

complaint

Miss H complains about a car she got through a conditional sale agreement with Moneybarn No. 1 Limited. She says the car was faulty when she got it, and it later needed expensive repairs.

background

I set out the background to this complaint and my provisional conclusions in my provisional decision, a copy of which I attach and which forms part of this final decision. I concluded that there was a fault with the car when Miss H got it, and this resulted in the repair work being needed later. So I set out what I thought Moneybarn should do to put things right.

I asked Miss H and Moneybarn to let me know if they had anything more to say before I make my final decision.

Miss H said she was happy with my provisional decision. She provided invoices for the repairs to the car and for her hire car costs. She also said she'd received a letter from Moneybarn about fees for late payment being added to her account.

Moneybarn didn't accept my provisional decision. It said, in summary:

- It was for Miss H to prove any problems with the car were there when she got it and weren't down to normal wear and tear. She hadn't done that.
- The timing chain is a "*wear and tear item*". It won't necessarily last for the lifetime of the car, and its lifespan can vary.
- The car had done just over 19,000 miles when Miss H got it and it's now seven years old. Cars do sometimes have problems, but that's not Moneybarn's fault.
- Miss H had been driving the car for 20 months and had covered nearly 16,000 miles, which is more than average. So it's not unusual that the car should need attention for wear and tear. And it's unlikely she'd have been able to use the car as much as she had and over such a long period if it had been faulty from the start. We should ask the engineer who replaced the engine about this.
- The car had passed its MOTs, which shows it was roadworthy and continued to be so for some time after Miss H got it.
- It agreed the dealership had initially cleared the fault codes. But there was nothing to show the same fault came back, and Miss H had cancelled an appointment with the main dealership. That was supported by the inspection report, and Miss H seems to have been happy to keep driving the car – which indicates it was fine. She also refused to take the car back to the dealership but took it to another garage instead. That garage is responsible if the repairs didn't fix any problem.
- I'd agreed with Miss H's version of events without any evidence. It questioned why Miss H hadn't raised any concerns at the time if the dealership had simply cleared the fault codes for a second time. The warranty wasn't specific to the dealership she got the car from, so it was reasonable to think she may have taken the car elsewhere to have repairs done. It thought we might look into that.

- Miss H hadn't told it about any concerns with the car until August 2016. And our adjudicator had agreed with its overall position on this complaint.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached broadly the same conclusions as I did in my provisional decision.

I'd already seen most of the points Moneybarn has made in its reply to my provisional decision, because it had made them to Miss H in its final response to her complaint. So I had taken them into account in reaching my provisional decision.

Where the available evidence is contradictory or incomplete, as some of it is here, I have to decide what I think is most likely to have happened. I still think it most likely that there was a fault with the timing chain when Miss H got the car, and that's what caused the engine to fail later.

In taking that view, I haven't simply accepted what Miss H has said without any evidence. I referred specifically to particular pieces of evidence in my provisional decision and said what conclusions I drew from them. That evidence includes the fact that both parties accept the engine management light came on soon after Miss H got the car, and the dealership found there was a fault code which related to the timing chain. I think that shows there was a problem with the car very soon after Miss H got it.

Moneybarn has pointed out that the warranty Miss H bought wasn't specific to the dealership she got the car from – so there was no reason for her not to have taken the car elsewhere for repairs. I haven't seen a copy of the warranty. But neither have I seen anything to show Miss H took the car to another garage. And I think she's unlikely to have done that if the dealership had – as she says – told her just to keep driving the car.

I agree timing chains can wear out. I said that in my provisional decision. The important point here, though, as I've also already said, is that there was a fault code on the car relating to the timing chain shortly after Miss H got it. The dealership cleared the code but didn't do any repair work. The mechanic who later fixed the car later said the damage he fixed was caused by the timing chain failing. Moneybarn hasn't said anything which leads me to conclude there wasn't a direct causal link between the fault code and the engine failure.

Finally, Miss H has said she's received a letter about late payment fees. I noted in my provisional decision that she'd missed some payments and why that was. So, in these particular circumstances, I think it would be fair for Moneybarn also to refund or waive any late payment fees it has charged between August 2016 and the date it settles this complaint.

my final decision

For these reasons – as well as those set out in more detail in my provisional decision – my final decision is that I uphold this complaint. I order Moneybarn No. 1 Limited to pay Miss H:

- 1) £4,396.28 – for the costs Miss H has had to pay to have the car repaired – plus interest as set out at 4) below from 2 December 2016.

- 2) her costs for hiring cars while the car wasn't roadworthy. Those costs are £623.88 and £217.38. Interest should be paid on those amounts as set out at 4) below from 8 October 2016 and 30 August 2016 respectively.
- 3) £300 for the trouble she's been caused.
- 4) Interest on the amounts at 1) and 2) above at a rate of 8% a year simple, from the dates set out at 1) and 2) to the date Moneybarn pays the settlement.

Moneybarn can deduct the value of the payments Miss H has missed from the total compensation at 1) to 4) above. It should also amend Miss H's credit file if necessary so it doesn't reflect any missed payments between August 2016 and the date of settlement, and refund or waive any fees it has charged for late payment for the same period.

If Moneybarn takes tax off the interest part of my award, it should send Miss H a tax deduction certificate when it makes payment. Miss H may then be able to reclaim the tax from the tax authorities if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 2 March 2017.

