

The complaint

Mr G is unhappy with a car he acquired using a conditional sale agreement with Moneybarn No. 1 Limited (Moneybarn).

What happened

Mr G acquired a used car in February 2020 funded by a conditional sale agreement provided by Moneybarn. When he got it, the car was around seven years old and had covered just under 38,000 miles. The cash price of the car was £6,110.

Mr G says shortly after getting the car he noticed issues with it. Around two weeks after getting the car repairs were carried out to the parking sensors – which it appears the dealer paid for. Mr G then says in early March 2020 the engine management light (EML) came on and the car wasn't performing well.

In April 2020 Mr G took the car to a manufacturer's garage. It confirmed the EML was on and it changed the spark plugs. It noted if the engine was still running poorly an inspection of the inlet manifold would need to be done. It also noted issues with a tyre and the windscreen wipers.

Mr G says this didn't solve the problem. At the end of April 2020 Mr G took the car to another garage. This noted an 'inlet valve carbon clean' was carried out. Again, Mr G says this didn't solve the issue.

In May 2020 an exhaust bracket was welded and a tyre was replaced.

In July 2020 another diagnostic was carried out and the spark plugs 'renewed'.

In August 2020 two tyres were replaced.

In November 2020 the spark plugs were replaced again.

Mr G then complained to Moneybarn. He said the car wasn't performing as it should and he had been trying to get hold of the dealer for some time about the problems but it wasn't responding.

In December 2020 Moneybarn sent Mr G a letter acknowledging his complaint. He then referred the complaint to our service.

In March 2020 an independent inspection was carried out on the car. At this point it had covered around 49,931 miles. This said, in summary, that the car's performance was "*very restricted*".

The report concluded that it appeared there was an underlying fault with the car's engine management system and turbo. It said these faults were not considered to be present at the point of supply as the car had covered around 12,000 miles. The company that did the report later sent a follow up, explaining that it thought issues with the spark plugs were developing

at the point of sale, but that the replacement that was carried out in November 2020 resolved the issue. It said as what it had noted was a lack of performance and a turbo issue, this was not connected.

In July 2021, Moneybarn issued its final response to Mr G' complaint. This said, in summary, that the spark plugs and other issues were wear and tear items. And it said the independent report had concluded the problems wouldn't have been present or developing at the point of supply. So, it didn't uphold Mr G' complaint. But, it did offer £100 for the delay in responding.

Our investigator then issued an opinion. This explained, in summary, that she thought the complaint should be upheld. She said she thought the later issues with the car's performance were linked to the earlier problems Mr G had. So, she thought these were present or developing at the point of supply.

Our investigator said the issues with the tyres, exhaust bracket and wipers were wear and tear items and not faults present at the point of supply.

She said Moneybarn should cover the cost of the work to the spark plugs and inlet valve clean. She said it should reimburse Mr G 10% of the repayments for the time the car wasn't performing as it should. She said Moneybarn should arrange for a diagnosis of the ongoing engine fault and repair it, or allow Mr G to reject the car. And she said it should pay Mr G £150 for the distress and inconvenience caused.

Mr G replied and said he'd taken the car for a further diagnosis in April 2021. He sent an invoice which showed the timing chain had been replaced. Mr G said this had fixed the issue and the car was performing as it should.

Our investigator sent a follow up to her view, explaining that she thought the underlying issue with the car had been the timing chain, and so in addition to what she'd previously recommended, Moneybarn should also cover the cost of this latest work.

Moneybarn responded. It said, in summary, that it thought the conclusions of the independent report should stand.

Our investigator said this didn't change their opinion, so the case was passed to me to decide.

While awaiting a decision, Mr G told us he was in the process of moving the car on.

I sent Mr G and Moneybarn a provisional decision on 8 September 2022. My findings from this decision were as follows:

Mr G complains about a car supplied under a conditional sale agreement. Entering into consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr G' complaint about 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 – Moneybarn here – 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 would consider relevant factors here, amongst others, to include the car's age, price, mileage and description.

