

complaint

Mrs P and Mr M are unhappy that a car supplied to them under a conditional sale agreement with Moneybarn No. 1 Limited trading as Moneybarn, was of an unsatisfactory quality.

Mrs P and Mr M are being represented in this complaint by Mrs P's father. But, for ease of reference, I'll refer to everyone in my decision as Mrs P.

background

In October 2017, Mrs P was supplied with a used car through a conditional sale agreement with Moneybarn. The agreement was for £10,095 over 60 months, with monthly repayments of £381.76. At the time, the car was just over 3 years old and had done 49,198 miles. In February 2019, when it'd done 59,227 miles, the car broke down as a result of an issue with the turbo. This was replaced, but the car broke down again in April 2019 and for a further time in July 2019. The car hasn't been used since July 2019.

Mrs P complained to Moneybarn in March 2019. She wanted to reject the car but Moneybarn didn't agree. So Mrs P brought the complaint to the Financial Ombudsman Service.

Our adjudicator said the car broke down in February 2019 because there was a problem with the turbo. And the evidence showed the turbo had been replaced in July 2017 – a few months before Mrs P took possession of the car, and 17 months before this new turbo failed. The adjudicator didn't think it was reasonable that a new turbo failed after such a short period of time, and after the car had only travelled around 10,000 miles.

The adjudicator also said the evidence showed that the cause of this turbo failure was likely to be because the incorrect grade of oil had been used. She also thought it was likely that the damage to the engine caused by the use of the wrong oil caused the other faults Mrs P was experiencing. And she thought all of this would've been present when Mrs P took possession of the car.

So the adjudicator recommended that Mrs P be allowed to reject the car, and that Moneybarn should unwind the finance agreement. She said Moneybarn should refund the deposit plus interest, refund all of the payments Mrs P has paid since July 2019, refund the cost of the turbo repair and pay Mrs P £250 to compensate her for the distress and inconvenience she'd been caused.

Mrs P didn't agree with the compensation recommended by the adjudicator. She said that, in addition to the refund of the deposit and finance payments from March 2019, Moneybarn should pay all of the garage and diagnostic costs relating to the breakdowns, pay her car hire car costs, and that the distress and inconvenience payment should be increased to a minimum of £500. She's also said that she's had to buy another car, at a cost of £1,250, because the car supplied by Moneybarn isn't useable.

Mrs P has also said she's spoken to a previous owner of the car, the one who had the turbo replaced just before she took possession. And she said the previous owner told her the cost of the first replacement turbo wasn't covered under the warranty, because he'd missed a service. And this decision had been unsuccessfully challenged with the Motor Ombudsman.

Moneybarn also didn't agree with the adjudicator. They've said that, because of the time that's passed between Mrs P taking possession of the car and it breaking down, Mrs P is responsible for proving the fault was present at the time the car was supplied. They've also said that they weren't given the opportunity to repair the car when it broke down in February 2019. And they think the mileage the car did between supply and breakdown was sufficient to have impacted on the performance of the turbo. So this matter has been passed to me to make a final decision.

I issued a provisional decision on 9 December 2020, where I explained my intention to uphold the complaint. In that decision I said:

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs P was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The relevant law says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale; and the vehicle's history.

So, if I thought the car was faulty when Mrs P took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

The car was first registered in September 2014. So, when Mrs P took possession of it in October 2017, it was just three years old. And at the time the car had done 49,198 miles. I wouldn't expect to see major wear and tear in a vehicle of that age and mileage.

When the car broke down in February 2019, Mrs P arranged to have it repaired. The repair was done on 8 March 2019, when the car had done 59,227 miles. To repair the car the turbo needed to be replaced and the oil system needed to be drained down and cleared.

I've seen a letter from a main dealer, dated 27 March 2019. The letter confirms that "the oil for this vehicle is very specific and can cause ongoing issues internally that may or may not present itself straight away." The letter goes on to say "the irregular servicing and incorrect oil has invalidated the {warranty}." I've also seen the details from the Motor Ombudsman, when they considered the previous owner's complaint. And they've said the failure of the previous owner to have the car serviced when it should've been invalidated the warranty.

And when the car broke down again in April 2019, the main dealer who inspected it indicated there were problems which had caused an oil smell and the engine management light to come on. The estimate for repair was almost £3,000. But the main dealer recommended some things Mrs P could do to try and clear the fault. She did these instead, but the car broke down for a final time in July 2019. The breakdown company who attended the repair thought the previous issues with the turbo may have contributed to this breakdown. Mrs P has since been told the engine needs to be replaced and the car hasn't been used since.

