

complaint

Mr G complains that the vehicle he acquired though a conditional sale agreement financed by Moneybarn No. 1 Limited wasn't of satisfactory quality. He wants Moneybarn to pay the cost of repairs.

background

Mr G tells us he acquired the vehicle in September 2017 from a dealer I'll refer to as "C". He says he took it to a garage I'll refer to as "K" for an MOT test on 30 April 2018. He says that at this time a number of issues with the vehicle were identified and the oil was changed. But shortly afterwards he found smoke coming from the engine and the vehicle was taken back to K. He says the vehicle was then examined by "S", a company, which found contaminated oil which it said had been present at the point of supply. Mr G states that he needs the vehicle for his work and when Moneybarn turned down his complaint he paid for repairs himself. He thinks these should now be refunded.

Moneybarn said Mr G had use of the vehicle for seven months prior to the complaint and in that time had covered around 6,500 miles. It said it didn't think it had been substantiated that any fault had been inherent at the point of supply. But it said as a gesture of goodwill it had credited his account with £150 towards an oil flush.

I issued a provisional decision on this complaint on 28 November 2019. In that provisional decision I said I considered Moneybarn's increased offer of goodwill - to refund four monthly payments and pay an additional £150 in compensation to Mr G - was fair and reasonable.

Since issuing my provisional decision neither Moneybarn nor Mr G has replied. In these circumstances I see no need to change my provisional decision which is largely repeated in my final decision set out 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 G has experienced problems with this vehicle. It's a fact of life that things sometimes go wrong - particularly with used vehicles - and clearly that's what's happened here.

Mr G'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. Whilst I don't apply the law directly, I do take it into account. And relevant law here includes the Consumer Rights Act of 2015 (CRA).

Where evidence is unclear or contradictory - as some of it is here - I'm required to make my decision on the balance of probabilities. That is I decide what's the most likely explanation to account for what's happened.

When Mr G acquired this vehicle its recorded mileage was 56,437 miles. For a vehicle which was just over three years old that's well above average mileage. After he acquired the vehicle I'm not aware of any reported issues before the vehicle was taken for an MOT test on 30 April 2018. That's some seven months after supply to Mr G. And by then the mileage had risen to 63,070. The vehicle initially failed its MOT but passed after a worn wheel bearing had been replaced. Immediately after, when a warning light illuminated, an inspection of the vehicle showed the engine was contaminated with burnt oil. S inspected the vehicle on 31 May 2018, at K's premises. It found that there were no oil leaks. But it found the engine oil to be contaminated with soot/carbon deposits. And when the engine filler cap was removed it was also found to be contaminated with sludge. It (S) commented that the engine breather system contains a high degree of sludge.

S's report concluded:

"That the vehicle's engine is an advanced state of wear which is necessitating the engine to have a complete overhaul such as replacing the piston rings at a minimum and engine bearings along with the engine gaskets and seals.

Subsequently passed a MOT after the date of purchase would lead us to conclusion that the vehicle was fit for purpose and road legal at the point of sale.

This leads us to question was vehicle of satisfactory quality at the date of purchase, there is no doubt in our mind the vehicles would have had a good degree of wear present at the date of purchase however this would not be considered unusual for a vehicle having covered well over 50,000 miles at that point, the engine oil condition would suggest that the vehicle is not had a service in a considerable period of time and given the fact that the vehicle has only covered some 7000 miles the date of purchase would suggest to us that the oil was not changed prior to the date of sale, taking that thought into account the fact that poor oil condition can result in accelerated wear to the engine lead us to conclusion that the vehicle was not in a satisfactory condition at the point of sale i.e. the vehicle should have been serviced prior to the date of purchase to prevent ongoing engine damage such as present at the point of the inspection."

Whilst respecting the report from S I don't think its conclusions are entirely consistent with the findings of fact on which the report is based. I don't think it's unfair to characterise the report as suggesting that poor maintenance is the primary cause of the engine failure.

I've already commented that the vehicle had covered above average mileage at the time of supply to Mr G. I've seen no service history so I'm not able to say what, if any, maintenance has been carried out on the vehicle prior to being supplied to Mr G. There's no information to say that the vehicle was supplied with a service history. In these circumstances and given the above average mileage of which he would be - or ought reasonably to be - aware, it seems to me that Mr G was accepting the vehicle - in terms of the maintenance history - in the state it was supplied. The vehicle then covered more than 6,500 miles - apparently without complaint - until the time of its MOT when further issues started to become apparent.

S's report points to the oil needing to be topped up at the time of the MOT. This suggests it was low due to lack of maintenance as no leaks were found. And in finding the oil hadn't been changed prior to the date of sale, this also leads to the inevitable conclusion that it also hadn't been changed since the vehicle was acquired by Mr G. S's report refers to there being sludge contamination visible when the engine filler cap was removed. So either Mr G didn't see this because he didn't check the oil or he didn't act upon it. And he's responsible for the ongoing maintenance of the vehicle. Although I've not been told what maintenance, if any, he undertook, the available information doesn't suggest that the vehicle was regularly and adequately maintained whilst in his possession.

S's report states that poor oil condition can lead to accelerated wear and tear. But the actual degree of engine damage, if any, or wear and tear occasioned by the time the vehicle was supplied to Mr G can't be determined. The vehicle travelled a further 6,500 miles after supply which suggests it was functional and performing as expected given the lack of complaint prior to the breakdown. But the normal life of a well maintained vehicle engine would be rather more than 63,000 miles. So I think it's probable that the lack of maintenance whilst in Mr G's possession is a significant and ultimate cause of the present failure. So I'm not able to find the vehicle wasn't of satisfactory quality at the time of supply.

I'm aware that since the original breakdown Mr G has spent a considerable sum of money on this vehicle. I see that in September 2018 the engine was rebuilt at a cost of £4,300. But given my findings I don't think it would be fair and reasonable to say Moneybarn should be responsible for this.

Although not accepting that the faults with the vehicle were present at the point of supply, Moneybarn has offered to assist by making a gesture of goodwill. As a result of negotiations with our investigator it's increased its offer to the refund of four monthly payments. This corresponds with the period during which Moneybarn was enquiring into the complaint and for much of which time Mr G wasn't able to use the vehicle. And it's also agreed to pay a further £150 in compensation for any inconvenience this caused. Along with the earlier £150 credited towards the oil flush, this amounts to over £1,200.

I think that's a fair offer in these circumstances and I wouldn't be asking Moneybarn to do anything else.

my final decision

For the reasons given above I believe the offer made by Moneybarn No. 1 Limited is fair and reasonable. Accordingly my final decision is:

In full and final settlement of this complaint I require Moneybarn No.1 Limited to take the following action:

1. Refund four monthly payments together with simple interest at the rate of 8% per year from date of payment to date of settlement;
2. Pay £150 compensation to Mr G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 January 2020.

Stephen D. Ross
ombudsman