Janet Millington
ombudsman

copy of provisional decision

complaint

Miss H complains about a car she got through a conditional sale agreement with Moneybarn No. 1 Limited. She says the car was faulty when she got it, and it later needed expensive repairs.

background

Miss H took out the agreement with Moneybarn and got the car in December 2014. It was a used car, which had done just under 20,000 miles. Miss H says the engine management light came on within a few weeks, so she took the car back to the dealership she'd got it from. She says the dealership told her in February 2015 that they'd cleared the faults, but the light came on again a couple of months later, in April 2015. She says she went back to the dealership again then, and they told her there were no faults.

The car broke down in August 2016. Miss H says the timing belt failed, which caused the engine to fail – so the car could no longer be driven. She's had to pay to hire a car so she can get to work.

Miss H contacted Moneybarn. It said the problems with the car were down to wear and tear. It also said the dealership had booked Miss H in to have the car looked at by a main dealership in February 2015 – but Miss H had cancelled the appointment because the car seemed to be alright.

Moneybarn accepted that Miss H had got in touch with the dealership again in April 2015, because the engine management light had lit up again. It said the dealership had asked Miss H to bring the car back in, but she refused and said she would have the car looked at locally.

Miss H asked us to look into the matter. She said she didn't know anything about an appointment at the main dealership. She also said the fault codes in early 2015 related to the timing chain, and this is what had since failed – so it must have been faulty when she got the car. Our adjudicator disagreed. He said Miss H had had the car for some time before the timing chain failed and it had passed its MOTs. He didn't think the fault was there when she got the car.

Miss H asked for a review. She said an MOT doesn't check the engine, and there's clear evidence there was a fault with the timing chain within weeks of her getting the car. She also said the dealership had cleared (rather than fixed) the fault, and the car's manufacturer had told her they would only be able to see when the fault started after it was last cleared – so there's no more evidence she can get to prove the fault was there from the start.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached a different conclusion from the adjudicator.

The law says the car should have been of satisfactory quality when Miss H got it. There's no dispute that the engine management light came on soon after Miss H got the car. The dealership say that, in February 2015, they found there was a fault code and this related to the timing chain. They erased the fault code. Both Moneybarn and Miss H agree on that.

There is some disagreement about what happened next. Moneybarn says Miss H cancelled the appointment the dealership had made for her at a main dealer, because the car seemed to be alright. It also says she wouldn't take the car back to the dealership she got it from when the engine management light came back on in April 2015.

Miss H, on the other hand, says she doesn't know anything about any bookings at another garage and she didn't cancel any appointments. She says she did take the car back to the dealership in April 2015. But they told her they hadn't found any faults and the car just "*needed mileage*". She says she didn't get any receipts or invoices because the car was still under warranty. She also says she wouldn't have said she'd take the car to another garage when she was paying the dealership for a warranty.

The dealership's invoice says the car was booked in with a main dealer and Miss H cancelled. There's nothing else to show a cancelled booking. And the same invoice also says "*advised customer to monitor*" – which ties in with what Miss H remembers. Besides that, in the circumstances, I think it unlikely Miss H would have paid another garage to look at the car when it was under warranty with the dealership.

Timing chains do wear out. That doesn't necessarily mean Moneybarn shouldn't be responsible for what happened to Miss H's car. I think it's clear there was a problem with the timing chain very soon after Miss H got the car. I also think it likely the engine management light did its job in alerting Miss H to the problem early. But the dealership cleared the fault codes without doing anything about the underlying problem. And, although the car passed an MOT later, that wouldn't have included an examination of the timing chain.

The mechanic who fixed the car after it broke down in August 2016 has provided a letter saying he found significant irreparable damage and had to replace the engine. He said: "*In my professional opinion, this damage had resulted from the timing chain having skipped a number of teeth on the camshafts as a result of timing chain failure*".

In the circumstances, I find there was a fault with the timing chain when Miss H got the car, and that this is what caused the engine to fail later.

Miss H says she finally had the car repaired in early December 2016, at a cost of £4,396. I think Moneybarn should pay that cost, as well as the extra costs Miss H has had in hiring cars while the faulty car was out of action, plus interest. This is subject to Miss H providing invoices or bills for these costs.

I also think Miss H should fairly receive some compensation for the trouble she's been put to in sorting out the problem and being without a car for some time. I think £300 is fair.

Finally, I understand that Miss H has stopped making payments to Moneybarn. She has told us she's been struggling to afford the payments after having had to pay for the repairs to the car, and I can see her point. So I find Moneybarn should ensure her credit file hasn't been adversely affected because of the missed payments, but it can deduct the payments that were due from the compensation it should pay Miss H.

my provisional decision

My provisional decision – subject to any more evidence or arguments Miss H or Moneybarn provide by 9 February 2017 – is that I intend to uphold this complaint. I propose to order Moneybarn No. 1 Limited to pay Miss H:

- 1) The costs Miss H has had to pay to have the car repaired – if she can provide an invoice for those costs.
- 2) Miss H's costs for hiring cars while the car wasn't roadworthy – if she can provide receipts and / or invoices for those costs.
- 3) £300 for the trouble she's been caused.

- 4) Interest on the amounts at 1) and 2) above at a rate of 8% a year simple, from the date Miss H paid each cost to the date Moneybarn pays the settlement.

Moneybarn can deduct the value of the payments Miss H has missed from the total compensation at 1) to 4) above. It should also amend Miss H's credit file if necessary so it doesn't reflect any missed payments between August 2016 and the date of settlement.

If Moneybarn takes tax off the interest part of my proposed award, it should send Miss H a tax deduction certificate when it makes payment. Miss H may then be able to reclaim the tax from the tax authorities if appropriate.

Janet Millington
ombudsman