So what I need to consider is whether any reasonable person would expect to have to replace a turbo in a car that was 4½ years old and had only done 59,227 miles. I also need to consider whether the fault with the turbo was present or developing at the time Mrs P took possession of the car.

I've seen an invoice dated 30 June 2017, showing the previous owner had work done at a main dealer. This invoice shows the turbo was seized and needed to be replaced. And the oil system needed to be drained and cleaned. At the time this work was completed, the car had done 48,760 miles. And I've noted the repairs needed in 2017 were exactly the same as the repairs needed in 2019.

Given that the car had a new turbo just before Mrs P took possession of it means the turbo failed after only 10,467 miles. I appreciate that Moneybarn consider that the 18-months that'd passed between Mrs P taking possession of the car and the turbo failing was sufficient for to have impacted the turbo's performance. But I don't agree.

While you could argue that a turbo may need replacing after 59,227 miles, it's highly unlikely a turbo would need to be replaced after just 10,467 miles. Or that a car would need three turbo units when it was only 4½ years old and had done 59,227 miles. So I don't agree with Moneybarn that this is an ongoing maintenance issue, or something that's "serviceable and wear and tear in nature."

Based on what I've seen, I'm satisfied there was an underlying problem with the car's engine that caused the turbo to keep failing. And, even if the root cause of this was that the wrong oil has been used, the fault existed before Mrs P took possession of the car. And the wrong oil was used in the car before Mrs P took possession of it, so she's not at fault for this.

The Consumer Rights Act 2015 says that goods can be rejected when after one attempt at repair the goods still do not conform to the contract. There's been one attempted repair here, albeit this was arranged by Mrs P and not Moneybarn. And the goods still don't conform to contract, for the reasons I've explained above. So having regard to all the circumstances, and the relevant law, I think it's fair and reasonable for Mrs P to be able to reject the car.

Moneybarn have said that they weren't given the opportunity to repair the car when it first broke down. Because Mrs P had the car for 18 months, it's not surprising that her first thought was to take it to a garage, and not to phone Moneybarn. And the garage diagnosed the fault and repaired the car. Again, I don't think this was unreasonable.

But I've also considered what would've happened if Moneybarn were given the opportunity to repair the car. There are two likely scenarios – Moneybarn would've paid for the turbo repair or they would've said it was a maintenance/wear and tear issue and refused to do so.

In the first scenario, the turbo would've been replaced, and the car would've broken down again in April and July 2019 because of the underlying issues with the engine. The only difference between this scenario and what actually happened is that Mrs P paid for the turbo repair, not Moneybarn.

In the second scenario, Mrs P would most likely have brought her complaint to us at that point. And, given the history of the car and the replacement turbo in June 2017; we would've most likely told Moneybarn to repair the car. And then it would've still broken down again because of the underlying issues with the engine.

So, in either scenario, Moneybarn would've ended up paying for a repair that would've been ultimately unsuccessful. And Mrs P would've had the right to reject the car because it didn't confirm to contract. So I don't consider the fact that Moneybarn didn't have the opportunity to repair the car in February/March 2019 has any impact on what's fair and reasonable.

And as Moneybarn would've ended up paying for the repair in either scenario described above, I think they should do so now. I also think it's reasonable they pay the cost of the diagnostics that've taken place since the turbo repair – if things had happened as they should, Moneybarn would've paid for an inspection for this breakdown to see if the faults identified stemmed from the turbo issue they'd paid to have fixed.

Given all of the circumstances, the adjudicator recommended Moneybarn should allow Mrs P to reject the car and unwind the agreement. She also said Moneybarn should refund the deposit plus interest. I'm in agreement with this.

The adjudicator also recommended Moneybarn should refund all of the payments from July 2019, as this is when the car ceased to be on the road and used. Having checked the MOT records, I've seen the MOT for the car expired on 3 October 2019, and it's had a SORN since this date. Given this, and that the report from the breakdown company on 15 July 2019 says "advised not to drive", I'm satisfied the car hasn't been used since. So Moneybarn should refund all payments made from August 2019, plus interest.

