

## **complaint**

Mrs C complains about a car she acquired through a conditional sale agreement from Moneybarn No. 1 Limited. She says the car is faulty so she wants to reject it.

## **background**

In June 2017 Mrs C acquired a used car which was around six and a half years old and had been driven around 53,000 miles at a cost of £9,000. She first experienced problems with the car not long after and it was taken to a local garage in early July 2017. The garage identified a knocking sound from the engine which it said was caused by the friction wheel tensioner to water pump pulley. A new water pump pulley tensioner and belt were fitted. This work was paid for by the dealer that sold the car.

Later in July 2017 the car was taken to another garage as the driver's side door handle wasn't working. It seems the door cable had corroded. While at the garage a health check was completed. This identified some urgent issues with the tires, some advisory issues with brakes and a slight oil leak from the solenoid valve.

In December 2017 the car broke down and was recovered by a breakdown assistance company. The breakdown report identified a broken drive belt. The car was taken to a local garage where a new ancillary drive belt was fitted.

In February 2018 the car broke down again. This time the report identified a number of fault codes following a diagnostic test. These fault codes were in relation to (among other things) oil pressure regulation, knocking due to problems with the injectors and the crankshaft. The report advised Mrs C not to drive the car.

Mrs C asked to reject the car at this point. Moneybarn told her she couldn't do this because the recent problems she'd had only manifested eight months after she'd bought the car.

In March 2018 Moneybarn sent Mrs C a default notice because she hadn't made any payments since January 2018.

In May 2018 the car was looked at by another garage. The garage prepared a quote identifying issues with the oil pressure switch and three broken door handles.

An independent inspection was arranged by Moneybarn in May 2018. This noted that there was a noticeable noise from the timing chain area of the engine which was most likely due to a loss of oil pressure causing timing tensioner issues. The report concluded on balance that the fault wouldn't have been developing at the point of supply but recommended further investigation of the car and engine oil pressure.

Our investigator thought Mrs C's complaint should be upheld. She thought the problems identified in February and May 2018 were linked to those first discovered in July 2017. And she thought given the difficulty identifying these problems and the number of attempted repairs, it was reasonable to allow Mrs C to reject the car. She asked Moneybarn to cancel Mrs C's agreement, take back the car and pay her £500 compensation for loss of use and distress and inconvenience.

Moneybarn disagreed with the investigator and asked for an ombudsman to look at the complaint. It said in summary:

- The vehicle health check Mrs C had carried out shortly after acquiring the car identified no issues requiring immediate attention – other than those it had agreed to contribute towards repairing. This suggests the car was of satisfactory quality.
- A slight oil leak identified by the health check was only an advisory issue so it was Mrs C's responsibility to address this. She continued to drive the car for 8 months after this so it's possible the most recent problems are a result of her failure to address this.
- The car was 8 months old before Mrs C raised the majority of the issues and had been driven nearly 5,000 miles.
- The independent inspection clearly said it was not responsible for the faults identified because they wouldn't have been present at the point of sale.

### **my findings**

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

Moneybarn supplied Mrs C with the car under the finance agreement it had with her. Under relevant legislation, The Consumer Rights Act 2015, there was an implied term that the car supplied was of satisfactory quality. What's satisfactory is measured by what a reasonable person would consider satisfactory taking into account any description of the goods, the price and other relevant circumstances. I think in this case this would also include things like the age and mileage of the car at the point of supply.

Moneybarn supplied Mrs C with a car that was six and a half years old and had driven around 53,000 miles. So it's fair to say that what a reasonable person would consider satisfactory quality is not the same as it would be for a brand new car. But there is of course still a reasonable expectation the car will be free from significant problems. And Mrs C paid £9,000 for the car which is still a considerable sum.

The job sheet from 4 July 2017 identifies a knocking noise caused by problems with the water pump pulley tensioner. New parts were fitted including a friction wheel tensioner, friction wheel with pump and alternator belt. This was the first issue with knocking sounds, tensioners and drive belts and was identified within a couple of weeks of Mrs C acquiring the car. And the mechanic that completed the independent inspection said *'the proximity of that repair to the point of sale does suggest that the condition with the water pump friction wheel was developing at the point of hire'*. I find it likely these issues were present at the time of supply.

It's true that the health check carried out a few weeks later describes the engine and driveshafts as 'visually ok'. But I'm not persuaded this report necessarily confirms the vehicle was of satisfactory quality. The report makes a note that it's the result of a visual examination only and that further checks may be required to determine the full extent of requirements. And although the oil leak identified was only an advisory issue, it's still evidence that all was not right.

