

Complaint

Mr D and Mrs G complain that Moneybarn No. 1 Limited refused to let them reject a faulty car.

Background

In May 2016 Mr D and Mrs G acquired second hand car costing £8,999 funded by a conditional sale agreement with Moneybarn and a deposit of £529. It was some two years old and had done 40,041 miles.

In early 2019 the engine suffered a major failure when the car had done some 69,000 miles. The car was inspected by three garages. The initial report recorded there was a noise coming from the inside of the engine block and advised Mr D to take the vehicle to a Ford garage to have the issue fully diagnosed. It suggested that it seemed likely the failure was due to the known issue with some Ford Eco boost engines.

They were advised that the car shouldn't be driven further. A third report was obtained on 5 March 2019. This states there were '*signs of a coolant leak...from above the alternator area*'.

Mr D and Mrs G submitted these reports along with other evidence to Moneybarn, but it rejected their request to reject the car. It didn't believe that they had demonstrated there was fault with the car at the time of acquisition.

They brought their complaint to this service where it was considered by one of our investigators who recommended it be upheld. He noted the evidence provided by Mr D and Mrs G which he found persuasive. He added that the facts were in line with other Ecoboost issues seen by this service where it appears the original degas pipe fitted to some vehicles was faulty and led to engine failures due to a loss of coolant.

He noted the report stated: "*I can however confirm that the degas pipe has either been replaced on recall or fitted at the time of vehicle assembly*". He noted that Mr D and Mrs G had confirmed they hadn't ever taken the vehicle to Ford for a recall on the degas pipe. He said this suggested either the pipe was the original or had been fitted prior to their acquisition of the car.

He thought therefore that the degas pipe was most likely faulty at the point of sale. He said that a Ford garage conducted an inspection and deemed the engine needed to be replaced. He noted that the car wasn't new and had done some 69,000 miles; but said Ford had accepted there are major issues with some vehicles running their Ecoboost engine. As such he didn't think the age or usage of the car was relevant.

He noted Mr D and Mrs G had voluntarily terminated the agreement as they were unable to afford to pay for a car that wasn't usable. Our investigator thought Moneybarn should have either allowed them to reject the car or paid for it to be repaired. Mr D and Mrs G had asked that they be paid for the cost of loans taken out to pay for two replacement cars, but the investigator didn't agree. However, he thought they should be allowed to reject the car.

Moneybarn didn't agree and said the investigator's view was unsubstantiated opinion based on inconclusive evidence. It didn't think the complaint should be decided on similarities to other complaints.

My findings

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 need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the conditional sale agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law 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.

I have some sympathy with the view expressed by Moneybarn that as the car had been with Mr D and Mrs G for 29 months then the fault wasn't likely to have been resent at the point of sale. However, I have reached a different conclusion. I will explain why.

The car suffered a major engine failure after only five years and having done less than 70,000 miles. The evidence indicates that it was properly maintained by Mr D and Mrs G. I regard such an event as exceptional and one must consider why it might have happened at that point.

The car has been inspected by three separate garages including a main dealer and coolant loss has been identified as an issue. This is symptomatic of the inherent problem with some of this particular type of engine. I consider that on the balance of probabilities that this car is one of those with the engine prone to fail.

I don't see that one would expect an engine to fail such that it needed to be replaced due to wear and tear. As I have said am satisfied the car was well maintained and that being so it is reasonable to assume that the engine would have carried on for many more years and for many more miles. Cars of this generation are expected to last for longer than this one did and I cannot safely conclude there is any basis to believe that it simply wore out and failed.

It is more likely that there was an underlying problem and as the symptoms suggest it lay with the particular engine in this car. I suspect it was doomed to fail.

Moneybarn has suggested that it is the manufacturer's responsibility to deal with any failure and recall, but I don't consider that removes the consumer's right to seek redress from Moneybarn. As such I believe I should uphold this complaint.

My final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs G to accept or reject my decision before 3 March 2020.

My final decision is that I uphold this complaint and I direct Moneybarn No. 1 Limited to:

- Rework the account as though Mr D and Mrs G had been able to reject the vehicle in January 2019
- End the finance agreement with no further liability to them (as of January 2019) – clearing any arrears that accrued after this.
- Refund the vehicle deposit (if any), plus 8% simple interest from the date of payment to the date of settlement;
- Refund the monthly payments for the time they were unable to use the car (January 2019 to April 2019 when the agreement was voluntarily terminated) plus 8% simple interest on the refund amount from the date of payment to the date of settlement.
- Remove any adverse information from their credit files.
- Refund the consequential losses of £86.40 for Initial diagnostics and £420 for further diagnostics (£420.00)
- Remove/refund the £455.00 default charge it added
- Pay £300.00 for the distress and inconvenience that this has caused

Ivor Graham
Ombudsman