Because of the breakdowns, the time the car spent being repaired or otherwise in a garage, and the fact that it wasn't useable from 15 July 2019 onwards, I'm also satisfied that Mrs P had impaired use of her car from March to July 2019. So Moneybarn should also refund part of the payments for this period, plus interest, to reflect that impaired usage. I think 25% is fair, as I estimate Mrs P didn't have use of the car for around 25% of this period of time.

Mrs P has said that, while her car was in for repair, she had to rent a hire car. And she'd like Moneybarn to pay the costs for this. When looking at what's fair, I'm looking to put Mrs P back in the situation she would've been if Moneybarn had been given the opportunity to repair the car in March 2019 and had agreed to do so. There's nothing in the agreement that says Moneybarn would provide alternative transport while the car was being repaired so, unless the garage was able to provide a courtesy car, Mrs P would always have had to arrange for alternative transport. Because of this, I don't think it's reasonable for Moneybarn to pay Mrs P's hire car costs.

And if Moneybarn had allowed Mrs P to reject the car in March 2019, she would've been left in a position where she needed to buy a replacement. So I don't think Moneybarn should cover the costs of the replacement car she purchased after the July 2019 breakdown.

Finally, Mrs P has said that she wants a minimum of £500 for the distress and inconvenience this situation has caused her. And she's said on more than one occasion this has gone on longer than it should have. She's also said that, because the adjudicator got some dates wrong, this gave Moneybarn the opportunity to reject the adjudicator's view, which has meant things have taken longer.

While it is the case that it's taken longer for this case to be investigated and decided than I would like, and I'd like to apologise for this, I disagree with Mrs P's assessment of the situation. Moneybarn didn't accept the adjudicator's view because they didn't think Mrs P had proved the fault with the car was present when she took possession of it. While the dates were a factor, Moneybarn would've rejected the view even if this wasn't the case.

And Mrs P also rejected the adjudicator's view. While she accepted that she should be allowed to reject the car, she didn't accept the compensation the adjudicator recommended. So, even if Moneybarn had accepted the adjudicator's view, because Mrs P didn't, this matter would always have needed to go to an ombudsman for a decision. And, because of this, I'm not considering the complaints process, and the time this has taken, when considering what's reasonable to compensate Mrs P for the distress and inconvenience she's been caused. For these reasons I think the £250 recommended by the adjudicator is reasonable in the circumstances, and I won't be increasing this.

For the reasons explained above I intend to uphold Mrs P and Mr M's complaint. Moneybarn No. 1 Limited should:

- Allow Mrs P and Mr M to reject the car and unwind the agreement, updating their credit files accordingly and removing any adverse information.*
- Refund the deposit paid, plus 8% simple interest a year from the date the deposit was paid to the date of refund.*
- Refund all payments from August 2019 onwards, plus 8% simple interest a year from the date of each payment to the date of refund.*
- Refund 25% of the payments from March to July 2019 inclusive, plus 8% simple interest a year from the date of each payment to the date of the refund.*
- Pay Mrs P and Mr M the cost of the turbo repair in March 2019, and the fault diagnostics since this date, plus 8% simple interest a year from the date they made these payments to the date of the refund.*
- Pay Mrs P and Mr M £250 to recognise the distress and inconvenience this matter has caused them.*

Responses

Moneybarn didn't respond to my provisional decision. Mrs P accepted my provisional decision, confirming that all payments remain up to date and paid, including the payment for January 2020.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Neither party has objected to my provisional decision. And I haven't received any comments or additional evidence that changes my view. So, for these reasons, I see no compelling reasons not to make my provisional decision final.

my final decision

For the reasons explained above I uphold Mrs P and Mr M's complaint. Moneybarn No. 1 Limited must:

- Allow Mrs P and Mr M to reject the car and unwind the agreement, updating their credit files accordingly and removing any adverse information.
- Refund the deposit paid, plus 8% simple interest a year from the date the deposit was paid to the date of refund.
- Refund all payments from August 2019 onwards, plus 8% simple interest a year from the date of each payment to the date of refund.
- Refund 25% of the payments from March to July 2019 inclusive, plus 8% simple interest a year from the date of each payment to the date of the refund.
- Pay Mrs P and Mr M the cost of the turbo repair in March 2019, and the fault diagnostics since this date, plus 8% simple interest a year from the date they made these payments to the date of the refund.
- Pay Mrs P and Mr M £250 to recognise the distress and inconvenience this matter has caused them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr M to accept or reject my decision before 19 February 2021.

Andrew Burford
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