This is relevant because the independent report in May 2018 says the noticeable noise with the timing chain was most likely due to a loss of oil pressure causing timing tensioner issues. And when asked about the issues identified and fixed in July 2017, the mechanic that completed the report said *'clearly this condition may be related to the auxiliary belt issue reported but this is far from clear'*. So there's evidence to suggest that a loss of oil pressure can cause issues with belts and tensioners. And clearly the car has had problems with all of these components on a number of occasions right from the start, including the leak identified in the health check in July 2017. So I think on balance the issues with the car identified in the independent report are linked to those identified in July 2017, December 2017 and February 2018.

I don't think anyone has got to the bottom of these issues, despite numerous attempts at repair. And although different parts have been fixed, there appears to have been something underlying causing issues with oil pressure, timing chain, tensioners and belts from the start. So even though there was a gap of around five months where nothing was reported as faulty, I'm not persuaded the main problem had been fixed. The issue is clearly a significant one as it's resulted in the breakdown of the car on more one occasion and has left it in a condition where Mrs C has been told not to drive it. And there were other issues too, such as the door not opening properly/sticking and which appears to still not have been fully resolved. Given all of this, I don't think the car was of satisfactory quality at the point of supply. Nor do I think any subsequent repair work had properly identified or remedied the issues.

I recognise the independent inspection concludes on balance that the faults identified within it wouldn't have been developing at the point of supply. However the mechanic's further comments after the report do cast some doubt over this conclusion. And the report was not completed with sight of a full history of repairs since the car was acquired so the mechanic wasn't aware of all of the facts.

Moneybarn says that Mrs C didn't address the oil leak identified in the health check in July 2017 and this may have contributed to the faults with the car. But the car had already experienced issues with tensioners before this. And given what the independent inspection has said about the relationship between oil pressure and these parts, it seems most likely that the underlying issue was already developing before the visual health check was completed.

The Consumer Rights Act says that goods can be rejected when after one attempt at repair the goods still do not conform to the contract. There's clearly been more than one attempted repair here. And the goods still don't conform to contract, for the reasons I've explained above. So having regard to all of the circumstances, and the relevant law, I think its fair and reasonable for Mrs C to be able to reject the car.

Mrs C stopped paying for the car in January 2018 and her last payment was made on 1 December 2017. The mileage on the car at this point was recorded at around 56,808. When the car broke down in February 2018 the breakdown report records the mileage at 58,042. But in May 2018 the mileage was 58,071. And I've seen evidence that Mrs C's car was with a garage for a long time after this. So Mrs C has had some use of the car that she hasn't paid for. But for much of the period since she stopped paying I'm persuaded on balance the car has been mostly out of use.

So Mrs C has driven the car for a couple of months without paying, but there's also been times where her car has been in the garage being fixed during the period she was paying for it. Weighing up one against the other, I think it's fair to say that neither Mrs C nor Moneybarn owe each other anything for use of or loss of use of the car.

Mrs C says she lost out on work while she was unable to use her car. She's given us text messages she received from agencies she was signed up to offering work she says she could have taken. I recognise given the nature of this work that quickly accessible transport was required. But Mrs C wasn't paying for her car from January 2018 onwards. So she could have made alternative travel arrangements like hiring a car for example to minimise these losses. So I don't think Moneybarn needs to make a payment to Mrs C for loss of earnings.

The investigator recommended £500 compensation for distress and inconvenience. I can see that Mrs C has been caused a fair amount of this but I think £500 is a little on the high side when considered against the kind of awards we usually make. However I see that Mrs C has incurred extra costs having the car fixed on a couple of occasions and having the car towed back to her house from the garage. I think if these costs are included within that figure of £500 then it's fair compensation overall.

### **my final decision**

For the reasons I've explained above, my final decision is that I uphold Mrs C's complaint. To put things right Moneybarn No.1 Limited must:

- collect the car at no cost to Mrs C and at a time convenient to her;
- cancel the finance agreement with nothing further to pay;
- return Mrs C's deposit of £150 plus 8% simple per annum from the date it was paid until the date of settlement;
- remove the agreement from Mrs C's credit file; and
- pay Mrs C £500 in compensation for distress and inconvenience and additional costs incurred transporting and fixing the car.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 October 2018.

Michael Ball  
**ombudsman**