

The complaint

Miss A complains about a car she acquired under a conditional sale agreement financed by Moneybarn No. 1 Limited.

What happened

In May 2022 Miss A acquired a used car with finance provided by Moneybarn. The car was about seven years old, and its cash price was £17,400. The mileage at the date of the agreement was 86,251 miles; by the time it was delivered to Miss A it was 86,395 miles.

In November 2022 the car broke down, and smoke was coming out of it. It would not start again, and it had to be collected and taken to a garage. Miss A was not offered a courtesy car at the time, and after initially agreeing to the dealership carrying out diagnostics and repairs, in December she changed her mind and asked to reject the car. Meanwhile, she had been using public transport, and she said this extra expense caused her to begin missing her monthly payments.

In February 2023 Moneybarn told Miss A that repairs were under way and were expected to be completed by 3 March. It offered her a courtesy car until then, but told her that she would have to collect it herself from a garage 200 miles away. It refunded her payment for December 2022, waived her payments for January and February 2023, and removed the arrears from her credit file. Moneybarn also paid her £200 for her inconvenience. Being dissatisfied with that outcome, Miss A referred this complaint to our service. She did not collect the courtesy car.

While this complaint was with our service, Moneybarn obtained a report from an independent expert in March 2023. This confirmed that there had been a fault with the car's turbocharger at the point of sale. But based on what else was written in that report (and also in two other reports from garages), Moneybarn concluded that further damage had been caused to the engine by Miss A failing to properly maintain the car by keeping it topped up with oil. So Moneybarn agreed to replace the turbo at no cost to Miss A, but it also said that she would be responsible for repairing or replacing the engine herself.

Our investigator upheld this complaint. He did not interpret the reports in the same way as Moneybarn had. He concluded that the expert's report said that oil had been leaking from the turbo, and so it could not be inferred that the lack of oil in the engine was Miss A's fault. That appears to be the main issue of dispute in this case, and as Moneybarn did not agree with the investigator, it asked for an ombudsman to review this case. But the investigator also said that the repairs had taken too long – the car had broken down in November 2022 but the repairs were still not complete by the following April – and this was a breach of Miss A's statutory right to have the car repaired within a reasonable time. So he recommended that she be allowed to reject the car, that the agreement be cancelled with nothing more to pay, and that the deposit be refunded, with interest, together with a further £300 for Miss A's inconvenience. But he did not recommend that her monthly payments since March 2023 should be refunded, because Miss A had been offered a courtesy car, although she had not accepted it.

Miss A accepted most of the investigator's opinion, except that she maintained that she had been entitled not to accept the courtesy car, and she asked to be refunded for her car insurance premiums, and the early cancellation fee when she had cancelled her policy. As Moneybarn did not accept the investigator's view, as I've said, this case was referred to me.

I wrote a provisional decision which read as follows.

What I've provisionally 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 done so, I am minded to uphold this complaint for the same reasons as my colleague, but also to direct Moneybarn to refund Miss A the monthly payments she has made since March 2023, with interest.

It is not in dispute that there was a significant fault with the turbo at the point of sale. But I still have to decide whether Miss A also contributed to the damage to the engine, whether she was entitled to reject the car (instead of having it repaired), and how much compensation she should receive.

I can deal with Miss A's right to reject briefly. From November to April is five months, which is plainly an excessive amount of time to take to repair a car, with or without a courtesy car. So I am satisfied that, having regard to sections 23(2)(a) and 24(5)(c) of the Consumer Rights Act 2015, she was entitled to reject the car and to treat the agreement as at an end (notwithstanding that the car hasn't been repaired yet).

I turn now to what the reports say, and I will begin with the expert's report as it is the longest and the most detailed. I will refer to it as "the first report," although it was not the earliest.

The first report gives the mileage as 87,749 miles, or 1,354 miles since Miss A began driving the car. (I note that over the six months she had the car for, that is an average of 225 miles a month.) The turbo had already been removed by the time the author inspected the car. Overall the car was found to be in average condition, but there was no oil present, and on starting the engine it began smoking, it made an unusual sound, and multiple warning lights appeared on the dashboard.

The author found oil contamination to the exhaust and throttle body area. He also says he was told that on the removal of the inter-cooler by the garage, an "insignificant" amount of oil had been found inside it. (Oil in the inter-cooler is indicative of a fault with the turbocharger.)

The author was unable to crank the engine manually, and he suspected that the engine was seized.

His conclusion was:

"The turbo bearing and seal have failed, possibly due to in-service wear and deterioration, commensurate with the vehicle's age and mileage. This has allowed engine oil to pass through the turbo into the induction system. The engine appears to be in a seized condition. We do suspect at this point that drive-on damage has occurred and the vehicle has been driven to the point of final failure due to a lack of lubrication. However, we would recommend further dismantling of the engine to fully confirm if the engine failure has been caused due to a lack of lubrication and drive-on damage or due to the possible reported nut becoming displaced from the turbo."

