

## **The complaint**

Mr M complains about the quality of a car supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited (trading as Moneybarn).

Mr M also complains that the car was misrepresented and had the wrong tyres fitted when it was supplied.

## **What happened**

In November 2020 Mr M entered into a conditional sale agreement with Moneybarn for a used car. The car was over six and a half years old and had travelled around 98,000 miles. The cash price was £18,450. Mr M says the dealer told him the car had full service history.

Mr M says a drivetrain warning sign came on the first time he drove the car after collecting it. In December 2020 he took it to a manufacturer's garage for a diagnostic check. Mr M says this confirmed multiple faults with the car. He also discovered the service history was incomplete.

In February and March 2021 Mr M took the car back to the manufacturer's garage for more investigation and repair of the fault that had caused the drivetrain warning. The dealer covered the cost of diagnostics and repairs up to this point.

But Mr M says this didn't resolve all the issues. In July 2021 he took the car to a garage to find out why the engine management light had come on and the car was losing power. The garage advised Mr M the intake manifold needed to be replaced.

Mr M made a formal complaint to Moneybarn. He says he had no option but to go ahead with a repair, which cost him £1,859.27.

In September 2021, Mr M had two new tyres fitted to the car, costing £399.98. He says he found it very difficult to pay these repair costs as well as the monthly payments due under the agreement.

On 30 September 2021 Moneybarn sent a final letter of response to Mr M's complaint. They said they'd seen no evidence to confirm he'd been advised the car had a full service history - or that it had missed a service. They said they had no evidence that the dealer's repairs had failed, and they were unable to investigate further as the problem had since been put right.

Mr M says he continued to have problems with the car. In November 2021 he had to pay for a repair to the suspension. And in January 2022 the prop shaft broke whilst he was driving on the motorway, causing the engine to fail.

Mr M complained to Moneybarn again, but they said they'd already issued their final response about the issues with the car. So, he brought his complaint to us.

Our investigator didn't uphold Mr M's complaint. She noted the dealer had paid for the diagnostic test and repair in March 2021. She said she didn't think the faults that occurred

after this were present or emerging when the car was supplied, because if they had been, she didn't think Mr M would have been able to cover the 55,726 miles he'd travelled in it.

The investigator said she hadn't seen any evidence that Mr M had been told the car had been fully serviced in accordance with the manufacturer's recommended servicing schedule – and she didn't think it was reasonable for Mr M to assume it had been.

Mr M disagreed with the investigator's view. He said the first diagnostic test had revealed numerous faults, all linked and contributing to loss of power. He didn't agree that all these problems had been resolved by the repairs the dealer paid for. Mr M said the car had also been fitted with the wrong tyres, which was affecting the differential mechanism.

Mr M said the car was beyond economical repair within two years of ownership. He didn't think it was reasonable for him to pay the total amount payable under the agreement, as well as having to buy a new engine costing £18,000. Mr M felt the car's service history was worthless because it wasn't carried out by reputable garages. He asked for an ombudsman to review his case.

### **My provisional decision**

I issued a provisional decision, saying:

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

*Mr M complains about a car supplied under a conditional sale agreement. Entering into consumer credit contracts like this as a lender is a regulated activity, so I'm satisfied I can consider Mr M's complaint against Moneybarn.*

*When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – in this case Moneybarn – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect, taking into account any relevant factors.*

*I consider relevant factors here, amongst others, to include the car's age, price, and mileage. The cash price of the car was £18,450. It was more than six and a half years old and had travelled 98,000 miles. I don't think a reasonable person would expect this car to be in as good condition as a newer car with a lower mileage. But I do still think they'd expect it to be in reasonable condition - and I think they'd expect it to be free of anything other than minor faults when it was supplied.*

### **Engine performance problems**

*Mr M told us that the drivetrain warning came on very soon after he got the car. He says this didn't specify what was wrong – all he knew was that the engine was losing power at 70mph. I've reviewed the evidence about the diagnosis and repair of this problem.*

*Mr M obtained a diagnostic from a manufacturer's garage on 15 December 2020. I haven't seen a copy of the full document, but I've seen the following extract which Moneybarn included in their final response to Mr M's complaint:*

*"The vehicle has a charge air pressure too low faults stored, this could be a turbo fault, heavily cocked intake ports, vacuum lines leaking for the turbo actuators, pressure accumulator defective? We have carried out a smoke test on the intake system and there is a leak coming from the airbox, this is due to a non gen, poorly fitted airfilter .. this isn't causing the issue though".*

*I've seen a copy of an estimate, dated 2 February 2021, for diagnostic and repair work that was carried out to the car. This says:*

