

The complaint

Ms A is unhappy with a car she acquired using a conditional sale agreement provided by Moneybarn No. 1 Limited. She says the car had various issues and she asked to reject it.

Ms A has been represented on this complaint. But, to keep things simple, I'll only refer to Ms A in this decision.

What happened

Ms A acquired a used car in February 2019. The car was around seven years eight months old and had covered around 106,387 miles. The car cost £7,436 and £7,036 of this amount was funded by a conditional sale agreement provided by Moneybarn.

Ms A says shortly after getting the car that she asked to reject it, as she says it had various issues with it. Ms A says the car had, amongst other faults, a blocked rear washer jet, faulty window seals, a faulty ashtray and a problem with the armrest.

Ms A says an engine management light ('EML') appeared on the dash. She made Moneybarn aware of this at the beginning of March 2019. A breakdown company attended to see the car. It noted issues with the diesel particulate filter ('DPF'). It said it attempted to regenerate the DPF but this failed. It also noted an issue with the dual mass flywheel. At this point the car had covered around 108,457 miles.

Ms A complained to Moneybarn about the car. It issued its final response at the end of April 2019. This said, in summary, that the issues Ms A complained about were either minor cosmetic problems or were due to wear and tear. It said it had attempted to arrange an independent inspection of the car, but hadn't been able to get hold of Ms A. Moneybarn didn't uphold the complaint. But, it said it would still consider arranging an independent inspection if Ms A got in contact.

Ms A got back in touch with Moneybarn in May 2019 and an independent inspection was carried out at the end of the month. This noted an EML was not illuminated. It said a brake pad warning light was on, but said the pads were "*visibly serviceable*". It said there was a fault code recorded for the throttle position sensor and it believed the DPF system wouldn't regenerate with this code logged in the ECU. It noted oil leaking and fume leakage from around the DPF. It also said there was a slight vibration throughout the car consistent with dual mass flywheel wear.

The report concluded that based on the mileage of 112,764 at the time, the issues would not have been present or developing at the point of supply.

In early June 2019 Moneybarn issued a second final response. It said, in summary, that based on the independent report's conclusions it still wasn't upholding Ms A's complaint. Ms A remained unhappy and brought her complaint to our service.

Our investigator issued an opinion and said he didn't think the complaint should be upheld. He said, in summary, that having thought about what the independent inspection said along

with other evidence, he considered there was nothing to suggest the car wasn't of satisfactory quality when it was supplied.

Ms A disagreed with this opinion and made several points. Amongst other things, she said she had asked to reject the car on 22 February 2019. She said the inspector who did the independent report told her in person that the DPF would have been faulty at sale. She said the inspector used the wrong mileage for the conclusions about the car, as the DPF developed a fault earlier. And she said the EML light was still illuminated.

Our investigator responded and said these points didn't change his opinion. He said he'd asked Moneybarn about the inspection, and it had been in touch with the engineer. The engineer had said he wouldn't have told Ms A there was an issue with the DPF at the point of supply. And they said the mileage didn't change their opinion.

Ms A then sent in some further evidence. This included screenshots of text messages between her and the dealer, photos of the car and videos of her partner making phone calls. She also sent a photo of a diagnostic report of the car with details of fault codes.

Ms A also raised concerns that her ability to afford the borrowing was not checked before Moneybarn gave her the finance.

Our investigator responded and said, in summary, that the new information didn't change his opinion and he still wasn't upholding the complaint.

Ms A remained unhappy and the complaint was arranged to be passed to an ombudsman. While awaiting a decision, Ms A let us know that due to non-payment of the account the agreement had been terminated. In November 2020 the car was collected. At this point the mileage of the car was around 125,148.

The complaint has now been passed to me to decide

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.

Ms A has raised some concerns about the customer service received from the dealer and with difficulty getting information from them about this complaint. I don't think Moneybarn are responsible for these issues, so I won't comment further about this in my decision.

Ms A also said she doesn't believe Moneybarn checked this lending was affordable for her when she took the borrowing. From what I can see, this was only raised after our investigator issued his opinion and didn't form part of Ms A's complaint to Moneybarn. So, I haven't considered this further here. Ms A will need to contact Moneybarn to raise a separate complaint if she wishes to pursue this.

