

The complaint

Mr W is unhappy that a car supplied to him under a conditional sale agreement with Moneybarn Limited, was of an unsatisfactory quality.

What happened

In October 2018, Mr W was supplied with a used car through a conditional sale agreement with Moneybarn. The agreement was for £9,000 over 60 months; with monthly repayments of £303.44. At the time, the car was just over six years old and had done 94,900 miles.

Mr W said the car had various faults, and he's had to have it repaired several times. He said he's had the fuel pressure sensor replaced twice, the gearbox serviced. He's also said that the car goes into limp mode, it's got a faulty start/stop feature, and it didn't have heated seats as advertised.

In February 2020, Mr W complained to Moneybarn that the car didn't have heated seats as advertised; that there was a crack in one of the leather seats; that he suspected the car had previously been in an accident; that the dashboard wasn't fitted properly; and that there was an issue with the head gasket. Moneybarn said that, because of the time that'd passed before Mr W complained to them, it was his responsibility to prove the faults with the car were present when the car was supplied to him. And they also arranged for the car to be inspected by an independent engineer.

The independent engineer said the car wasn't fitted with heated seats, but that the car was in a condition "*commensurate to its age and recorded mileage*." The engineer also said that the faults Mr W was complaining about weren't present when the car was supplied to him. Based on this, Moneybarn offered Mr W £250 as compensation for the car not having heated seats as advertised. Mr W wasn't happy with Moneybarn's response, and he wanted to reject the car. So he brought his complaint to us for investigation.

Our investigator said the car was advertised as having heated seats, which it didn't have. So she thought that Moneybarn should compensate Mr W for this. But she hadn't seen any evidence to show there were any faults with the car when it was supplied to Mr W. So she thought the car was of a satisfactory quality when Mr W took possession of it.

The investigator said that the cost of fitting heated seats to the car is £550, and Moneybarn should pay for this. But, if the fitting of heated seats isn't permitted by the terms of Mr W's agreement with Moneybarn, or because of the conditions of Mr W's car insurance policy, then Moneybarn should pay Mr W £250 – the additional amount Mr W would likely have had to pay for a car with heated seats in 2018.

Mr W agreed with the investigator's view, but Moneybarn didn't respond. So this has been passed to me to make a final 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.

Having done so, I have reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr W was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale; and the vehicle's history.

The CRA also says that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed that the fault was present when the car was supplied, unless Moneybarn can show otherwise. But, where a fault is identified after the first six months, it's for Mr W to show that it was present when the car was supplied. So, if I thought the car was faulty when Mr W took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

I've seen a copy of the independent engineer's report dated 13 March 2020. This says that the current mileage on the car was 113,908, so the car had travelled 19,008 miles in the 17-months it'd been in Mr W's possession. While the engineer confirmed that the car wasn't fitted with heated seats, he also said that *"there was no evidence of any cylinder head gasket failure or evidence of any impact damage to the instrument cluster or dials."* The engineer concluded that *"on the balance of probability the faults reported would not have been developing at finance inception."*

Mr W hasn't been able to provide any evidence to show that the faults he'd complained about were present or developing at the time the car was supplied to him. So I'm satisfied that it's reasonable to rely on the independent engineer's report, and that the car was of a satisfactory quality when supplied. Because of this, I don't agree that Mr W should be allowed to reject the car.

While I've not seen a copy of the original advert for the car, the company who advertised the car have provided the text of what this said. And that says the car has *"LOTS OF FACTORY EXTRAS [including] Front Seats-Heated."* The car doesn't have heated seats, and Moneybarn have offered Mr W £250 compensation for this. But, as Mr W financed a car that should have had heated seats, I think it's reasonable that Moneybarn should arrange for heated seats to be fitted to the car, if that's possible.

Mr W has provided a quote for £550 (including VAT) for heated seats to be fitted to the car. But it's not possible to determine exactly how the value of the car would've been changed in 2018 if heated seats weren't part of the factory fitted extras. Given the age and mileage of the car at the time, I'm satisfied that the recommended £250 is likely to have been the difference in value. And, given the lack of any other specific evidence, I'm looking to adopt this figure as part of my overall decision.

Putting things right

Moneybarn should now arrange to do the following:

- Pay (on production of an invoice once the work is done) for heated seats to be fitted to the car, up to a maximum cost of £550 including VAT; or.
- If it's not possible to fit heated seats because of the terms of Mr W's agreement with Moneybarn, the terms of Mr W's insurance or for any mechanical reason; pay Mr W £250 compensation for the difference in the likely 2018 value of the car with and without heated seats.

My final decision

For the reasons explained, I uphold Mr W's complaint. Moneybarn Limited must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 May 2021.

Andrew Burford
Ombudsman