

The complaint

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

What happened

In October 2022, Mr O acquired a car through a hire purchase agreement with MBL. The car was around five years old and had travelled 71,269 miles when it was supplied. The cash price of the car was £8,500. As no deposit was paid, the total amount financed on the agreement was £8,500 payable over 60 months.

Mr O said that when he collected his car he was given a vehicle check report which didn't highlight any issues, however, he noticed some damage to the roof liner and rear wheel arch. Mr O said he booked the car into the dealership to be repaired in December 2022 but was told no one was available to carry out the repairs. Mr O said a complaint was raised as he never received another appointment to resolve the issues.

Mr O raised another issue which he said occurred in June 2023 when the timing belt failed. The car was recovered to a garage where Mr O said he was told by the mechanic that the timing belt should've been changed before it was supplied to him. Mr O said after some going back and forth with the dealership, he paid £365 to have the car recovered to them. The dealership arranged for an inspection to be carried out and provided Mr O with a copy. Mr O says there are inconsistencies with information on the inspection report in comparison to a health check report he received when he acquired the car.

Mr O provided a copy of an email from the dealership explaining they weren't accepting liability for the timing belt issue as its replacement wasn't due when the car was supplied to him, and so he should arrange to have the car collected. Mr O said this has impacted his mental health and has affected him when he had to move home. Mr O said he wanted the car replaced like for like, or for the car to be returned and the agreement ended.

In August 2023 MBL issued their final response to the complaint which they didn't uphold. They explained that they considered the issues to be wear and tear and that any checks on the car would have been the responsibility of Mr O. They also noted Mr O had driven the car over 10,000 miles before the issues were raised with them.

Unhappy with their decision, Mr O brought his complaint to our service for investigation.

In October 2023, Mr O told us MBL had arranged for the car to be collected from the dealership. Mr O said he returned the logbook to the dealership and collected his belongings from the car but felt there were some items missing.

MBL informed the investigator in October 2023 that the car was collected from the dealership by a vehicle collection agency as the car was considered as abandoned.

Having reviewed the information on file, one of our investigators recommended that Mr O's complaint should not be upheld. In their view the investigator concluded that there was no evidence to show that the car was faulty at the point it was supplied.

Mr O didn't agree with the investigator's view and focussed mainly on the failure of the timing belt and that it had failed sooner than it should have and that it was likely to be incorrect oil that caused the failure.

However, as the investigator's view remained unchanged, Mr O asked that his complaint 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 O 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 O'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 O with a used vehicle that had travelled 71,269 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.

From the information provided I'm satisfied there was a fault with the car. This is apparent from the independent inspection report which confirmed the timing belt had fractured along with a number of related fault codes. Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.

Satisfactory quality

Mr O provided us with a copy of a vehicle inspection report from a professional vehicle inspection agency. The inspection was completed in September 2022, a month prior to him

acquiring the car. No issues were identified, and the inspection was recorded as passed. Mr O said some information on the report differed to that of the independent inspection report which was completed after the car had failed.

MBL also provided a copy of the car's MOT history which showed it passed an MOT in July 2022 with mileage around 300 less than at the point of supply and with no advisories related to the timing belt.

I've also seen an email from the dealership dated in September 2023 advising they were told by Mr O in July 2023 that the timing belt required changing. The dealership says they were willing to replace it, but when the car arrived, they learned the belt had snapped causing damage to the engine so they decided to instead arrange an independent inspection of the car which confirmed the issues were likely caused by wear and tear.

The independent inspection report arranged by the dealership was completed in July 2023. The report in conclusion advised: *'in our opinion the timing belt has failed as a result of normal general wear and tear and therefore, not the responsibility of the sales agent'*.

Having considered all the information and evidence provided, I'm satisfied that the car was of satisfactory quality when it was supplied to Mr O. I'm persuaded that the failure of the timing belt, which caused significant damage to the engine, was a result of in-service wear and tear.

The independent inspection report noted the timing belt was due to be replaced in December 2023 or at 93,000 miles. So at the time of supply, according to what the independent inspection report says, the timing belt wasn't due to be replaced at that point.