Ms A complains about the quality of goods supplied under a conditional sale agreement. Providing consumer credit contracts like this is a regulated activity. So, I'm satisfied we can consider Ms A's concerns about Moneybarn.

Ms A has raised various points and issues about the car in her complaint. I'm going to focus on what I think are the key things raised here. Where I haven't mentioned, or addressed something in detail, this isn't because I haven't thought about it or consider it unimportant. This simply reflects the informal nature of our service. I want to reassure Ms A, and Moneybarn, that I've carefully considered all of the information about this complaint.

When deciding what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 is relevant to this complaint. This says under a contract to supply goods, the supplier – Moneybarn in this case – needs to make sure the goods are of 'satisfactory quality'. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

It seems to me that relevant factors in this case would include, amongst other things, the car's age, price, mileage and description. So, I'll bear in mind that this car was nearly eight years old. It had done well over 100,000 miles when Ms A got it. And, Ms A paid an amount for the car which represented a very significant reduction on what it would've cost new.

I have carefully considered the car's description. I can see from the car's advert and in texts between Ms A and the dealer that the car had been described as being in "*fantastic condition*". But, I still need to consider the car's age, price and mileage. I think a reasonable person would consider that the car may have some issues with it given this. I don't think they would expect the car to be in the same condition as a younger car with fewer miles, even though it was described as 'fantastic'.

So, what I need to consider here is whether or not I think the car was of satisfactory quality when it was supplied to Ms A. I'll consider the issues Ms A has raised in turn.

DPF:

It isn't in dispute here that the car had issues with the DPF system while Ms A had it. I say this as Ms A, Moneybarn, the breakdown report and the independent inspection all say this was the case. So, what I need to consider here is whether these issues were present or developing at the point of supply.

I can see from the contact notes provided by Moneybarn that Ms A first contacted it about the DPF in early March 2019. The report from the breakdown company is dated 19 March 2019 and the mileage was recorded as 108,457.

I've considered what the independent inspection says here. This says in summary, that the DPF issues are likely caused by a throttle position sensor fault logged in the ECU – as this would cause the DPF system to not regenerate. It concludes "*on the balance of probability, would not have been developing at finance inception*".

I've considered that Ms A said this conclusion wasn't valid, as the inspection was carried out at a higher mileage than when the issue first appeared. So, I've looked at the inspector's response when this argument put to them by Moneybarn. Here the inspector said: "*If this issue was present at point of sale, I would expect symptoms and problems to have arisen well before 2000 miles*", so the difference in mileage wouldn't affect the inspector's conclusion.

I've also carefully considered what Ms A said about being told by the inspector in person that the fault with the DPF was present at the point of sale. But, this is the opposite conclusion to what the inspector said in their report. And, the inspector directly denied saying this when asked about it. So, on balance, I don't think it's likely Ms A was told this at the time.

I've considered the diagnostic report sent in by Ms A. This seems to back up the independent report in that it references a fault code for the "*throttle position sensor*". The fault code with the throttle sensor has a date and mileage under it, "*Date: 2019.04.17*" and "*Mileage: 177766 km*". Thinking about the mileage here, this works out around 110,459 miles.

I don't know for sure if this date and mileage is the first occurrence of this fault or not. But, it appears this fault code *may* have appeared after the breakdown report mentioned issues with the DPF. I've thought carefully about this. I accept this means the DPF issues *might* not have been caused by this fault code as suspected by the engineer.

But, even if this was the case, this wouldn't affect the outcome I would reach here. I say this as the first evidence I've seen of the DPF having an issue is the breakdown report where the car had covered over 2,000 miles since Ms A got it. I agree with the inspector's comments that if the DPF had a fault with it when Ms A got the car, then it would've become apparent earlier than this – whatever the cause for the fault was.

I've also thought about whether this fault code itself means the car wasn't of satisfactory quality. But, the date and mileage in the diagnostic report was over 10 weeks after Ms A got the car and after the car had covered over 4,000 miles. So, I'm satisfied, if the date recorded is the first instance, this fault wasn't present or developing at the point of sale.

Thinking about all of this, I accept the car developed a fault with the DPF system after Ms A got it. But, I'm satisfied, on balance, that this issue wasn't present or developing at the point of supply. So, it follows I don't think this means the car was of unsatisfactory quality when Ms A got it.

