

## **complaint**

Mr J complains the vehicle he acquired through a conditional sale agreement financed by Moneybarn No. 1 Limited was not of satisfactory quality. He wants to reject the vehicle.

## **background**

Mr J complains he's had a number of problems with the vehicle. When he complained to Moneybarn he says the vehicle inspection it arranged wasn't carried out correctly. He feels the vehicle examiner only carried out a visual check. Mr J says he's had to have the engine replaced and the turbo redone amongst other things. He's also said the mileage stated on the agreement is incorrect and was higher than shown.

Moneybarn told us when Mr J complained it arranged an independent inspection by S, a limited company. This had concluded the vehicle cylinder head gasket had been breached as a result of general age-related wear and tear. So it didn't consider it had been present at the point of sale.

Mr J wasn't satisfied and complained to us.

The investigator didn't recommend the complaint should be upheld. She found the vehicle had covered around 6,300 miles since being acquired by Mr J. And as it was seven years old it was likely it may experience wear and tear issues. Having considered the report by S she didn't feel there was anything to indicate the faults were present at the point of sale.

Mr J didn't agree with this and wanted an ombudsman to make the final decision.

## **my findings**

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

I understand Mr J is disappointed at the experience he's had with this vehicle. It's upsetting when things go wrong and especially so if this occurs at a relatively early stage.

Mr J acquired this vehicle through a conditional sale agreement and under present legislation this means Moneybarn is responsible for the satisfactory quality of the item supplied. Whilst I don't apply the law - directly - I do take it into account. In this case The Consumer Rights Act, 2015 is relevant legislation. In general terms this says, subject to certain conditions, if an item is not of satisfactory quality at the point of supply a consumer has the right to either reject or have it repaired. And it's assumed faults arising within the first six months were present at the point of supply unless it's established otherwise.

I've seen the report from S and I've seen Mr J's comments about his view on the shortcomings of the inspection. But from what I've seen the inspector carried out more than merely a visual check. And his observations included comments about noise and emissions. There are obvious constraints on any inspection if a vehicle can't be driven but I've no reason to doubt the inspection was sufficient to allow for a fair assessment.

This concluded the head gasket has been breached resulting in overheating. It went on to say *"Cylinder head gasket breaching occurs because of the result of the vehicle having been run at elevated temperatures for the direct result of age-related general wear and tear or more likely a combination of both"*.

*And it further stated "The vehicle to break cylinder head gasket could not travel 100 miles let alone 6000 miles with the breach cylinder head gasket". "Therefore, it is our considered opinion that the vehicle cylinder head gasket been breached because of general age-related wear and tear will be considered a latent defect that was not present at the point of sale".*

I accept the report could have been expressed more clearly. But the point it makes - that with the head gasket fault the vehicle could not have travelled far - is highly relevant. I'm aware Mr J believes the mileage when he was supplied with the vehicle was around 53,000 miles and not 50,000 as stated on the agreement - but he accepts there's no other evidence to support this other than an earlier MOT showing 50,054. As such I think it more likely than not the vehicle covered over 6,000 miles from the point of supply prior to breakdown. Given the time period of around five months this represents higher than average use and suggests the fault probably developed some time after supply.

I'm aware from my knowledge of many previous cases a head gasket is a component which is highly dependent upon the way in which a vehicle is maintained. Its serviceable life can vary enormously. Whilst I would question it being described in generic terms as a wear and tear item - the way the vehicle was serviced and maintained would be an influential factor in determining durability. I've not seen any specific evidence about previous service history - but I can see the vehicle had passed MOT tests. And as it had covered 50,000 miles before being acquired by Mr J it's not unreasonable to infer it must have experienced some maintenance in this time.

It's an unfortunate fact that mechanical items do from time to time go wrong and with a seven year old car with this mileage such a possibility is an inherent risk which a consumer has to accept. Whilst I have great sympathy for Mr J I think the report by S does show on a balance of probabilities the fault was not present at the point of supply.

Whilst it doesn't affect my decision I understand Mr J has had a reconditioned engine fitted at a discounted price through the dealers. So given such a major alteration I wouldn't have thought this was consistent with the vehicle being rejected - even if the fault had been found to be present at the point of supply.

Although I'm sure it will be a disappointment to Mr J, I'm in agreement with the investigator and for much the same reasons that this complaint should not be upheld.

### **my final decision**

For the reasons given above my final decision is I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 21 July 2018.

Stephen D. Ross  
**ombudsman**