*"Replace air filter"*

*"Replace air mass meter"*

*"Replace nitrogen oxide sensor after SCR".*

*I've also seen a copy of an email from the manufacturer's garage to the dealer, dated 8 March 2021, discussing problems they'd found. It says:*

*"We have found that the intake manifold has excessive carbon build up, I have attached 2 photos of this also.*

*I would recommend removal of the intake manifold and carrying out a decoke. This involves cleaning the intake system and checking the swirl flaps. Whilst the manifold is removed we can also replace the hose which we previously noted is incorrect. There are also faults with the back pressure sensors which I have included on the estimate.*

*It is important for me to stress that further testing would be required once completing this work as it may eventually require a replacement manifold."*

*Having reviewed the photos showing excessive carbon build up in the intake manifold, together with the evidence from the garage recommending that it needed a decoke, I'm satisfied there was a fault with the car. And, given how soon this came to light after Mr M collected the car, I find it most likely that the fault was either already present or developing when he got it.*

*For these reasons, I don't consider the car to have been of satisfactory quality when it was supplied to Mr M. I can see there was initially some uncertainty as to what was causing the problem. I've gone on to consider whether it was fixed by the repair in March 2021.*

*I've seen a copy of the invoice dated 16 March 2021 for the following repair:*

*"Carry out decoke – clean/remove carbon from intake manifold and inlet ports"*

*"Replace hose (whilst manifold is removed)"*

*"Replace exhaust back pressure sensors".*

*This invoice records the car's mileage to have been 105,973 at the time this repair was carried out.*

*Mr M has told us he didn't have any problems for three to four months after this. But on 2 July 2021 he complained to Moneybarn about numerous faults affecting engine performance. And I've seen a copy of the invoice dated 9 July 2021, for the following work:*

*"Fit New Inlet Manifold, top up Antifreeze and clear down DDE memory. Reset Adapted values and road test."*

*This invoice records the car's mileage to have been 121,442.*

*I've noted that, before carrying out the repair in March 2021, the manufacturer's garage warned that a replacement manifold may eventually be required. But although Mr M reported engine performance problems within four months of the March 2021 repair, I can see the car had travelled more than 15,400 miles in this time. I consider this amount of mileage to be significantly more than an average car would travel in a year.*

*Given the amount of mileage the car had covered in between these two repairs, I'm not persuaded that the problem in July 2021 was due to the failure of the previous repair. I do think it was more likely that the inlet manifold needed to be replaced in July 2021 due to wear and tear. So, I don't find Moneybarn to be liable for the cost of that work.*

### Tyres

*Mr M says the wrong set of tyres had been fitted, and the car drove very differently after they'd been changed. He says he couldn't afford to do this immediately because he'd had to pay other repair costs, as well as his regular monthly payments.*

*Tyres are a wear and tear item, which need to be replaced periodically. The receipt dated 4 September 2021 records the car's mileage to have been 132,281 when the two new tyres were fitted. I've seen that Mr M had covered well over 34,000 miles in the car by this point, so I'd expect the tyres to need replacement due to normal wear and tear.*

*I haven't seen evidence from any of the garages confirming the tyres were incorrect, or that this was affecting the differential mechanism. So, I wouldn't expect Moneybarn to pay for replacing the tyres.*

### Suspension

*I've seen a copy of an invoice dated 5 November 2011, showing Mr M paid a total of £856.25 + VAT for diagnosis and repair of a problem with the car's air suspension. The invoice says the following repair was needed: "Fit New EHC Compressor".*

*By this time the car would have been seven and a half years old – and the repair invoice showed it had covered around 143,342 miles. I do think ongoing repairs and maintenance are to be expected with a car of that age and mileage. As Mr M had been able to cover well over 45,000 miles in the car before this fault came to light, I'm not persuaded that it was already present, or developing, when the car was supplied to him.*

*So, although I appreciate this problem must have been frustrating for Mr M, I wouldn't expect Moneybarn to cover the cost of this repair.*

### Prop shaft failure

*Mr M has provided a copy of two invoices dated 1 March 2022, detailing work recommended and work carried out after the prop shaft failed. The first invoice says:*

*"Found prop shaft has failed and smashed into sump and has lost oil (requires replacement). Advised further stripping required to confirm if any damage has been done to Engine (swarth present in oil)"*

*"Customer declined engine strip at this point – authorised sump and prop shaft replacement."*

*The second invoice says:*

*“Removed engine to carry out inspection. Confirmed swarth has gone through engine and caused major component failure.  
Requires replacement engine.  
Vehicle is not driveable.”*