So, I'll consider here that the car Mr G acquired was around seven years old. And it cost around £6,100 – which is a significant discount on what the car would've cost new. So, I think a reasonable person wouldn't expect the car to be necessarily in great condition, and might expect some parts to have suffered from wear and tear. But, the car had covered around 38,000 miles – which is reasonably low for its age. So, I think a reasonable person would've expected it to be free from anything other than minor faults when it was supplied and would've expected trouble free motoring for at least a short period of time.

The main issue here is the car's underperformance and the appearance of the EML – which Mr G says kept coming on until the timing chain was replaced. Mr G says this first occurred in March 2020 shortly after he got the car. I'm satisfied a fault occurred around this time – which I'll comment on further below. And I'm satisfied this fault was present or developing at the point of supply, as it occurred so soon after Mr G got the car – a conclusion the independent report producer also reached in its follow up.

The crux of this complaint, and the question I need to answer, is whether this issue was ongoing and linked to the later timing chain repair, or whether the car suffered from separate, unconnected issues.

Mr G said the car wasn't performing as it should and the EML appeared shortly after he got it. The vehicle health check from April 2020, where the mileage was 39,889, noted:

“EML Light on, investigated and fault codes stored in log are linked to misfire and inlet valves clogging”

The invoice from this time noted:

“Investigate customer complaint of the vehicle seems to be losing power and not hitting the revs”

“replaced spark plugs and erased fault codes and road tested customer to monitor vehicle still slightly lumpy if fault/customer not happy inlet valves will need inspecting”

At the end of April 2020 Mr G has supplied an invoice for an “inlet valve carbon clean”. This is in line with the recommendations from the previous inspection – so this backs up Mr G' testimony that the issue continued after the spark plugs were replaced.

Mr G then says the issue still continued, and he was given repeated advice to replace the spark plugs. He's provided an invoice from July 2020 showing a diagnostic was carried out and following this the invoice notes “renew all the spark plugs”. And he's provided an invoice from November 2020 from a different garage where a diagnostic was done and spark plugs were again replaced.

I'm satisfied both of these invoices again back up Mr G' testimony that the problem persisted and the attempted repairs weren't successful.

I've then considered what the independent report said. I'll discuss the conclusions of the report later. But in relation to the reported issues, it said:

“The engine management light remained illuminated during the examination and during a road test”

“We found that the performance was below average with a lack of turbo performance noted”

“we found that the performance was very restricted”

I appreciate the independent report reached different conclusions as to why this was happening from the other garages – which I'll comment on later. But, it seems to me that the actual issue here – the underperformance and EML – sounds very similar to what Mr G consistently said was happening and which was identified in April 2020.

I've then considered what the invoice for the final repair Mr G had carried out in April 2021 said. This explained:

“CHECK AND REPORT ON ENGINE LIGHT WARNING”

It then goes on to explain the timing chain was replaced. Importantly, and what is a key fact in this case, is that Mr G said this repair resolved the issue. And I haven't seen any further work was needed from this point.

So, thinking about all of this, I'm satisfied I can see a history here that backs up Mr G's version of events – that the underlying fault from April 2020 wasn't put right until the repair in April 2021.

I've carefully thought about what Moneybarn said about this. It said the conclusions of the independent report should stand. The independent report concluded that:

“the issue under review is not considered to have been present at sale after 12,000 miles of further use, had it been present at sale it should have materialised in the first 1000 – 1500 miles of use”

It later clarified, having seen some evidence of the spark plugs being repaired:

“this would lead ourselves to believe that the fault with the spark plugs would have been developing at the point of finance inception”

“However, the repairs (to the spark plugs in November 2020) do appear to have been successful as the fault that was displayed in our inspection related to a lack of performance and a potential turbo charger fault, therefore we would consider, the faults noted on the date of our inspection would not have been developing or present at the point of finance inception”

I've thought about this. But, I don't agree it's likely, despite the difference in fault codes, that the issue was repaired until the timing chain was replaced. I say this as Mr G says the earlier repairs didn't resolve the issue. He brought the complaint to our service after this attempted repair was carried out. And it is specifically noted that the performance was still “slightly lumpy” after the spark plugs were initially replaced. I can't see that the repeated work on the spark plugs would've resolved things when the earlier repairs seem to have been unsuccessful.

