

The complaint

Miss D complains that Moneybarn No. 1 Limited refused to accept her rejection of a faulty car.

What happened

In November 2020 Miss D acquired a second hand car costing £15,000. It was some eight years old and had covered 97,489 miles. The car was replacement for another supplied by the dealer which wasn't satisfactory. The acquisition was funded by a conditional sale agreement.

Some seven weeks later the car broke down. Miss D says that a rear door wouldn't unlock and this was repaired by a garage engaged by the dealer. Shortly afterwards there were issues with the reversing camera and it went into limp mode due to unknown sensors. These issues were repaired by the garage. Later the car went into limp mode again due to a pin hole in a hose. The car was taken back to the dealer. Miss D says that it agreed to take it back but then refused to do so. Miss D had covered some 8,000 miles in three months. The car was repaired though Miss D says she didn't authorise this.

In February 2021 Miss D complained to Moneybarn. It arranged for an independent inspection. The inspector concluded

"We would conclude that we were able to demonstrate a fault on the vehicle, this being leakage from the positive terminal on the battery and also a brake judder and abnormal noise from the offside front. However, based on the evidence available to ourselves at the time of our inspection and on engineering facts we do not consider the faults to have been present or developing at the point of finance inception and subsequently is not the selling agent's responsibility in our opinion."

Moneybarn said that it didn't consider rejection was appropriate, but it recognised it had taken some time to resolve the complaint and offered Miss D £120 compensation and it also offered to make a good will payment to cover the cost of a new battery. Miss D didn't accept this. She had also refused to collect the car from the garage which had started to charge storage fees. Moneybarn paid these and moved the car to one of its agents' storage facilities.

Miss D brought the complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. She agreed that there had been issue with that car, but wasn't persuaded that it was faulty at the point of sale. She noted it covered some 8,000 miles from acquisition before Miss D had identified any faults and that the independent assessor had concluded the car wasn't faulty at the point of sale. She said Miss D had authorised repairs which appeared to have been successful and she thought the offer made by Moneybarn to be fair.

Miss D didn't agree and said that she had two cars from the dealer which had broken down so she should have the right to reject this one. She said the car should be able to handle the mileage.

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.

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 conditional sale, 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.

To uphold Miss D 's complaint, I have to be satisfied that the car wasn't fit for purpose at the point of sale. To reach that conclusion I need some supporting evidence.

The car was fairly elderly and had covered a high mileage therefore it is to be expected that it would suffer from wear and tear. It did have some issues shortly after the sale, but these arose more than 30 days later and so the dealer was entitled to an opportunity to effect repairs.

This it has done and according to the independent assessor the repairs have been effective. I appreciate Miss D wasn't happy with the car, but if she had taken the car back and had found these repairs not to be satisfactory then I might be in a position to uphold her complaint. However, she chose not to collect the car.

On one side we have the evidence that the car did suffer from some faults, but nobody has identified that these were present when the car was sold. Although the first issue arose after some seven weeks the car had covered a very high mileage in that time, close to the mileage many cars cover in a year and so it makes it difficult to say that the faults were present when the car was sold.

The independent assessor didn't think that the car was faulty at the point of sale and I would need persuasive evidence to allow me to say his expert analysis was wrong. This has been reinforced by the MOT which was carried out in October 2021 with the car having covered 108,749 miles at that point. It passed without advisories having failed initially due to a bonnet catch issue.

Furthermore, the garage which carried out the repairs inspected the car and identified a list of issues, most of which were due to wear and tear. I can see nothing in that list which would be of a nature that would suggest rejection as a suitable outcome. The issues were

remedied relatively easily.

The complaint is about the second car and not the first and I can only consider the facts surrounding that car. I appreciate Miss D will be disappointed with my decision, but I do not consider that I can uphold her complaint.

My final decision

Moneybarn No. 1 Limited has already made an offer to pay £275 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Moneybarn No. 1 Limited should pay £275 if it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 28 December 2021.

Ivor Graham
Ombudsman