

The complaint

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

What happened

In September 2020, Mr M took out a conditional sale agreement with Moneybarn for a used car. The car was five years old, with a cash price of £9,990. Mr M has told us that he'd spent months searching for a car of the specification he wanted. He says the dealer was based a long way away, so he chose this car based on the description in the advert. It said:

"Overview satnav – revcam – red leather – history 103,000 miles".

"This is a one owner car with 6 service stamps done 10K – 21K – 42K – 62K – 91K and last serviced at 103K in September 2020".

It said the car came with:

"Rear parking aid"

"Satellite navigation – SD card with dynamic route guidance and low CO2 routing".

Mr M says he'd told the dealer that he'd noticed the MOT history showed advisories about the condition of the brakes and tyres, and that he wouldn't be prepared to buy the car unless those issues were taken care of. He says the dealer also agreed to refurbish the wheels as part of the deal.

Mr M signed the finance agreement online. This showed the purchase price to be £10,520, which included £360 for a warranty and £170 for delivery. Mr M agreed to make an advance payment of £360 and to repay the rest of the amount owed over 59 months, in accordance with the terms of the finance agreement.

Mr M says the dealer delivered the car to him on 30 September 2020. He says the delivery driver got there late, after it was dark, and had to rush off to catch a train. Mr M says he then noticed several issues, including damage to the alloy wheels, a broken mirror, the problems with the brakes and tyres hadn't been addressed, and the car didn't have satnav or a reversing camera. He's told us that the engine management light (EML) came on within 20 minutes of driving the car.

Mr M says he took the car for a diagnostic check the following day. The garage issued a receipt, recording the car's mileage to have been 106,107. It listed six diagnostic check codes, described as *"intermittent historic fault codes"*.

Mr M says he contacted the dealer to complain about the car within a day of it being delivered to him. He says they told him to wait two weeks and then make a claim on the warranty. Mr M says the dealer told him he could carry on using the car with the fault, with no risk to the car.

Mr M says he's never been able to use the warranty he was sold with the car, because it only provides cover for claims up to £1,000 and labour charges of up to £70 per hour. He

says this isn't adequate, because the manufacturer's garages charge £176 per hour for this type of vehicle.

On 8 October 2020 Mr M complained to Moneybarn that he'd like the mechanical and other issues rectified. Moneybarn arranged for an independent engineer to inspect the car on 30 October 2020. The car's mileage was recorded to have been 106,435 at the start of the inspection. The engineer's report concluded:

"there were no faults found with this vehicle in regards to performance or running issues."

"The intermittent fault codes require further investigation under workshop conditions."

On 1 December 2020 Moneybarn issued their final response to Mr M, saying they couldn't support his request for repairs to be carried out because the engineer hadn't been able to find a fault with the car. They acknowledged that some faults can be intermittent, and asked Mr M to take the car for diagnosis if the problem happened again. They paid him £150 for any distress and inconvenience caused by the length of time they'd taken to respond to the complaint.

Dissatisfied with this response, Mr M brought his complaint to our service. He provided evidence showing he'd paid for the brake discs and pads to be replaced in November 2020. He told us that he'd also had the tyres replaced because he felt they were a safety risk.

In October 2021 Mr M contacted our investigator again to say the car was at the garage and couldn't be driven. He said the garage told him the *"timing jumped"* and the car now needed a new engine, which would cost over £10,700.

Mr M also obtained a diagnostic report from a mobile mechanic, which said:

"Timing chain has stretched and skipped a tooth on the inlet and exhaust camshaft sprockets."

"Advise remanufactured engine is fitted."

Mr M said he believed the engine had failed because the car hadn't been serviced properly by the dealer. He said the dealer promised him the car would be serviced in accordance with the manufacturer's recommendations, so the timing chain should have been changed.

Moneybarn arranged for an independent engineer to reinspect the car on 1 November 2022. The mileage was recorded to have been 118,951 at that time. The engineer's report concluded:

"Based on the evidence available to ourselves at the time of inspection, we would not consider the reported faults with the vehicle to be present or developing at the point of inception."

Having looked into what happened, our investigator said he thought Moneybarn should reimburse Mr M £120 for the cost of the diagnostic report carried out on 1 October 2020. He said he couldn't make any award for the cost of repairing the six faults highlighted at that time, because he hadn't seen any evidence to show what this would have cost. And he didn't think he could hold Moneybarn liable for the engine having failed, without evidence to show this was due to issues that were already present or developing when the car was supplied.

