

## Complaint

Miss D, who is represented by her son, Mr D, complains that Moneybarn No. 1 Limited refused to let her reject a faulty car.

## Background

In September 2017 Miss D acquired a second hand car at a cost of £10,390 funded by a conditional sale agreement and a deposit of £400. It was some years six old and had done 64,934 miles. Miss D held warranty cover. The car passed its MOT on 30 August 2017 with no advisories. The logbook shows the last full service was carried out in August 2016 with a recorded mileage of 51,909.

Mr D said that soon after acquisition the oil warning light came on and there was an issue with an armrest. The dealer repaired the armrest, but was unable to find a fault with the oil. Mr D says that some five weeks later the oil light came on again and the dealer advised him to take it to another garage. According to Moneybarn this garage said it had carried out diagnostic tests which showed there were two faults codes one for the clutch function limit and the other for a function restriction due to pressure drop. No repairs were carried out by this garage.

Mr D contacted the warranty company and he was advised to take it to another garage. It carried out an interim service in early December and it's the records show the car had done 4,300 miles since the point of sale. It noted the oil level was excessively low, but no leak was found. Mr D was recommended to take the car to a specialist.

Mr D says he took the car to a specialist, but he was unable to recall which one. He says it couldn't find a fault. Neither Moneybarn, nor the warranty company hold any information about this specialist garage.

On 26 April 2018 Mr D contacted Moneybarn and it asked for evidence of the current issues. Mr D sent it an email from the garage which had seen the car in December 2017. Moneybarn explained that it needed to see what the current faults were to establish if these had been present at the point of sale. Mr D supplied the job card from the third garage dated 2 December 2017, but Moneybarn concluded that it couldn't be satisfied that any current faults had been present at the point of sale.

Mr D continued to use the car and by September according the MOT certificate he had driven it for some 17,800 miles. The car passed its MOT with an advisory for a brake pad and brake disc. In November the car's engine seized. Mr D had driven it for some 22,350 miles by this point.

A specialist garage recorded that: *"Vehicle recover in with engine non start, confirmed fault, no oil in engine. Carried out diagnostic test 1 fault with camshaft position sensor. Carried out cylinder compression test 0 bar all cylinders, risk of engine damage. Requires further investigation cylinder head pistons to be removed + inspected. Customer authorised to remove cylinder head + pistons. Removed & found piston 2 + 3 + 4 mechanically damaged + cylinder bores 2 + 3 + 4 damaged requires new engine..."*

Mr D complained to Moneybarn, but it rejected this and then arranged and paid for an independent inspection. The report goes into some detail but the inspector concluded that

*“there is enough evidence to suggest that the vehicle's faults could not have been present at the point of sale due to the vehicle's mileage covered since the point of purchase”.*

Miss D brought her complaint to this service where it was considered by one of our adjudicators who didn't recommend it be upheld. She sought further information from both Mr D and Moneybarn as well as third party garages. She also asked the independent inspector for clarification of his report.

He had thought the car had been driven for considerably fewer miles than had been the case. He said that he thought the garages which had looked and worked on the car wouldn't have missed the likely symptoms of the lack of oil which had led to the engine seizing. That suggested the fault wasn't present at the point of sale.

Our adjudicator explained that under consumer law Moneybarn was entitled to ask Miss D to provide evidence to support the claim the fault was an inherent one. The independent report concluded the fault was unlikely to have been present in September 2017 and she also noted the car had done some 35,000 mile since its last full service. In the 14 months the car had been driven by Mr D it had done over 22,000 miles before the seizure.

Mr D didn't agree with our adjudicator and said nobody has listened to him or his mother about the problems they had encountered. He said the car hadn't been inspected properly and he said the inspector had told him something different to what had been written in the report.

## **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 hire purchase 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 recognise the strength of feeling Mr D has shown in the pursuit of his mother's complaint, but I don't believe I can uphold it. I will explain why.

I need to be satisfied that the car wasn't fit for purpose at the point of sale in September 2017. Consumer law puts the onus on Miss D. and her son as representative to demonstrate that this was the case. I haven't seen sufficient evidence that would allow me to agree with Mr D's assertions.

None of the garages which looked at the car could find a fault. They noted the high use of oil and one suggested a specialist look at it. I have seen no evidence of what the specialist Mr D says he took the car to concluded. Mr D says it didn't identify fault. Mr D was able to use the car extensively and I appreciate he has told us the oil warning light came on several times he was able to still drive it.

I have also noted that there is no evidence of a proper service having been carried out for some considerable time. The agreement Miss D signed contained the requirement that she keep the car serviced at intervals as recommended by the manufacturer. Unless it was serviced, and Mr D hasn't notified us of this, then the terms of the contract have been broken. In any event a lack of servicing can contribute to subsequent faults.

I appreciate Mr D has expressed his doubt about the independent inspection, but I have no reason to doubt his conclusions. He is a suitably qualified engineer and is independent of both parties. I would need significant evidence to allow me to reach a different conclusion to his. Even though the engine had been stripped at the time of his inspection I don't consider this undermines his conclusions.

In short, cars suffer wear and tear and Miss D was unfortunate that the car suffered from a fault which led to the engine seizing. I cannot safely conclude that the fault was present at the point of sale. For completeness I would add that I am satisfied that Moneybarn handled the various complaints made by Mr D in a professional manner.

### **My final decision**

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 27 June 2020.

Ivor Graham  
**ombudsman**