Having said that, I note that in their final response MBL advised the manufacturers guidance states the timing belt should be replaced every 60,000 miles or every six years. Although I've not seen the manufacturers guidance MBL referred to it is consistent with general research.

As Mr O acquired his car with a mileage of 71,269, I've thought about whether MBL should have had it replaced prior to supplying it to him.

MBL pointed out in their final response that they felt the responsibility was on Mr O to have included a check on the timing belt history as part of his due diligence checks. They also pointed out that there was no mention in their adverts of the car being supplied with a full-service history.

Having thought about this carefully, I think a reasonable person would expect when acquiring a car that it's supplied in a condition that is fit for purpose. For example, I would expect the components were in working order and that they could offer a reasonable duration, in particular consideration that the car was priced at £8,500, which isn't insignificant.

Having said that, at the point of the independent inspection the car's mileage was recorded as 82,088 which was about 10,800 more miles than when it was supplied. So, I think it's fair to say Mr O had received a reasonable duration of the car's components. In addition, Mr O was provided with a pre inspection checklist which recorded the auxiliary drive belts as being checked and with no issues recorded. And as this was carried out by a professional vehicle inspection agency, I think it's reasonable to conclude there were no issues with it at that point.

I do think there is a level of responsibility on Mr O when he acquired a used car, that was valued considerably less than it would be brand new and with no service history, that he carry out a degree of due diligence which may mean reviewing the manufacturers guidance for certain components and satisfying himself of their durability.

Many factors can impact the lifespan of a timing belt, for example driving style and service history. So, the lifespan can vary from vehicle to vehicle. I'm not persuaded it was the dealerships responsibility to ensure the timing belt was replaced as per the manufacturer's guidance. The dealership provided a vehicle to Mr O that offered a reasonable duration, and beyond this I think the ongoing responsibility of the maintenance of the car falls on Mr O.

So, all things considered, and for the reasons given, I won't be instructing MBL to take any action in relation to this part of Mr O's complaint.

Other issues

In relation to the initial issues Mr O raised about the roof lining and the wheel arch, I'm not persuaded MBL acted unfairly in the circumstances and so I also won't be instructing them to take any action in relation to this part of Mr O's complaint.

I've considered the photos Mr O provided of the damage and that he reported the issues soon after supply. However, I think it's reasonable to conclude that Mr O would have had an opportunity to inspect the car prior to entering into the agreement. For example, the photos show damage that I think is reasonably noticeable upon general inspection, and in the circumstances, I'm persuaded Mr O could and should have noticed it prior to entering into the agreement.

I've not seen any evidence to suggest Mr O was prevented from inspecting the car before he decided to acquire it. I think it's likely Mr O entered into the agreement with the knowledge that the car wasn't to a show room standard and had some damage of a cosmetic nature. And even had he not initially noticed it, I think it's reasonable to say the age and mileage of the car means it's reasonable that there'd likely be visible signs of wear and tear. This would also have been reflected in its value. So, I don't think it's unreasonable that there would have been some visible damage as Mr O described.

Having said that, I think it's reasonable to say the issue with the timing belt has become more of a priority to Mr O than the other concerns he had with the car. However, Mr O is also no longer in possession of the vehicle and so it's unlikely any further issues of quality in relation to the cosmetics of the car can be considered, for example the car is no longer available for repair or for further inspection to gauge the extent of any cosmetic damage.

Mr O also said he believed there may have been some of his personal belongings missing when he went to hand the keys into the dealership. As this is an issue unrelated to the quality of the car, and not something he raised in his original complaint to MBL, I'm unable to look into this, although, Mr O may decide to raise these issues separately with the dealership.

In an email to the investigator in March 2024 Mr O provided documents relating to court action for an unpaid penalty notice in connection to his car which at a point in November 2023 was found to be uninsured. It appears Mr O had transferred the insurance to another vehicle soon after the failure of the timing belt.

This particular issue appears to relate to the status of the insurance on the car and the action that a court is intending on taking. This is a separate issue from the quality of the

vehicle when it was supplied to Mr O, and so isn't something that I've considered as part of this decision.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I don't uphold Mr O's complaint about Moneybarn No. 1 Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 15 July 2024.

Benjamin John
Ombudsman