The investigator wasn't satisfied that Mr M had been misled into believing particular servicing had been undertaken when it wasn't. And he wasn't persuaded that Mr M had been misled about the reversing camera or the condition of the wheels.

The investigator said he hadn't seen sufficient evidence to be able to recommend reimbursement for the cost of replacing the tyres. But he thought Mr M was reasonably

entitled to expect the brakes to have been in better condition when the car was supplied. He said Moneybarn should reimburse Mr M £693.59 for the cost of the replacement brake parts. He felt they should also reimburse Mr M for the associated labour, if the price of this could be evidenced or otherwise ascertained.

Moneybarn accepted our investigator's view. They asked for evidence showing the amount they needed to pay Mr M to settle the complaint.

Mr M disagreed with our investigator's suggested outcome, so the case has come to me for a decision.

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's complaint is 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 look into this complaint.

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. It says that under a contract to supply goods, there's an implied term that the quality of those goods is satisfactory. It explains that things like fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances. It seems likely that in a case involving a car, the relevant circumstances a court would take into account might include things like its age, mileage, and history.

In this case I bear in mind that this car was five years old when it was supplied to Mr M. It cost £9,990, which is significantly less than it would've cost when it was new. I've also taken into account the way the car was described by the dealer.

I can't say with any certainty what the car's mileage was at the time the car was supplied to Mr M. I've seen a copy of the dealer's service invoice dated 28 September 2020, which records the mileage to have been 103,712. And I've seen a copy of the diagnostic report dated 1 October 2020, which records the mileage to have been 106,107. I think one of those records is likely to be incorrect, because I consider it very unlikely that the car travelled almost 2,400 miles in those three days.

Mr M has told us that the car was delivered to him on the evening of 30 September 2020, and that he covered very little distance before the diagnostic report was carried out the following day. Having thought about this, I think it likely that the car had already covered closer to 106,000 miles when it was supplied to Mr M.

It isn't disputed that there's now a major fault with the car, which means the engine needs to be replaced. The point for me to decide is whether the car was of satisfactory quality at the time Moneybarn supplied it to Mr M, in September 2020.

If I haven't commented on a particular point Mr M has raised, that doesn't mean I haven't considered it. I want to reassure him that I've thoroughly reviewed all the information he's provided. But in my decision, I've focussed on what I consider to be the main issues in this case.

Was the car of satisfactory quality when it was supplied?

Moneybarn have provided a copy of their records, showing Mr M got in touch on 8 October 2020 to raise the following complaints about the car:

- *Advisory items shown on the MOT hadn't been put right*
- *Damage to the wing mirror*
- *No reversing camera fitted*
- *Damage to the alloy wheels*
- *Chipped windscreen*
- *Engine management light on.*

Mr M has also told us that the satellite navigation doesn't work. He believes the SD card he was given belongs to a different car.

I've considered whether these issues meant the car wasn't of satisfactory quality when it was supplied.

1) Advisory items shown on the MOT

I've reviewed the car's MOT history. This shows a test was carried out on 30 July 2020, at which time the car was recorded to have travelled 101,621 miles. The following advisory issues were noted:

"Nearside front tyre outer edge stepping"

"Nearside rear tyre worn close to legal limit/worn on edge"

"Both front brake disc edges corroded"

"Both rear brake disc edges corroded"

"Rear brake pads wearing thin".

Mr M says he asked the dealer to confirm that these advisory issues would be taken care of. He's provided screenshots of text messages he sent the dealer about this, saying:

"...there's no way I'll be taking a car needing brakes and tyres... I'm not buying a car I need to spend money on basic maintenance pretty much straight away."

There's no legal requirement for "advisories" shown on an MOT test to be repaired within any set time. They show components that are not defective yet but worn. This means it won't be long until they become defective.

I'm satisfied that the car had travelled between 2,000 and 5,000 more miles between the MOT test and the date it was supplied to Mr M. Although I've seen no supporting evidence to confirm whether the brakes discs and pads were defective by that point, on balance, I consider it very likely that they were at least very close to the end of their serviceable lives.

I accept that a reasonable person would expect brake discs and pads to require replacement from time to time, due to normal wear and tear. But I don't think they'd expect to have to do this within the first few weeks of buying the car. As reliable brakes

are an essential safety feature, I think this meant the car wasn't of satisfactory quality when it was supplied.