That last sentence is a reference to one of the other reports, prepared earlier (“the second report”), which said that the *“turbo nut has come off and gone into engine.”*

The first report went on to say that due to the short distance driven by Miss A since the point of sale, it was likely that *“the initial failure of the turbo would have been present and developing at the point of sale.”*

However, he also said that there should be further investigation under workshop conditions to confirm the cause of the engine failure. That was because *“a significant increase of costs of repairs may have occurred due to drive-on damage.”* It was partly because of this statement that Moneybarn concluded that Miss A was responsible for the damage to the engine, other than the damage to the turbo. However, it appears that the further investigation which the expert recommended has not yet been carried out, as of July 2023.

Moneybarn also based its opinion on what the other reports said. They are both very brief, consisting of one paragraph each. The second report, which I have quoted from already, had also said:

“the car has had lack of lubrication. No engine oil in vehicle ... [this] resulted in failure of both engine and turbo.”

It is accompanied by a photo of a dry dipstick.

The third report described the damage to the turbo and said it had been caused by *“excessive radial movement”* which had caused the interior parts to come into contact with the housing. It then said:

“this fault would cause boost issues / oil issues and / or excessive noise issues. The only reason this component would fail in this manner is due to the vehicle being driven to breaking point.”

This report does not address when the fault occurred, how much bad driving it would take to bring it about, or whether the fault was present at the point of sale. So I have no reason to doubt the conclusion given in the first report, that the turbo was already faulty at the point of sale. I am therefore satisfied that the third report implicates the driving style of a previous driver, and not that of Miss A.

This report also states that the fault would cause “oil issues,” but it does not elaborate further. However, I think that it probably refers to the issues described in greater detail in the first report, and so on balance I think it corroborates what the first report says about that. It certainly does not say that the fault was caused by a lack of oil; neither does the first report.

As I’ve said, the first report says that the failure of the turbo bearing and seal allowed engine oil to pass into the induction system. This is what led the investigator to conclude that it was this fault, rather than negligence on the part of Miss A, which had led to a lack of oil in the engine. Neither the first report nor the third report state whether this fault alone would account for the lack of lubrication in the engine. But there certainly must have been some oil in the engine for oil to have been found in the induction system. (I don’t know how much oil was found in the induction system, but I think that enough time has passed for me to make a decision based on the evidence we have, without waiting for a fourth report.)

While the second report confirms that there was a lack of lubrication, it does not address the issue of oil leaking from the turbo. Indeed, it attributes the failure of the turbo to a lack of oil.

I cannot reconcile that conclusion with the findings in the other two reports, and so I do not find the second report to be persuasive.

Also, having purchased a car just six months before the breakdown, and driven so few miles in it, I don't think it was unreasonable of Miss A if she hadn't checked the oil yet.

However, the greater difficulty I have with Moneybarn's position is that the first report is inconclusive as to whether the engine damage was caused by a lack of lubrication and drive-on damage, or by the nut which detached from the turbo and entered the engine. That second alternative is at least as plausible a cause of the engine seizing. So I do not think that there is enough evidence for me to safely conclude that the damage to the engine was caused by Miss A so that she should have to pay for it herself.

On the balance of probabilities, I am satisfied that it would be fair to require Moneybarn to keep the car and end the agreement with nothing more for Miss A to pay, and to refund the deposit with interest.

Turning to the courtesy car, I think it was manifestly unreasonable to expect Miss A to make her own way to a garage 200 miles away to collect it and then to drive it 200 miles back. I therefore think it would be fair to require Moneybarn to waive or refund the payments that have fallen due since March 2023, with interest on any refunds.

That does not mean that Moneybarn should have to refund the payments Miss A made to her insurance company. My objective is to put her back into the financial position she would have been in if the car had not been faulty at the point of sale, and I think that is achieved by refunding the deposit and monthly payments and ending the agreement. Without the fault, she would still have been paying insurance premiums. (She wouldn't have had to pay a cancellation fee, but I think that loss is off-set by the fact that she is no longer paying monthly premiums.) I would generally only refund insurance premiums if she'd had to buy another car and insure that – and paying for both policies.

Finally, I agree with the investigator that Moneybarn should pay Miss A £300 for her trouble, in addition to the £200 it has paid her already. She had to rely on public transport for months, for taking her children to school among other things.

So my provisional decision is that I intend to uphold this complaint. Subject to any further representations I receive from the parties by the deadline below, I intend to order Moneybarn No. 1 Limited to:

- Retain the vehicle and end the agreement with nothing further to pay;
- Refund the deposit and all payments made since March 2023;
- Pay simple interest on those refunds at the rate of eight per cent a year from the dates on which the refunded payments were made to the date of settlement;
- Arrange to remove all adverse information about the agreement from Miss A's credit file;
- Pay Miss A £300 (in addition to what it has paid her already).

Responses to my provisional decision

Both parties accepted my provisional decision. So there is no reason for me to depart from my provisional findings, and I confirm them here.

My final decision

My decision is that I uphold this complaint. I order Moneybarn No. 1 Limited to:

- Retain the vehicle and end the agreement with nothing further to pay;
- Refund the deposit and all payments made since March 2023;
- Pay simple interest on those refunds at the rate of eight per cent a year from the dates on which the refunded payments were made to the date of settlement;
- Arrange to remove all adverse information about the agreement from Miss A's credit file;
- Pay Miss A £300 (in addition to what it has paid her already).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 11 September 2023.

Richard Wood
Ombudsman