DRN-4366076

The complaint

Mr G complains about the quality of a used car that was supplied to him through a conditional sale agreement with Moneybarn No. 1 Limited (MBL).

What happened

In May 2022, Mr G acquired a used car through a conditional sale agreement with MBL. The car was about six years old and had travelled 97,840 miles when it was supplied to him. The cash price of the car was £19,000. Mr G made an advanced payment of £1,500 so the total amount financed on the agreement was £17,500 payable over 60 months.

Mr G said when he collected the car he noticed a whistling noise which he was told was the Turbo. However, Mr G said about four weeks into driving the car the warning light came on, so he contacted the warranty company where he was referred to the dealership who paid for the repairs.

Mr G said in November 2022 the car began to smoke and went into limp mode. He said he was told by the recovery agent that the car shouldn't be driven as it was likely due to a turbo issue. Mr G contacted the dealership who referred him to the warranty company. Mr G said he was left without a vehicle from 4 November 2022 to 11 February 2022. He said he had to pay for additional transport at the time and so fell into financial difficulties.

Mr G said the warranty agreed to cover the cost of replacing the Turbo charger, but wasn't given any paperwork relating to the repairs.

Mr G said that in February 2023 the car broke down again due to a failed turbo. He asked to return the car due to the issues. In his complaint form he described a challenging process with going back and forth with the dealership to resolve the issue. The dealership agreed to arrange an independent inspection which was carried out on 30 March 2023.

The inspection report confirmed the mileage as 104,309, and concluded that the engine was misfiring, vibrating, knocking and operating badly. It said there was no evidence the current issues were as a result of previous repairs and said it was likely to be a result of age-related general wear and tear.

Mr G said he was asked to clear any debt on the account and felt forced into a termination of the agreement which he said left him with around £15,000 of debt, a default and no car.

In February 2023 MBL issued their final response. MBL confirmed they received Mr G's complaint in January 2023 which is when they were notified of the issues. MBL said they required evidence of the faults with the car which Mr G didn't provide. They concluded that the issues were likely due to wear and tear so didn't uphold the complaint. They also confirmed Mr G's arrears at that time was £2,119

Mr G provided us with a copy of an email where he confirmed that he'd voluntarily terminated the agreement, as he felt he had no other choice.

Unhappy with their decision, Mr G brought his complaint to our service for investigation. One of our investigators recommended that the complaint should be upheld. The investigator concluded that the failure of the turbo was a result of the initial issue not being correctly repaired. The investigator recommended MBL refund Mr G's deposit and some monthly repayments when he couldn't use the car along with £200 in compensation for the inconvenience caused.

MBL didn't accept the investigator's view. They said they weren't provided with any evidence of repairs, invoices or job cards showing what works had been carried out on the car. MBL also advised that as the issues with the turbo occurred more than six months after the car was supplied to Mr G then the onus was on him to provide the evidence.

The investigator considered as the car was supplied with a full-service history it wasn't reasonable that the turbo would fail at that point with the car being maintained, so as the investigator's view remained unchanged, MBL asked that the case be referred to an ombudsman for a final decision.

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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr G complains about a conditional sale agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr G's complaint about MBL. MBL is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that MBL supplied Mr G with a used vehicle that had travelled 97,840 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage which may impact its overall quality and reliability, so

there'd be an increased likelihood of unforeseen problems surfacing sooner than in a new vehicle.

Having said that, the car was priced at £19,000 which isn't insignificant. It also wasn't a particularly old vehicle. So, I think a reasonable person would expect it could offer a considerable duration without any major issues, for example, if it's been maintained and serviced.

From the information provided I'm satisfied that there was a fault with the car which included its turbo. Neither party disputes this, however the invoices for repair at the manufacturer garage and the independent inspection report confirmed there to be an issue with the turbo. Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.

In his complaint form, Mr G refers to the failed turbo, which has brought rise to him wanting to return the car and consequently deciding to terminate the agreement. I acknowledge that Mr G says the turbo showed audible signs of failing from when he acquired the car, for example with noticing a whistling sound soon after collecting the car. However, research shows that whistling sounds on vehicles could be symptomatic of several different things, and I've considered that Mr G hadn't provided any evidence that the turbo was failing at that point. So, I don't consider that the whistling sound necessarily meant the turbo was failing.

Mr G said the car was recovered to a third-party garage around November 2022 following its breakdown due to a faulty turbo charger. Although no job card or repair invoice has been provided, during a phone call with our investigator, the third-party garage was able to confirm that they replaced the turbo at that point on Mr G's car. So, I'm satisfied the turbo had failed at that point.