Mr M has shown us a copy of a receipt dated 5 November 2020, confirming that he purchased new discs and pads for the car at a total cost of £693.59. I've seen no evidence of any associated labour cost. I think it's fair for Moneybarn to reimburse Mr M the full cost of the parts and labour involved in replacing the brake discs and pads, on production of invoices, receipts or other suitable evidence showing the expense he incurred.

Mr M has also provided two photos, each showing a tyre with very little remaining tread, and an invoice for four new tyres. I'm unable to ascertain where or when these photos were taken, or the date the invoice was issued. In the absence of further evidence about this, I'm not persuaded that it would be fair for Moneybarn to cover the cost of replacement tyres.

2) Damage to the wing mirror

Mr M has provided a photo of the wing mirror. In this photo, part of the moulding that forms the wing mirror housing is missing, exposing the wiring. There are signs that this mirror housing has sustained an impact. Although I haven't seen any evidence to confirm the date this photo was taken, I'm satisfied that this was one of the first things Mr M complained about, around a week after he got the car. The damage doesn't appear to be recent. So, I think it most likely that this damage happened before the car was supplied to him.

Bearing in mind the price of this car, I think a reasonable person would expect all parts of its exterior bodywork to be present, with any wiring concealed. So again, I think this meant the car wasn't of satisfactory quality. For that reason, I think it's fair for Moneybarn to cover the cost of repairing this wing mirror.

3) Satellite navigation (satnav) not working

The dealer's advert included a lengthy description of the car's features, including:

"A spare key is present with the SD card for the navigation, sat navigation"

"Satellite navigation – SD card with dynamic route guidance and low CO2 routing".

Given this description, I think Mr M was reasonably entitled to expect the satnav to be present and working. But as I've seen no supporting evidence about the issue with the satnav or what's needed to fix it, I've been unable to consider this any further.

4) No reversing camera

The dealer's advert included a brief "overview", which included the word "revcam".

The section headed "this car comes with" included the description "rear parking aid".

I don't think it's entirely clear from the advert whether the car came with a parking aid or a reversing camera. If this feature was particularly important to Mr M, I do think he could have checked this with the dealer before he signed the agreement.

I don't think a reasonable person would consider this car to be of unsatisfactory quality because it had a parking aid instead of a reversing camera. So, I don't consider Moneybarn liable for the cost of fitting one.

5) *Damage to the alloy wheels*

Mr M has told us that the dealer promised the wheels would be refurbished before he got the car. But I've seen no supporting evidence to confirm this.

I've seen photos showing damage to the alloy wheels. Bearing in mind the car was five years old and had travelled over 100,000 miles when it was supplied to Mr M, I do think some minor scuffs and scratches to the alloy wheels were to be expected. So I don't think Moneybarn are liable to cover the cost of repairing this damage.

6) *Chipped windscreen*

I've seen no evidence showing a chip in the windscreen, so I haven't considered this issue.

7) *Warranty*

Mr M says the warranty was of no use to him because it didn't cover the hourly rate the manufacturer's garage charges for this car.

I've reviewed a copy of the agreement Mr M signed, showing a purchase price of £10,520. I've also seen a copy of the dealer's invoice, showing this figure included £360 for the dealer's warranty. So, I'm satisfied that I can potentially consider this aspect of Mr M's complaint.

But I haven't seen any supporting evidence to show how the dealer described the warranty to Mr M, or what it in fact covers. So, I've been unable to consider whether it was misrepresented to him.

8) *Engine management light (EML)*

I think it's fair to say Mr M's main concern was that the EML came on within the first 20 minutes of driving the car. I appreciate this would have been concerning for him. But I don't think this necessarily means there was a significant fault with the engine at that time.

Cars have sensors to check everything is running smoothly. The EML might be triggered because a sensor detects a potential issue with the engine. There are a number of things that can cause this, ranging from minor issues to much more serious ones. But a broken sensor can also turn on the EML.

Again, I bear in mind that this car was five years old and had already covered more than 100,000 miles by the time it was supplied to Mr M. I think it's reasonable to expect there may be some minor issues with a car that's already covered that sort of mileage. I've considered whether any of the evidence shows there was a significant fault with the engine.

I've seen a copy of the garage receipt dated 1 October 2020 and the independent engineer's report dated 30 October 2020. These documents both list the same six fault codes found to be stored in the car's electronic control unit (ECU).

The garage receipt simply states that these were "intermittent historic fault codes". It gives no further information as to what might have caused these codes to be generated, or whether any of them were due to recent or ongoing problems. So I don't consider this to show there was a fault with the car at that time.

