

The complaint

Miss B complains that Moneybarn No. 1 Limited refused to let her reject a faulty car.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute so instead I'll focus on giving the reasons for my 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 agree with the conclusions reached by the investigator for the following reasons:

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.

The car was over five years old and had covered some 85,000 miles so a degree of wear and tear is to be expected. It had passed its last MOT when it had done 84,738 miles without any advisories. While the test does not confirm that the car is fault free there was no evidence of the issue which Miss B later encountered.

She had the car for approximately four months before she noticed any problems and she was able to cover 2,511 miles. She raised a complaint with Moneybarn within six months and the onus was on it to show that car wasn't faulty at the point of sale. It commissioned an independent report from a suitably qualified engineer.

He noted the fault with the car and said: "*The faults have most likely occurred since finance inception due to general in-service wear.*" It is unusual for an engineer to give an absolute opinion as to the cause of any fault and his conclusions were made on the basis of the available evidence.

I have seen no alternative evidence to show that the fault would have been present at the point of sale. Unless I have some evidence or information that would allow me to reach a different conclusion to that of the engineer I do not consider I can do so.

It is not enough that the fault occurred a few months after the sale to say that it must have been present when the sale took place. Therefore, I regret to say that I am unable to uphold this complaint.

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 B to accept or reject my decision before 7 October 2021.

Ivor Graham
Ombudsman