for the repairs required – estimated then at nearly £990. The repairs actually cost more than that and Mr C and Miss O subsequently supplied two invoices from the TPG totalling just over £1,300 which Moneybarn paid.

In December 2020 the car broke down and Miss O and Mr C complained to Moneybarn again. Moneybarn arranged for an independent expert to inspect in January 2021. He found (in summary) a new gearbox was needed as one of the transmission oil cooler pipes had developed a leak and discharged fluid and a constant transmission fluid drip from one of the pipes between the automatic transmission and the oil cooler was noted.

The expert thought this was a maintenance issue probably caused by wear and tear, such as minute fractures developing due to fatigue, porosity, corrosion in pipe joints or damage to threads - or internal damage due to using the vehicle with insufficient fluid. Given the car had covered 10,000 miles since supply, the expert didn't think this would have been present at the outset. He considered it would likely have been apparent within about 500 miles of use.

Moneybarn didn't think it should be held responsible in these circumstances – given the expert's conclusion that the problem was wear and tear/maintenance related and not there at the outset. Moneybarn recognised there was some delay in dealing with the complaint however and paid Miss O and Mr C £100 for associated distress and inconvenience.

Mr C and Miss O didn't think that was fair - the car is off the road and they want to reject it and receive a refund. So they referred to matter to our service.

One of our investigators considered the evidence. She was satisfied that Moneybarn agreed

to pay for repairs required early on and then arranged and paid for an independent inspection when further issues appeared. She thought this was reasonable. And she wasn't persuaded that the gearbox fault is likely to have been present when Mr C and Miss O got the car - taking account of the expert's conclusions and the car's age and mileage at the outset and distance travelled since then. The investigator considered the problem was probably the result of wear and tear. She didn't find it likely the car was of unsatisfactory quality at the point of supply and she didn't recommend the complaint should be upheld.

Mr C and Miss O remained unhappy. They say the TPG checked the car and found it was leaking fluid and would have been doing so for months. They supplied an email from the TPG that said the issue is not a common fault, it would not be classed as wear and tear and, while it was impossible to tell when the pipe cracked, it was obviously a very gradual process - as the gearbox holds about seven litres of oil and Mr C and Miss O would have noticed if it had all come out at once.

The investigator considered the new evidence but she didn't change her mind. She was satisfied the TPG didn't say the fault was likely present at the outset - it considered this could have happened in the 10,000 miles covered, albeit there might be an argument in terms of the MOT advisories and the issues that were rectified early on. The investigator wasn't persuaded the current issue is likely to have been present at the point of supply and she remained of the view the complaint should not be upheld. So Mr C and Miss O asked for an ombudsman to review the matter. They said (in summary):-

- the car had a dead battery at the point of supply – they think the dealer must have jump started it for the test drive;
- they weren't told about advisories on a previous MOT even though Miss O asked about this specifically and the dealer said there wasn't anything she needed to be concerned with;
- the car must have been sold with a fake MOT because the advisories aren't there now and the car was sold with a clean pass rate - yet all of the earlier advisories needed repairing within the first few months then the gearbox failed;
- they acknowledge the expert found it impossible to say if the crack in the pipe was there at the outset but consider this is unlikely to be due to wear and tear;
- given the multiple faults and MOT failures it's reasonable to conclude that they were sold a faulty car which wasn't fit for purpose;
- Moneybarn failed to answer calls and correspondence and they had to hire a replacement vehicle as Miss O needs transport for her work as a medical professional; and
- Miss O had to hire a car in January and February and lease another car in March, she was unable to pay for this and her credit score was affected adversely which has all been very stressful.

My provisional decision

Having considered the available evidence, I wasn't minded to uphold this complaint. My reasons weren't quite the same as the investigator's however and I thought it was fair to let the parties see my provisional conclusions and make further submissions (if they wanted to) before I made my final decision.

I issued a provisional decision on 28 April 2022 and an extract from that is set out below (in italics). This forms part of my final decision.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete,

inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr C and Miss O bring this complaint to our service because Moneybarn supplied the car under a HPA. I'm satisfied Moneybarn was required to ensure that this car was of satisfactory quality at the point of supply - under the Consumer Rights Act 2015 (CRA). What amounts to "satisfactory" quality varies depending on individual circumstances. In the case of a used car, I think it's reasonable to take the car's age, cost and mileage into account.

The car cost just under £13,000, it was first registered in 2013 and the mileage recorded at the time of purchase was about 108,000. I think a reasonable person would accept that some parts would be worn and likely need to be repaired or replaced sooner or later in a car like this. And that's reflected in the lower price paid for a used car compared to the price of a brand new vehicle.

There seems to be no dispute that the car broke down in December 2020 because of a problem with the gearbox. I can see the expert found there was a constant transmission fluid drip from one of the pipes between the automatic transmission and the oil cooler – and he identified the likely fault was a cracked pipe and thought this was probably age related and due to wear and tear or maintenance issues.

It looks as if the TPG agrees the problem here was a cracked pipe leaking transmission fluid – although it considers the fault is not wear and tear related. The TPG thinks the fluid loss must have been a gradual process and fluid would have been leaking for months – because Mr C and Miss O would have noticed if all seven litres of transmission fluid had come out at the same time.

I'm not persuaded it's reasonable to say either all of the transmission fluid must have come out in one go or the pipe leaked so slowly that fluid would have been lost unnoticed over several thousand miles of use. I'm satisfied the TPG has acknowledged that, whilst it would like to assist Miss O and Mr C, it can't say when the crack in the pipe came about. And this same TPG, that inspected the car in July 2020 and carried out the repairs required then, found no issue with the gearbox at that time.

I'm satisfied the expert is independent and I think he seems to have appropriate qualifications and experience. I find his report to be fairly detailed and I consider it is reasonable to give some weight to what he says in this situation. I think the expert's conclusion that a leak like this is likely to have become apparent within 500 miles or so of use makes sense. And I consider this seems to be consistent with the other evidence.

On balance, I find it unlikely that Mr C and Miss O would have been able to drive the car as far as they did if this issue had been present or developing when they got it. And, taking into account the car's age and mileage at the outset and the distance covered, I'm minded to agree that this problem is probably wear and tear or maintenance related.

For the reasons I've set out, I'm not persuaded it's likely this car has a fault that was present at the outset. This means I can't fairly hold Moneybarn responsible and I can't reasonably require Moneybarn to take the car back or pay for repairs or do anything else. I realise this decision is likely to come as a disappointment to Miss O and Mr C, as it's not the outcome they wanted. I have sympathy for the situation they find themselves in. I appreciate they feel this problem must be connected to the faults found early on and/or previous MOT advisories. I've seen nothing to suggest that's the case however and, as I've explained in a separate decision, this service is unable to look into their first complaint now.

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.

I invited the parties to consider my provisional decision and let me have any comments or new information by 19 May 2022. And I explained that I'd review all the evidence available after that date and make my final decision.

Mr C and Miss O haven't made any further submissions and Moneybarn had nothing to add. I see no reasonable grounds to depart from my provisional conclusions in the circumstances. On balance, I remain of the view it's unlikely this car has a fault that was present at the outset. So, I can't reasonably require Moneybarn to take the car back or pay for repairs or do anything else.

I realise this is not the outcome Mr C and Miss O hoped for and I'm sorry if they feel let down. They are not obliged to accept what I've said, in which case it remains open to them to pursue this matter by any other means available.

My final decision

For the reasons I've given, my decision is I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss O to accept or reject my decision before 7 July 2022.

Claire Jackson
Ombudsman