The independent engineer's report also described the fault codes as "intermittent and historic". It states:

"there were no faults to be found with the vehicles' performance or running, however there are evident fault codes stored in the vehicle's ECU systems."

"we would conclude that the vehicle has had intermittent problems with either the vehicle's catalyst system or DPF, which would require further investigation with more in-depth diagnostics being carried out under workshop conditions. "

"Such faults would generally become evident in the form of lack of power, limp mode and engine management light illumination."

In their final response to Mr M's complaint, Moneybarn said they couldn't support his request to repair the car because the engineer hadn't been able to find a fault. But I note their letter went on to say:

"I appreciate sometimes faults can be intermittent and therefore, should this issue arise again, can I ask that you get the vehicle diagnosed at that time and send me the diagnostics report for my review. I will be happy to re-open your complaint at that time, if appropriate."

I think that was reasonable in the circumstances.

Based on what Mr M has told us, my understanding is that the fault codes didn't come back on again after they were turned off and reset. I haven't seen any information confirming when the fault codes were cleared and reset, or whether that involved further diagnostic or repair work.

In the absence of further evidence about this, I'm not persuaded that the EML and fault codes seen in October 2020 show there was a significant fault with the engine at that time.

And as I've seen no evidence of work having been carried out to further investigate or fix the issue that caused the EML to come on, I'm unable to assess whether Moneybarn would be liable to cover any costs that may have been incurred.

Engine failure

In September 2021 Mr M told us that he'd had to take the car to the manufacturer's garage for diagnostics after it failed to start. He later provided a screenshot of a message confirming the outcome of that diagnostic check, saying: "engine timing jumped, req new engine", and a videoclip made by a technician, expressing the same opinion.

The independent engineer's report of the inspection in November 2022 states:

"Due to the time that has elapsed and the mileage covered in the vehicle since purchase, we would not consider any reported faults with the vehicle to be present or developing at the point of inception".

I think it's important to note that the car had travelled around 118,951 miles by the time the engine failed. I do think it's reasonable to expect that a car that's covered that kind of mileage may start to need more significant repairs.

Although the precise mileage is disputed, I'm satisfied that Mr M had somewhere in the region of 13,000 miles' use of the car before the engine failed. I don't think he'd have been able to cover that kind of mileage in the car if there was a significant fault with the engine when he got it.

Mr M feels strongly that the fault with the timing chain was already developing when he got the car. I've given careful thought to whether anything in the evidence supports this view.

The report of the independent engineer's reinspection of the car on 1 November 2022 sheds no light on what caused the engine to fail. It says:

"The engine will need checking under workshop conditions and possible stripping to find the root cause of the fault with the vehicle."

The diagnostic report/invoice Mr M obtained from the mobile mechanic, dated 29 July 2022, confirms the engine was stripped down to inspect the condition of the timing chain. It says:

"Found timing chain has not been replaced as per manufacturing guidelines of 100k approx. Original factory chain still fitted."

Mr M believes the engine failed because the dealer hadn't serviced the car in accordance with the manufacturer's recommendations – which he says they promised him they'd do. He's shown us a copy of the dealer's service invoice. This is dated 28 September 2020 and records the car to have covered 103,712 miles. It says: "Service carried as per schedule".

Having seen the invoice Mr M was given, I do think he was entitled to expect the dealer to have serviced the car in line with the manufacturer's recommendations. So, I've reviewed what servicing the manufacturer recommended.

Servicing information for this vehicle is available online. This includes details of services carried out by manufacturer's garages, and checklists showing which items the various services are recommended to cover. For this car, the last service that was recorded online was shown as an 84,000 mile / 96 months service. This was shown to have been carried out in December 2019, when the car had travelled 91,825 miles.

Following the 84,000 mile / 96 months service, the manufacturer's next recommended service would be at 105,000 mile or 120 months. I've carefully reviewed the manufacturer's checklist of service items, but I've seen nothing to suggest replacement of the timing chain was recommended.

Although I appreciate the mobile mechanic felt this should have been replaced, I find the manufacturer's service checklists to be more persuasive. For this reason, I'm not persuaded that the failure of the timing chain was due to inadequate servicing by the dealer.

Mr M points out that the MOT history for this car shows the EML was on when it was tested in July 2020. But as I've explained, the EML can come on for a number of reasons. I've seen no evidence to persuade me that it came on in July 2020 due to the same issue that caused the engine to fail, over a year later.

