

The complaint

Miss R complains about a car supplied to her under a conditional sale agreement with Moneybarn No. 1 Limited.

What happened

In March 2019, Miss R took out a conditional sale agreement with Moneybarn to finance the purchase of a used car. The car was nine years old, had travelled more than 105,000 miles and cost just over £5,000.

Miss R says she found fault with the engine within the first few days. She said the engine had a very serious carbon leak, and the heat protection cover was covered in carbon. The dealer carried out a repair, and Miss R said it told her it had replaced the fuel injector seals and cleaned the carbon.

In July 2019 the car broke down. Miss R said white smoke was coming out of the engine. She said her partner, a qualified vehicle technician, diagnosed the cause as an oil leak caused by the injector seals. She said she contacted the dealer as she thought this would be fixed under the warranty she'd been given. She said the warranty provider told her to provide a diagnosis. She provided a diagnosis from her partner. This stated that the injector seals were leaking and there was a hole on the inside of the rocker cover caused by the leaking seal.

She said the warranty provider told her the fault wasn't covered. So she went back to the dealer because the new fault was related to the seals the dealer had fixed when she first got the car. She said she knew this was the reason because mechanics from garages near to her own garage had looked at the engine and agreed the rocker cover could only have been broken because of the leaking injector seals.

The dealer collected the car but disagreed with her diagnosis. She said it wouldn't repair the car under the service warranty. She said she called to collect the car at the beginning of September 2019. She said the dealer then agreed to replace the injector seals. She said she found this confusing as the dealer had previously said the seals were not broken. She said it now told her there was a hole in the rocker cover, and this was caused by a screw, and it looked like it had been burned from the outside of the cover.

She said the dealer told her in September 2019 it had replaced one of the seals in March 2019, not all of them as it had previously told her. She said it told her one of the seals had failed, but it was not the one it had replaced. She said it told her this was due to wear and tear as she had done 10,000 miles since the previous repair.

So she complained to Moneybarn.

In September 2019 Moneybarn said they received Miss R's complaint. She told them she hadn't had use of the car for four weeks and was worried the dealer wouldn't fix the car properly. Moneybarn told Miss R they would arrange for the car to be independently assessed, by an engineer appointed by them. They agreed the assessment would be done

at Miss R's garage.

Moneybarn didn't uphold Miss R's complaint. They said the expert engineer's report found that the fault was likely to have been due to wear and tear. And they said she was responsible for repairs as she was the registered keeper of the car.

Our investigator looked into the complaint. She felt that it was reasonable for Moneybarn to conclude the faults were a result of wear and tear, and it was fair that they didn't allow Miss R to reject the car.

Miss R disagreed and has asked for an Ombudsman's decision.

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.

Moneybarn supplied Miss R with the car under the conditional sale agreement they had with her. There's a term implied in the agreement that the car would be of satisfactory quality. What is satisfactory is determined by what a reasonable person would consider satisfactory given the price, description and other relevant circumstances. In this case this would include things such as the age and mileage of the car.

Miss R's car was nine years old and had travelled more than 105,000 miles when she got it. So, a reasonable person might expect to have to repair or replace some parts of the car over time.

Miss R first reported faults with the injector seals within days of getting the car. The relevant law, The Consumer Rights Act 2015, gives her the right (amongst other things) to ask for a repair or a replacement. She returned the car to the dealer and it carried out the repair.

It was several months later that the car broke down. And by this time the car had travelled more than 8,600 miles since Miss R got it. So I think we can assume the repair worked – and it seems likely that Miss R accepted the repair had been carried out properly.

Both Miss R and the supplying dealer have given varying and contradictory reasons for the fault that caused the car to breakdown in July 2019. And both have relied on their own experts to support their opinions. Miss R says the damage to the rocker cover was caused by the leaking seals. Moneybarn say it was damaged by someone removing the cover. I've not seen enough evidence to find that it was the dealer that caused the damage to the rocker cover. So I have to consider whether or not Moneybarn has acted fairly.

The first test is whether or not the car they supplied to Miss R was of satisfactory quality. I've explained above how this would include the age and mileage of the car. There was a fault at the point of supply that was relevant to the quality of the car – but this was fixed by the dealer. And as I've said, the repair worked.

In July 2019 the car broke down – within six months of her getting it. The law says that goods found to be faulty within six months would be considered to be faulty when they were supplied. So I need to consider whether or not the breakdown was caused by a fault present at the point of supply. Miss R says that the car broke down because the earlier fault wasn't fixed properly, or at all.

I disagree. She drove the car for several months, and for more than 8,600 miles before it broke down. This is a significant amount of miles in a relatively short period of time. And as

our investigator pointed out, significantly more than the UK average of 7,000 miles a year. So I think it was reasonable for Moneybarn to conclude the fault was caused by wear and tear.

And they've reached this position after obtaining the opinion of an independent engineer. He found a hole in the rocker cover which he thought could be coming from the injector seals. But he was unable to fully determine what caused this, because some dismantling of the engine had already taken place.

He did say that 'on *the balance of probability*', considering the time and mileage done since the car was supplied to Miss R, the fault would not have been developing when she got the car. I find this persuasive. I think it unlikely that Miss R would have been able to travel more than 8,500 miles without warning signs if the repair hadn't been carried out properly, or at all. I say this because the independent engineer says the fault presented a potential fire risk. So I think it likely that this would have happened sooner if the fault was present from the time of the repair.

He also confirmed faults were present at the inspection, and they would not have been present at the time the car was supplied.

So I think it was reasonable for Moneybarn to conclude that the faults that led to the breakdown in July 2019 were not present at the time of sale. So they don't need to do anything more.

I know this has been frustrating for Miss R. She bought a car that she says she is unable to use. And she feels that the dealer didn't carry out the repair it said it did. But I'm satisfied from the evidence I've seen, that it was reasonable for Moneybarn to conclude that the latest fault was caused by wear and tear to a part – a part that it's reasonable expect to wear out due to the amount of mileage the car has done, before and after she got it. I've seen no evidence that it was the initial repair done by the dealer that caused the latest fault.

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 R to accept or reject my decision before 2 December 2020.

Gordon Ramsay
Ombudsman