

## **The complaint**

Mrs G complains that a used car she acquired via a conditional sale agreement with Moneybarn No.1 Limited wasn't of satisfactory quality

## **What happened**

In December 2022 Mrs G entered into a four-year conditional sale agreement with Moneybarn for a used car. The car was around 10-years old and had a mileage of just over 82,500. The car was supplied to her by a dealer and came with a three-month warranty.

Before Mrs G collected the car, she was informed by the dealer providing it that the power-steering pump was defective. The dealer replaced this part and Mrs G collected the car in January 2023.

In February 2023 Mrs G experienced problems with the car over-heating and had to call out a roadside assistance company who advised there was an issue with the cylinder head. Mrs G contacted the dealer who took the car in and found that the head gasket had blown. It was arranged for repairs to be undertaken. The dealer informed Mrs G that the warranty wouldn't cover this repair work and requested she made a £200 contribution to the cost of the repairs which she did.

While the car had been taken in for repairs and because Mrs G was unhappy about the quality of the car, she raised a complaint with Moneybarn.

In March 2023 the car was returned to Mrs G following the head gasket repairs but she says that the following day it overheated again, and a water pipe was found to be burst. She says this was later repaired by the dealer.

Moneybarn responded to Mrs G's complaint in May 2023. It apologised for the length of time it had taken to reply but didn't uphold her complaint. It said that it considered the dealer's offer of repair for the car's faults was fair and reasonable and asked that if Mrs G had paid a contribution to those costs that she should forward it the receipt. Moneybarn closed Mrs G's complaint.

Mrs G says that in August 2023 the car developed further problems and is now off the road as it requires repairs that will cost around £2,500 to repair.

In September 2023 Mrs G complained to this service. She said the car wasn't of satisfactory quality and she wanted to reject it. Our investigator didn't recommend that Mrs G's complaint should be upheld. He said that it would be reasonable to expect a car of that age and mileage to have been subjected to significant wear and tear and that there would therefore be a risk of maintenance and repairs being required. Our investigator said it wasn't unusual for a head gasket to require replacing in a car of this age and use and he didn't think there was a fault when it had been supplied to Mrs G. He said the issue had arisen due to fair wear and tear. The car had been, our investigator thought, of satisfactory quality at the point Mrs G had acquired it.

Our investigator also said that he wasn't able to consider any faults the car had developed later in August as these hadn't been part of Mrs G's complaint to Moneybarn in February 2023. He also explained that while he accepted it had taken Moneybarn 11 weeks to provide Mrs G with a response, this wasn't within the remit of this service to consider as complaint handling was a service rather than a regulated activity.

Mrs G disagreed with our investigator's view. She said that due to the defective power-steering pump the car had been of unsatisfactory quality at its point of sale. She also said that the head gasket issue had been present when she had acquired the car. Mrs G said the roadside assistance company mechanic had advised her that a temperature sensor had been replaced before she'd acquired the car to mask the over-heating problem with the car.

Mrs G also said she wouldn't expect a head gasket to go after seven weeks of use and that she had been told the repairs that had been carried out had only masked the problem so the car would only last a while. Mrs G said the dealer hadn't satisfactorily repaired the vehicle as the car had broken down again shortly after the repairs to the head gasket. She said under the Consumer Rights Act 2015 there was only one right of repair.

Mrs G said that due to the poor repairs carried out by the dealer the car was now practically a write-off due to the extensive repairs now required.

As the parties could not reach an agreement the complaint has been passed to me.

### **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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the conditional sale agreement entered into by Mrs G is a regulated consumer credit agreement this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that 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 the goods.

Here the car was around ten years old and had a mileage of just over 82,500 so I think it's reasonable to consider that significant wear and tear would have been suffered by some of its components and repair and maintenance issues would be expected to arise after a reasonable period of time. Unlike a new car it wouldn't be expected to be fault free.

Mrs G says the car wasn't of satisfactory quality when it was supplied to her because of the defect with its power-steering pump that had been reported by the dealer before she collected it. I've seen this defect was accepted and repaired by the dealer at no cost to

Mrs G and that the dealer had also asked Mrs G for "*her thoughts*" about the purchase before carrying out this repair. I think it's fair to say that Mrs G accepted this repair and didn't seek to reject the car and end the agreement at that time. So, although there was a defect with the car (the power-steering) meaning the car wasn't of satisfactory quality at the point of supply this doesn't mean she can now reject it. That issue with the car was resolved and I haven't seen any evidence the repair to the power-steering pump has failed.

Mrs G says she disagrees that the issue with the head gasket was due to wear and tear, and she would have expected the car to be more durable than it was. She has raised that the roadside assistance mechanic reported to her that the temperature sensor had been changed possibly as away of masking the over-heating problem with the car. But looking at the report from the AA there is no mention of the temperature sensor having been replaced nor have they provided any other evidence about this part having been repaired. I don't have any evidence in respect of this sensor.

I've also seen that in October 2022 the car passed its MOT with no advisories and at the same mileage recorded when Mrs G acquired the vehicle.

So, I don't think I have enough evidence to reasonably say there was an ongoing fault with the car over-heating that the dealer was aware of and had taken steps to hide.

I appreciate that Mrs G had had the car in her possession for around six weeks when it developed the problems with the over-heating. I don't know how many miles she had travelled in it as the mileage recorded on the roadside assistance report is wrong being less than the mileage at the point of supply. Mrs G says she wouldn't expect this type of issue with this car but I'm afraid I disagree. I think a reasonable person would expect issues with repair and maintenance to arise after a relatively short time of use due to the age and the use the car had already undergone. I don't think this type of fault is unusual in a car of that age and mileage and is more likely than not be due to ordinary wear and tear.

I think on the evidence that I've seen that the fault with the head gasket occurred from Mrs G's use and that it wasn't present when she acquired the car. In terms of the head gasket, I think the car was of satisfactory quality at the point of supply to Mrs G.

Mrs G has raised that under the Consumer Rights Act 2015 the dealer has only one right to repair the car. But, as set out above, I don't think the repairs to the head gasket were carried out as a remedy for the car not being of satisfactory quality. These were repairs due to a reasonable level of wear and tear. This means that the issue with the water pump coming off the day after the car had been returned to Mrs G wouldn't mean she was now entitled to return the car because the repairs had failed. If there are issues as to the standard of the repairs carried out by the dealer then Mrs G will need to raise those with them. Moneybarn isn't responsible for repairs that were carried out due to wear and tear.

I've seen Mrs G has raised further problems with the car and that she hasn't been able to use it since around August 2023. Mrs G says this was due to the standard of the repairs to the head gasket. But I can't look at the current state of the car because this hasn't been raised with Moneybarn. Under our service's remit, I can only consider matters that have been raised with the business first and they have had an opportunity to investigate. So here, I can only look at those issues considered by Moneybarn in its final response letter dated May 2023. If Mrs G wishes other faults with the car to be considered, she will need to make a new complaint to Moneybarn and if she is unhappy at its response then she can make a new complaint to this service.

I'm sorry my decision will disappoint Mrs G, but for the reasons set out I'm not upholding her

complaint. On the evidence provided I'm satisfied that the fault with the head gasket wasn't present when the car was supplied to Mrs G and that in light of its age and mileage it was reasonably durable.

### **My final decision**

For the reasons set out above I'm not upholding Mrs G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 15 December 2023.

Jocelyn Griffith  
**Ombudsman**