Mr M says the fact that the car was displaying a fault code relating to the cam position sensor in October 2020 shows the problem with the timing chain was already developing at that time. Having given careful thought to this point, I'm not persuaded that this is what the evidence shows.

The independent engineer reported the following information about stored fault codes found in October 2020 and November 2022:

<i>October 2020</i>	<i>November 2022</i>
<i>P20EE-04: Selective catalyst reduction Nox catalyst efficiency below threshold</i>	<i>P007800: Exhaust valve control circuit bank 1 – intermittent code</i>

<i>bank 1</i> <i>P20EE-92: Selective catalyst reduction Nox catalyst efficiency below threshold bank 1</i> <i>P049B-00: Exhaust gas recirculation insufficient flow detected</i> <i>P0341-91: Camshaft position sensor A circuit range performance bank 1 or single sensor</i> <i>B1248-15: Right rear turn signal</i> <i>U2300-54: Central configuration</i> <i>U3000-63: Control module intermittent</i> <i>These are intermittent and historic fault codes.</i>	<i>P261087: Engine control module power train control module, internal engine off time performance – intermittent code</i> <i>P245208: Diesel Particulate Filter differential pressure sensor circuit – pending code</i> <i>P023A13: Charger air coolant pump control circuit open – intermittent code</i> <i>P033531: Crankshaft position sensor A circuit – pending code</i>
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I can see the car's electronic control unit had a stored fault code about the cam position sensor in October 2020. But I haven't seen any evidence to confirm whether this was the reason the EML came on at that time, or whether this was simply historic information about a fault that had since been repaired.

Nor have I've seen any evidence to confirm whether the cam position sensor fault code was generated because the timing chain had started to stretch, or whether there were other issues that could have triggered it.

I also note that different fault codes were found in November 2022, after the timing chain was confirmed to have stretched/failed.

For these reasons, I'm not persuaded that the timing chain fault was present or developing when Moneybarn supplied the car to Mr M. It follows that I don't consider Moneybarn to be liable for the cost of repairing that issue.

Putting things right

I don't consider the car to have been of satisfactory quality when it was supplied to Mr M because I think he was entitled to expect the following components to have been in better condition:

- Brake discs and pads,*
- Wing mirror housing.*

Mr M has already shown us a copy of a receipt for the parts needed to replace the brake discs and pads. I've seen no details as to any labour costs he incurred. I think it would be fair for Moneybarn to cover the full cost of replacing the discs, pads, and missing section of the wing mirror housing on production of an invoice, receipt or other suitable evidence showing the costs Mr M has incurred.

I think Mr M has suffered some distress and inconvenience because the car wasn't of satisfactory quality. I've seen evidence showing he's had to arrange for repair work to be carried out and make a complaint to recover the cost he's incurred. I think Moneybarn should pay Mr M £150 compensation for this.

I said I intended to uphold Mr M's complaint and direct Moneybarn to:

- Reimburse Mr M £693.59 to cover the cost of replacement brake discs and pads.*

- Reimburse Mr M the cost of fitting the replacement brake discs and pads, on production of an invoice, receipt, or other suitable evidence of this expense.
- Reimburse Mr M the cost of replacing the missing section of the wing mirror housing, on production of an invoice, receipt, or other suitable evidence of this expense.
- Interest should be added to each of the reimbursed amounts, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Pay Mr M £150 for the distress and inconvenience he's suffered.

I invited both parties to send me any further information or comments they'd like me to consider.

Responses to my provisional decision

Moneybarn said they were happy to accept my provisional decision. They asked to see copies of the receipts showing the cost of replacing the brake discs, pads and missing section of the wing mirror housing, to help speed up the settlement process.

Mr T didn't respond.

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.

As neither party has provided any additional information or comments in response to my provisional findings, I see no reason to depart from them.

My final decision

For the reasons I've explained, I uphold this complaint and direct Moneybarn No. 1 Limited to:

- Reimburse Mr M £693.59 to cover the cost of replacement brake discs and pads.
- Reimburse Mr M the cost of fitting the replacement brake discs and pads, on production of an invoice, receipt, or other suitable evidence of this expense.
- Reimburse Mr M the cost of replacing the missing section of the wing mirror housing, on production of an invoice, receipt, or other suitable evidence of this expense.
- Interest should be added to each of the reimbursed amounts, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Pay Mr M £150 for the distress and inconvenience he's suffered.

If Moneybarn consider tax should be deducted from the interest element of the award, they should tell Mr M how much they've taken off. They should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if he's eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 March 2023.

Corinne Brown
Ombudsman