*The invoices record the mileage to have been 153,726.*

*I do appreciate how upsetting this must be for Mr M, and I sympathise with the situation he now finds himself in. But Moneybarn aren't responsible for faults that weren't either present, or developing, at the time the car was supplied to him.*

*I bear in mind the fact that, by the time the prop shaft failed, the car was eight years old and had been driven more than 55,700 miles since Mr M got it. So, I'm not persuaded that the prop shaft failed due to a fault that was already present or developing when he got the car. I find it more likely that this part failed due to wear and tear.*

*I appreciate that Mr M feels he was only able to cover this amount of distance in the car because he was servicing the car. But as I've said, I do think ongoing repairs and maintenance are to be expected with a car of that age and mileage.*

*For these reasons, I'm not persuaded that Moneybarn are liable for the cost of the repairs that are now needed.*

#### *Service history*

*Mr M says the car had only been serviced twice before he got it, and he feels these services were done by “cowboys”. He believes the problems he's had with the car were due to lack of proper servicing.*

*Mr M is effectively complaining that the car was misrepresented to him. For me to uphold this complaint I'd need to be satisfied that Mr M was told a false statement of fact about the car, and that this led him to enter into the agreement.*

*I do think there's an important distinction to be made here. If Mr M was told the car came with “full service history”, I think he could reasonably expect there to be evidence showing the car had been fully serviced in accordance with the manufacturer's recommended servicing schedule. If he was told the car came with “service history”, I think he could expect there to be some evidence of servicing that had been carried out, but this may be incomplete.*

*Mr M has provided a copy of the advert he saw for the vehicle. I've seen that this said:*

*“Last serviced on 23/10/2020 at 98,000 miles, Service history...”*

*Mr M says the dealer told him the car had full service history, but I've seen no supporting evidence for this. Where evidence is incomplete or contradictory, as it is here, I have to consider what's most likely to have happened. In this case I find it most likely that the dealer told Mr M the car had “service history.” And I don't find that to be false because Mr M has told us there was some service history for this vehicle.*

*I appreciate Mr M's disappointment that the servicing hadn't been carried out by a manufacturer's garage. But I've seen no suggestion that this was what he was promised.*

*I don't think Mr M was told anything about the service history that was incorrect. So, I'm not persuaded that there was any misrepresentation of the service history when the car was supplied to him.*

I said I wasn't minded to uphold the complaint. I invited both parties to send me any further information or comments they'd like me to consider.

### **Responses to my provisional decision**

Moneybarn didn't respond.

Mr M said he didn't agree with my provisional decision. I'll summarise the comments he made:

- He was told the car had a full service history, which should have been recorded on the key.
- Apart from the two recorded on the key, there's no evidence of service history. And Mr M feels faults identified in December 2020 invalidate the service on 23/10/2020.
- The lifespan of the car will be affected by poor servicing.
- The tyres were changed because they were incorrect, which affected the differential. Mr M said BMW can support this. He said he spent £920 for four new tyres, not £400.
- The car cost £18,450, Mr M paid a deposit of £4,200, the loan amount was £14,000 but it was costing £32,000. The car had been parked on his drive since 31 January 2022 with no engine, which will cost around £18,000 to fix.

Mr M said he feels a unilateral decision had been made without thorough consideration of the facts and the financial impact. He felt the finance company should be forced to reduce the interest they were charging him due to faults that had been identified from the first day, which were accepted to have been unsatisfactory.

### **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'm grateful to Mr M for taking the time to respond to my provisional decision. I want to reassure him that I've given careful thought to all the information he's provided and points he's raised.

Mr M clearly expected the car to have full service history. But I haven't seen any supporting evidence to show this is what the dealer promised him. Nor have I seen any supporting evidence showing the wrong tyres were fitted to the car. So, although I realise this isn't the outcome Mr M is hoping for, I'm not persuaded that I should change my provisional findings about these issues.

I explained in my provisional decision that I'm satisfied that there was a fault with the car when it was supplied to Mr M. But I said I'd seen evidence showing repairs were carried out at the dealer's expense to fix it – most recently in March 2021. I explained that I considered it most likely that the problems Mr M experienced since were due to normal wear and tear. I've seen no new evidence about this, so I'm not persuaded that I should change my provisional findings.

I do appreciate the very difficult financial situation Mr M now finds himself in. But I haven't seen any new information to persuade me to change my provisional findings. So, although I

realise how disappointing this must be for Mr M, I won't be directing Moneybarn to do anything more to resolve his complaint.

### **My final decision**

For the reasons set out in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 September 2022.

Corinne Brown  
**Ombudsman**