complaint

Mr A 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 and end the agreement.

background

Mr A tells us he acquired the vehicle in April 2018 through a dealer I'll refer to as *"C"*. He says the vehicle broke down in July 2018 and had to be recovered by the RAC - and it had taken the vehicle to an independent garage I'll call *"K"*. He said K had inspected the vehicle and found there was probably turbo damage. Mr A told us the vehicle had then been returned to C but had later been left in a hotel car park - as he understood C was no longer in business. He says he feels it may have been tampered with as it had been with C for eight weeks prior to being inspected on behalf of Moneybarn.

Moneybarn told us that after the vehicle had been returned to C it (C) had carried out an inspection. It said this had revealed the vehicle had been overfilled with oil. It said Mr A had told C he'd added half a litre of oil but had later told Moneybarn it was only one quarter litre. Moneybarn said it had arranged for the vehicle to be examined by an independent company I'll refer to as *"E"*. It said E's report had concluded the vehicle had been overfilled with oil and this had resulted in back pressure causing several pipes to blow off on the engine. It said E had concluded that the customer should be responsible for the repairs. Moneybarn told us that as a gesture of goodwill it had provided Mr A with £607 to fund hire cars during the period of its investigations.

I issued a provisional decision on this complaint on 5 July 2019. In my provisional decision I said I was minded to uphold the complaint as I thought the vehicle was not of satisfactory quality at the point of supply. And I said Mr A should be able to end the agreement.

Since then Mr A has replied accepting my provisional view. Moneybarn have not replied. I thank Mr A for his reply. In these circumstances I see no reason to change my provisional decision which is largely repeated in my final decision below.

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'm sorry Mr A has experienced the problems which have arisen with this vehicle. I can understand it would have come as a disappointment that a major failure occurred after a relatively short time.

Mr A's conditional sale agreement is a regulated consumer credit agreement and our service is able to consider complaints relating to it. Moneybarn supplied the vehicle and it's therefore responsible for a complaint about the quality of the vehicle.

In trying to resolve complaints, we listen to what the parties tell us, and we look to documentary and other evidence to help us reach a decision. Where evidence is unclear, incomplete or contradictory - as some of it is here - I make my decision on the balance of probabilities.

When the vehicle broke down it was examined by K and diagnosed as a probable turbo failure. K stated a new turbo and intercooler would probably be required. K has subsequently confirmed this opinion to our adjudicator. It also confirmed it had examined the oil levels and found them to be within acceptable limits. It's worth noting that this inspection took place on or around 18 July 2018.

The vehicle was then taken to C and - according to notes supplied by C to Moneybarn - the turbo was then inspected by another garage. It's said this inspection showed the turbo was in perfect condition - although I've not seen a report from the inspecting garage to support this.

C is then said to have inspected the vehicle itself and - having stripped it down - said it found it had been overfilled with oil. It says eight litres was drained from the sump - when the maximum is supposed to be four and a half litres. It said this had caused the Diesel Particulate Filter (DPF) to collapse. I understand a new DPF was fitted - at a cost to Mr A of £748 - but this also didn't solve the problem.

The vehicle was inspected by E on 20 September 2018. The report stated the battery was flat and the engine would not start. It reported the oil level to be at the correct level. The report concluded that the vehicle had faults which had been caused by being overfilled with oil.

There's a considerable conflict in the evidence and - other than the fact that it is agreed the vehicle is not working - there is little common ground. Starting at the point when K examined the vehicle it was confirmed the oil level was within the required limits. That's also the case two months later when E inspected the vehicle. What happened in the intervening period was that for part of the time the vehicle was seemingly left in a hotel car park adjacent to C's premises. During its examination and attempt at repairs C drained oil from the vehicle - allegedly up to eight litres - before replacing some of it. So it's hardly surprising it was showing the correct level when inspected by E. As far as I can see the conclusion which E has drawn is almost entirely based on verbal evidence from C. And it seems heavily reliant on what it was told about the amounts of oil which had been added by the customer. The report actually refers to its inspector being told that the customer had admitted *"that he overfilled the engine by over half a litre".*

Mr A accepts he topped up the oil level - by *up to* half a litre - before going on the trip during which the vehicle broke down - but he doesn't admit this amounted to overfilling. Whilst C has reportedly taken eight litres from the vehicle there's no documentary evidence to support this. Nor is there any evidence it showed E the amount of oil it had taken from the vehicle before replacing some of it. In those circumstances I think E's conclusion - that Mr A is liable for the repair costs - was based on information which at best was unproven and was probably erroneous.

Whilst I don't apply the law - directly - I do take it into account. And here relevant legislation includes the Consumer Rights Act of 2015. In summary, this states that where a fault is identified within six months of supply it's presumed to be present at the point of supply unless it's established otherwise.

For the reasons stated I'm not able to rely on E's report and I don't think there is plausible evidence to support the assertion that C took eight litres of oil from the vehicle. C knew of K's view of what caused the breakdown and that it (K) hadn't identified overfilling as an issue. So it would have been relatively easy for C to preserve and record the amounts of oil it removed and replaced to support its diagnosis of overfilling. It did not do so and it has also not provided Moneybarn with any report as to the details of the turbo inspection. Moneybarn suggested C had ceased trading and that it had not been able to obtain this documentation. But I saw the vehicle recently advertised for sale under what appeared to be the same company details as C.

I don't think E's report establishes that the faults - which led to the vehicle failure - were not present at the point of supply. On a balance of probabilities I think it likely that the vehicle was not of satisfactory quality when supplied.

In normal circumstances I'd think Moneybarn should be given the chance to repair the vehicle. But it rejected Mr A's complaint and given it's now a year or more since the vehicle failed I don't think it would be fair and reasonable to expect Mr A to accept the vehicle back.

I note Moneybarn funded £607 in hire charges for a replacement vehicle during its investigation and I think it acted fairly in doing so. And I do not consider it should be liable for the £748 Mr A was charged for the replacement DPF. I've seen no evidence Moneybarn authorised this - or was even aware until afterwards of this expenditure. That seems to have been a matter arranged solely between Mr A and C. It also seems this didn't solve the problem and so I think Mr A will need to seek any remedy directly from C.

In my provisional decision I asked for clarification from the parties about the current status of the vehicle. My understanding was that the vehicle was never returned to Mr A - or collected by him - following the inspection by E. And ownership of the vehicle never passed from Moneybarn to Mr A as full payment was not made.

As neither party has supplied any further information, I've assumed that the vehicle was recovered and that Mr A no longer claims any right to possess and/or use it. Moneybarn has told us it's back in stock - and I've seen evidence it's currently being advertised on a website.

In summary, and for the reasons I've explained, I don't think the vehicle was of satisfactory quality when supplied. I am, therefore, upholding this complaint.

my final decision

For the reasons given above my final decision is I am upholding this complaint.

I require that in order to settle the complaint Moneybarn No.1 Limited should take the following action:

1. Treat the vehicle as having been rejected by Mr A;

2. End the agreement with nothing further for Mr A to pay from 28 September 2018 or, if earlier, the final day on which the replacement (hire) vehicle was paid for by Moneybarn;

3. Refund the deposit paid by Mr A together with simple interest at the rate of 8% per year from date of payment to date of settlement;

4. Pay £100 to Mr A for distress and inconvenience;

5. Arrange to have details of the agreement removed from Mr A's credit file. This is subject to all payments and charges due under the agreement being paid.

Moneybarn No. 1 Limited can deduct any sums due under the agreement prior to paying any sum arising from item 3 and 4 above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 September 2019.

Stephen D. Ross
ombudsman