

The complaint

Ms M complains that a used car she acquired from Moneybarn No.1 Limited ("Moneybarn") under a conditional sale agreement was not of satisfactory quality, or fit for purpose, contrary to the requirements of the Consumer Rights Act 2015 ("CRA").

What happened

Ms M entered into the conditional sale for a car with Moneybarn in June 2019. The car was then some six and a half years old and had a recorded mileage of 47,414 miles. It had a cash price of £4,795. Ms M paid an advance payment of £400, and agreed to pay the balance (plus finance charges) by 59 monthly payments of £174.65 each.

Immediately before Ms M received it the car was submitted for an MOT which it passed without any advisories. After it was delivered Ms M asked a friend who knew more than she did about cars to look at it. Because of what her friend said, she had the car checked by a franchised garage for her make of car.

The inspecting garage said all four brake pads had worn down with only 2mm, or 20 %, of friction pad left, and should be replaced immediately. It said that there was sufficient tread on all four tyres. However, it seemed to Ms M that the two back tyres were old and the rubber had perished. So she thought they should also be replaced.

In July 2019, Ms M paid to have the brake pads and tyres replaced. She complained to Moneybarn that the car as supplied was of unsatisfactory quality, and so Moneybarn should reimburse this cost. She said the car shouldn't have passed its MOT in this condition.

Moneybarn didn't accept her complaint. It said the fact that the car passed an MOT at the time Ms M acquired it without any advisories showed it was roadworthy at delivery. Brake pads and tyres would usually be considered wear and tear items with a limited lifespan which would vary depending on factors such as the car's mileage, its maintenance, and how it was driven.

Our investigator recommended that this complaint should be upheld in part. She said she had spoken to the inspecting garage. The car had covered only 289 miles between delivery to Ms M and being seen by the inspecting garage. The garage said the brake wear it saw, with 20% pad depth remaining, would have been what was present at delivery. It classed this as at the end of life of the pads.

The investigator said that she appreciated brake pads were a wear and tear item. However Ms M was told the car had passed its MOT with no advisories. So she wouldn't have expected the brake pads to need replacing two weeks into her agreement and after only 289 miles.

The investigator thought the brake pads weren't in a satisfactory condition when Ms M acquired the car, and Ms M wasn't given any indication that they would need to be replaced so soon. So the investigator thought Moneybarn should reimburse the £238 Ms M had paid for the replacement brake pads.

The investigator didn't recommend that Moneybarn should reimburse the cost of the tyres. She said that while Ms M had felt they also needed replacing, there wasn't any mention of this by the inspecting garage.

Moneybarn responded to say, in summary, that according to the investigator, the inspecting garage indicated the brake pads would likely cover a maximum of 2,000 miles more, but this could be less depending on driver style. On this basis Ms M didn't need to replace the pads so soon. As a used car which had covered 47,500 miles, and had passed an MOT, Moneybarn thought a consumer should have a different expectation from a new car.

The investigator thought it wasn't acceptable for the car to be sold to Ms M with brake pads approaching the end of their life without her being given some indication of this. She thought Ms M was induced to enter the agreement by being told the car had passed its MOT with no advisories.

The investigator didn't think it was fair for the car to have been sold to Ms M with, unbeknown to her, brakes needing to be replaced, and so that she had to pay for this after only 289 miles.

Moneybarn asked for this complaint to be reviewed by an ombudsman. It pointed out that the MOT was conducted by a qualified MOT technician.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I understand that Ms M was unhappy with the condition of the tyres. But this wasn't mentioned in the comments of the inspecting garage. So, like the investigator, I don't think there's enough evidence for me to say Moneybarn should reimburse the cost of replacing the tyres.

It appears that the minimum thickness of brake pads needed for a car to pass its MOT is 1.5 mm. The inspecting garage said 20%, or 2mm, was remaining when it saw the car. On this basis, I can't say it was wrong for the car to have passed its MOT as it did.

Brakes are an important safety feature of cars. When the brake pads wear low the car's braking performance is reduced. Because of this, it also appears that garages usually recommend considering replacing pads when they are reduced to between 2mm and 3mm.

MOT technicians are expected to mention "advisories" at the time of testing - that is items which meet the testing requirements at the time of the test, but are expected to need replacement before too long. So MOT technicians will often mention brake pads showing the degree of wear Ms M's pads did as advisories. However, it appears this is down to the judgement of individual technicians.

From what I've said, I can't say it was wrong for the car to have passed its MOT with its brakes as they were. I agree with the investigator that it would have been preferable for the pads to have been mentioned as an advisory, as a warning to anyone interested in the car. But again, I can't say this was categorically wrong.

However, under CRA Moneybarn had a responsibility to supply a car which was of satisfactory quality and fit for purpose. To satisfy this CRA says goods must meet the standard that a reasonable person would consider satisfactory, taking account of a number of listed aspects including safety and durability, and all the relevant circumstances.

Every case must be considered on its own circumstances. In this case, I conclude that to supply a car when its brakes had reached the stage that a reasonable person would consider the pads should be replaced, without any notice being provided of this, means that the car wasn't of satisfactory quality when supplied. So I think Moneybarn should reimburse the cost to Ms M of replacing the brake pads.

Putting things right

I agree that Moneybarn should reimburse to Ms M the £238 it cost her to replace the brake pads.

My final decision

My decision is that I uphold this complaint, and order Moneybarn No.1 Limited to pay Ms M £238.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 15 July 2020.

Lennox Towers
Ombudsman