

## **Complaint**

Mr W and Mrs H complain that Moneybarn No. 1 Limited refused to let them reject a faulty car.

## **Background**

In August 2018 Mr W and Mrs H acquired a second hand car at a cost of £5,208 funded by a conditional sale agreement and a deposit of £400. It was some eight years old and had done 76,229 miles.

Shortly after taking delivery Mr W took the vehicle to a main dealer for a free health check. This identified a number of issues including a leak from the oil cooler, severely corroded and pitted brake discs, insecure wheel arch liner and the tracking was out which was causing the tyres to wear unevenly. Mr W says the head gasket needed to be replaced.

Mr W says the dealer was unhelpful, but eventually agreed to repair the car. It says that replaced an oil seal and although it considered the brakes to be satisfactory it replaced discs and pads. Mr W says the brakes produced smoke when he drove the car, but the dealer says this was to be expected until they bedded in.

Mr W took the car to another garage which carried out work on the brakes which was paid for by the dealer which also paid £150 in compensation.

The dealer says that it next heard from Mr W in January 2019 when he told them of problems with the wheel alignment (tracking), a water hose and the alternator. The dealer said the alternator was covered by the warranty which came with the car which could be carried out by an approved garage. It says it offered to recover the car.

Mr W obtained an estimate from another garage showing further work that was required. This was for tyres, water pump, engine belts and the HVAC (heating, ventilation and air conditioning) module. Moneybarn said it considered these to be wear and tear issues.

Mr W and Mrs H brought their complaint to this service where it was considered by one of our adjudicators who didn't recommend it be upheld. He reviewed all the evidence and concluded the later work was all of a wear and tear nature and not linked to previous repairs. He said that taking into account the car's age and mileage of the vehicle at point of sale, it would be expected that some parts would wear out.

In June 2019 Mr W and Mrs H opted to voluntarily terminate the agreement and return the car. Mr W explained that they had been encountering further issues with the gearbox and the vehicle appeared to jump. They were facing financial difficulty and they couldn't afford to pay for more repairs. Our adjudicator suggested an independent inspection to identify if the faults were inherent, but they were unable to arrange this and Moneybarn remained of the view that the faults hadn't been present at the point of sale. Mr W didn't agree and asked that the matter be referred to an ombudsman. No further information was provided.

## **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 can see that Mr W and Mrs H have had an unfortunate experience with the car, but I don't consider I can uphold their complaint. I will explain why.

In short I am not persuaded that the car was inherently faulty at the point of sale. In the first instance the dealer carried out repairs to the brakes and even if it wasn't as helpful as it could have been I cannot hold Moneybarn responsible for that. Moneybarn wasn't aware of this work as Mr W didn't contact it until January 2019.

It is worth noting that it is not unusual for new brakes to smoke as they bed in and I suspect that happened with this car. However, despite that the dealer paid for further work on the brakes and made a goodwill payment.

As for the tread on the tyres being low this is something Mr W and Mrs H had opportunity to inspect before acquiring the car. Furthermore, such items are subject to wear and tear and I cannot safely conclude that that fact the tread was low is grounds for rejection.

On the other issues, such as the water pump, engine belts and the HVAC module the business has said these are also wear and tear issues. However, I understand these were resolved as was the oil leak. This makes it difficult to say they were present at the point of sale. An independent inspection was suggested by our adjudicator, but this wasn't taken up and with the car returned by Mr W and Mrs H the opportunity to explore that option has now passed. Regrettably I cannot reach any conclusion on the later issues with the gears referred to by Mr W for much the same reason.

The car was relatively elderly and had done a substantial mileage and it is to be expected that various items will suffer wear and tear and begin to fail. Some of these issues were dealt with by the dealer and a goodwill payment made. I also note that it passed its MOT shortly prior to sale and while this is not a guarantee that a car is fault free it doesn't support the complaint made by Mr W and Mrs H. Therefore in conclusion while I have every sympathy with their situation I cannot safely uphold their complaint.

### **My final decision**

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs H to accept or reject my decision before 28 June 2020.

Ivor Graham  
**Ombudsman**