Mr G provided a diagnostic invoice dated March 2023 from the manufacturer garage. The invoice confirmed the turbo had been excessively damaged which they suspected was due to oil pump failure.

I acknowledge that MBL has pointed to the fact the failure to the turbo occurred outside of six months, and that under the CRA it puts the onus on Mr G to prove the turbo was inherently faulty from the point of supply. I also acknowledge that MBL says the initial repair was unauthorised and likely to have caused the repeated failure of it.

The third-party garage that initially replaced the turbo is a professional vehicle repair shop. So, I've no reason to doubt their ability to correctly diagnose and fix a mechanical issue. I've also seen no evidence that the repair they carried out was ineffective. In addition, the independent inspection report concluded that '*there was no suggestion that the current symptoms could be associated with the previous repairs'.*

And in the circumstances, I think it was reasonable that Mr G had his car recovered to the third-party garage. I think it's reasonable that the main concern was to have the car repaired and as Mr G confirmed the warranty covered the cost, I'm further persuaded that it wasn't unreasonable that Mr G approved the repairs to his car. In addition, I think it's unlikely the warranty would have covered the repair costs had they been a result of in-service wear and tear.

So in consideration of this I'm satisfied that the repairs carried out by the third-party garage was successful and that it was likely other reasons that caused the turbo to fail other than wear and tear.

Having said that, I've not seen any evidence which specifically shows why the turbo failed around seven months after it was supplied to Mr G. So I've considered whether it was suitably durable.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods. From the evidence provided I think it's fair to conclude that Mr G's car was not suitably durable because it suffered catastrophic failure at around 100,000 miles as the result of a part failing that should not reasonably have failed at that mileage.

Research shows that a turbo charger is expected to survive between 150,000 to 200,000 miles. I recognise this is more likely to be a guide and that failure can occur before or beyond these timescales. However, Mr G provided us with a copy of the service history carried out by a manufacturer garage, dating back to 2016. In consideration of regular servicing by a manufacturer garage, and that Mr G drove the car in total less than 6,000 miles, I'm persuaded the car was reasonably well maintained; and I don't think a reasonable person would expect to have to replace the turbo charger on a car of this age and mileage less than 10 months from supply. So, I don't consider the car was of satisfactory quality at the point it was supplied.

Putting things right

As I've concluded that the car wasn't of satisfactory quality at the point it was supplied, MBL will need to put things right for Mr G.

In his complaint form Mr G made it clear that he wanted to return the car, and in the circumstances, in consideration of the repairs the car has had since supply, under the CRA I'm satisfied that its' reasonable Mr G should be allowed to reject it.

I understand Mr G has already ended his agreement, however I'm aware that Mr G still has a balance to pay following the voluntary termination. So MBL should ensure the existing agreement in place is ended and that Mr G is refunded his initial deposit with no adverse information recorded on his credit file.

Mr G should be reimbursed £540 for the diagnostic dated 15 March 2023. He should also be refunded all rentals from when he was without the car due to it breaking down or being repaired. This was from around 25 November 2022 to 9 January 2023 due to the third-party garage repair to the turbo and again from 28 February 2023 where he stopped using the car from that point when it had been recovered.

MBL should also ensure Mr G is reimbursed any additional costs he may have been charged for having the car collected.

Mr G also described the impact this situation has had on him and the inconvenience it has caused. Mr G has said it made his financial difficulties worse affecting his family and mental health. I'm in agreement with our investigator that £200 is fair in the circumstances to recognise the impact this situation has had on him. MBL should pay this amount to Mr G in compensation.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and instruct Moneybarn No. 1 Limited to:

- End the current agreement in place with nothing further for Mr G to pay
- Refund the deposit of £1,500 Mr G paid (if any part of this deposit is made up of funds paid through a dealer contribution, Moneybarn No.1 Limited is entitled to retain that proportion of the deposit)
- Remove any adverse information that may have been recorded with the credit reference agencies in respect of the damage.
- Reimburse to Mr G any charges applied to him for the collection of the car
- Reimburse to Mr G the diagnostics cost of £540
- Refund to Mr G all rentals from 28 February 2023 to the date of settlement as described in my decision
- Refund to Mr G the prorate rentals paid between 25 November 2022 to 9 January 2023 whilst the car was in the third-party garage for repairs
- Pay Mr G £200 in compensation for the distress and inconvenience caused

Moneybarn No. 1 Limited should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If Moneybarn No. 1 Limited considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr G how much it's taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & 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 23 February 2024.

Benjamin John
Ombudsman