Finally, the CRA says durability should be considered when thinking about satisfactory quality. I have considered if this issue arising when it did meant the car wasn't durable.

I know it must have been disappointing for an issue to arise with the car relatively soon after Ms A got it. But, I think a reasonable person's expectations for durability would be low for a car of this age and mileage. There is always going to be a risk of things going wrong when acquiring a car which has done nearly 110,000 miles. A DPF system is a part of a car that would suffer from wear and tear during its use. Thinking about this, I don't think in this case that the DPF developing a fault when it did means the car wasn't durable.

Dual mass flywheel:

I've considered the evidence about the dual mass flywheel. Both the breakdown report and the independent inspection mention this. The inspection describes this as a "*slight vibration*". It again says it's unlikely this was present or developing at the point of supply.

I've thought carefully about this. On balance, I haven't seen enough to make me think this issue was present or developing at the point of supply. But, even if it was, I don't think this would've meant the car was of unsatisfactory quality.

I say this as I don't think a reasonable person would think a 'slight vibration' would mean a car of this age, price and mileage was of unsatisfactory quality. I've also considered that when the car was collected in November 2020, it had covered nearly 19,000 miles since Ms A got it. She has confirmed no repairs were done to the car. So, I'm satisfied, even if it wasn't working perfectly when she got it, there must have been a reasonable amount of wear left in the flywheel for the car to have been able to drive this distance without repair.

Engine management light

Ms A complains that an EML was on in the car shortly after she got it. I've thought about this. But the breakdown report doesn't mention an EML. And, the independent inspection specifically says that an EML wasn't on.

Ms A has provided photos of an EML illuminated in the car. But, looking at the date from the dashboard where visible, these photos appear to be from May and June 2019 – which is several months after Ms A got the car.

Thinking about everything, on balance I haven't seen enough to make me think it's likely there was a fault with the car which lead to an EML illuminating when Ms A got it.

Other issues

Ms A complained about the ashtray not closing, the rear wiper jet being blocked, the armrest being faulty and window seals not fitting correctly.

I have seen some photos of these issues. But, they aren't clear enough to make me think it's most likely these are faults that were present at the point of sale. But, even if I assumed they were, I still wouldn't uphold this complaint.

Even considering the car's description, I don't think a reasonable person would've expected this car to be in perfect condition considering its age and mileage. I think they would assume the car might have some minor issues – which is how I would describe these problems. So, even if I accepted these faults were present when Ms A got the car, I don't think this would mean the car was of unsatisfactory quality.

I have considered what the independent inspection said about the brake pad warning light being illuminated. But, it also said the pads were "*clearly serviceable*". This warning light hasn't been mentioned again and I haven't seen enough to make me think this was illuminated when Ms A got the car. So, I haven't considered this further.

I have considered all of the other issues Ms A has raised about the car. But, I haven't seen enough to make me think these were present or developing at the point of supply. So, these don't change my decision.

Short term right to reject:

Ms A has told us that she complained about the car and asked to reject it on 22 February 2019. She said she believes this meant she had the right to reject it.

I've carefully thought about this. I know how strongly Ms A feels about this issue. And I understand she's been frustrated with trying to get information and evidence to back this up.

The earliest I can see Ms A complains about the car is 6 March 2019 – which is outside of the 30 days where someone can exercise their short term right to reject goods under the CRA. But, even if Ms A did ask to reject the car within this 30 day window, I still wouldn't say she should've been allowed to do this. I'll explain why.

The CRA explains, in summary, that under certain conditions a consumer has the short term right to reject goods if they exercise this right within 30 days of acquiring them. But, they can only do so if the goods are of unsatisfactory quality. As I've explained above, I've not seen enough to make me think Ms A's car was of unsatisfactory quality. So, regardless of when she asked to reject it, I don't think she had the right under the CRA to do so.

Summary and conclusion:

In summary, I appreciate Ms A's car did develop faults when she had it. But, on balance I haven't seen enough to make me think these faults were either present or developing at the point of supply or were enough to mean this particular car wasn't of satisfactory quality.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 9 April 2021.

John Bower
Ombudsman