But, there is a simpler reason why I'm not persuaded by the conclusions of the independent report. I say this as the report's conclusions that the faults weren't present or developing at the point of supply were based on the issues being:

“an underlying fault with the vehicles engine management system and the turbocharger not boosting”

Thinking about how closely together the report was carried out and the timing chain repaired, I'm satisfied the issues noted in the report were in fact being caused by the timing chain – not the turbo or engine management system. it follows that I'm satisfied the conclusions in

the independent report about when the issues arose aren't valid.

Thinking about all of this, I'm satisfied it's likely the car had an underlying fault that was present or developing at the point of supply. I'm satisfied this means the car wasn't of satisfactory quality when Mr G acquired it. And I'm satisfied this wasn't put right until the repair in April 2021.

I've then gone on to consider the other issues Mr G complains about.

Mr G says the parking sensors required a repair shortly after getting the car. But it appears this was paid for by the dealer, so I don't need to make any findings here and Moneybarn don't need to take any action.

Mr G also says the car had issues with the windscreen wipers and it required new tyres. Both windscreen wipers and tyres are parts of the car that will suffer wear and tear and need to be replaced as part of routine maintenance. I think, given the age and cost of the car here, that a reasonable person would expect these items to be road worthy and safe when the car was supplied. On balance, I think it's most likely this was the case.

I also haven't seen enough evidence to persuade me that the issue with the exhaust was present or developing at the point of supply. So, it follows I don't think Moneybarn needs to take any action on these areas.

I now need to consider what would be fair and reasonable to put things right for Mr G.

Thinking about the CRA, a repair is one of the remedies available to him given the car supplied wasn't of satisfactory quality. So, given this has taken place, I need to think about what else should happen.

I don't think it's reasonable that Mr G should have to pay out for the costs of the attempted repairs, diagnostics nor the final repair. So, Moneybarn should reimburse him for these costs. I have considered whether it was reasonable of Mr G to get the spark plugs changed multiple times. But, considering he had a diagnostic done at each point, I'm satisfied he was following advice from the garages here in good faith.

I'm also satisfied that from the point Mr G got the car, to when it was repaired in April 2021, that the car wasn't performing as he would've expected it to. So, I think Moneybarn should reimburse him a proportion of his monthly repayments to reflect this impaired usage. I agree with our investigator that 10% feels reasonable here.

I also agree with our investigator that Mr G has been caused distress and inconvenience because of what's gone wrong. He's had to take the car to be repaired multiple times and pay for repairs out of his own pocket. I agree £150 is fair here.

Our investigator asked Moneybarn to further investigate the fault. But, given it's been repaired, I'm satisfied it doesn't have to do this. It also does not need to allow Mr G to reject the car as his rights under the CRA will have been met.

I gave both parties two weeks to come back with any further comments or evidence.

Mr G responded and said he didn't have any more information for me to consider. Moneybarn didn't reply.

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.

Having thought about all of the information on this case again, I still think it should be upheld.

This is due to the same reasons I explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint. I instruct Moneybarn No. 1 Limited to do the following:

- Reimburse Mr G £272.78 from 16 April 2020*
- Reimburse Mr G £355 from 28 April 2020*
- Reimburse Mr G £120.72 from 31 July 2020*
- Reimburse Mr G £152.29 from 30 November 2020*
- Reimburse Mr G £1,829.18 from 8 April 2021*
- Reimburse Mr G 10% of all repayments made towards the agreement from when he got the car to 8 April 2021*
- Pay Mr G £150 to reflect the distress and inconvenience caused

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Moneybarn considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr G how much it's taken off. It should also give Mr G a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 21 October 2022.

John Bower
Ombudsman