

The complaint

Miss L complains that a car acquired with finance from Moneybarn No 1 Limited wasn't of satisfactory quality.

What happened

In January 2020 Miss L was supplied with a car and entered into a conditional sale agreement with Moneybarn. At the point of supply the car was around 5 years old and had covered around 62,000 miles.

Soon after getting the car, Miss L experienced issues with the engine overheating and she kept having to top up the coolant. The car would stop at traffic lights and fail to start again. Miss L reported the issues to the supplying dealer and says she was told that there were problems with the gearbox and the cylinder head. Miss L says the dealer gave her the option to return the car or have the issues fixed. Miss L chose to have the car repaired under warranty. The cylinder head was repaired, and Miss L says she was told to take the car back later for the repairs to the gearbox.

Miss L says that after the cylinder head was repaired, the car was fine on short journeys but on longer journeys the temperature gauge started to rise and she kept having to add coolant. The car went back to the dealer who replaced the thermostat and said it had replaced a cracked water bottle. Miss L says she noticed afterwards that the water bottle hadn't been replaced.

Following this the car began to judder and misfire. Miss L took the car to a different garage. It replaced the water bottle but said there were issues with the head gasket and recommended that Miss L take the car to another garage to have the head gasket replaced.

Miss L took the car to another garage in July 2020. It inspected the car and said the problems weren't just with the head gasket but that the cylinder head was warped and the cylinder block needed replacing.

Miss L authorised the necessary repairs and the car has been fine ever since.

Miss L complained to Moneybarn about the problems she'd experienced with the car. Moneybarn said that because of the length of time which had passed since the start of the agreement, it was Miss L's responsibility to prove that the faults were present at the point of supply.

Miss L wasn't happy with the response and complained to this service. She wants the cost of repairs refunded.

Our investigator upheld the complaint. He said the dealers attempts at repairing the car hadn't been successful and that Miss L should be allowed to reject the car, but as she'd now paid for repairs and the car was fine, the cost of repairs should be refunded.

Moneybarn didn't reply to the view so I've been asked 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.

Because Moneybarn supplied the car under a conditional sale agreement, there's an implied term that it is of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. I would expect a second hand car to have some wear and tear and to require repairs more often than a brand new car. So, in order to uphold the complaint, I would need to be satisfied that there was an inherent fault with the car, as opposed to a fault caused by general wear and tear.

Under the Consumer Rights Act 2015, where a fault occurs in the first 6 months, its presumed to have been present at the point of supply and its generally up to the business to put things right. The business is allowed one attempt at repairing the fault. If the repair isn't successful, the consumer can reject the car. After 6 months the burden of proof is reversed and its up to the consumer to show that the car wasn't of satisfactory quality when supplied.

I've thought about whether there was a fault with the car. Based on what I've seen, and taking into account the invoice from the third party garage who carried out the most recent repairs, I'm persuaded that there was a fault which caused the engine to overheat and ultimately caused the head gasket to fail. This derives from the same fault that Miss L reported early on in the agreement. I think its likely that the fault was present or developing at the point of supply. The invoice from the third party garage also identifies missing bolts on the timing cover and that sealer had been used in places where there should be gaskets. This suggests that these issues were either present at the point of supply or caused by the dealers attempt at repair.

Moneybarn has said that its up to Miss L to show that the fault wasn't due to wear and tear. I've taken Miss L's testimony into account and I'm persuaded that she experienced issues with overheating in the first few weeks of getting the car. So, I'm satisfied that the presumption applies here. I've also thought about the nature of the fault. Ultimately, the car had to have major engine repairs in August 2020. At this time, Miss L had only travelled around 1600 miles I the car over a period of 8 months. This calls into question the durability of the engine. I don't think a reasonable person would expect to carry out major engine repairs so soon into the agreement, having covered relatively little mileage since the point of supply. On balance, I don't think the car was of satisfactory quality at the point of supply.

There's very little evidence, other than Miss L's testimony, about the repairs caried out by the dealer. Miss L has said the car was first returned for repair in January 2020 and that the cylinder was replaced. She's also said that the gearbox was repaired in April. Given that I am satisfied that there was a fault causing the car to overheat which occurred very early on in the agreement, and given that the overheating issue continued after the repairs had been attempted, I don't think the repairs carried out by the dealer were successful. This gives Miss L grounds to reject the car under the relevant legislation.

Putting things right

Based on everything I've seen, I don't think the car was of satisfactory quality when supplied. I don't think the dealers attempt to repair the fault was successful. Moneybarn should put things right.

I've already said that Miss L has grounds for rejection. However, I can see that the repairs she paid for have fixed the faults. In the circumstances, I think the cost of the repairs should

be refunded.

Miss L was unable to use the car when it was returned to the dealer for repairs. She wasn't provided with a hire car during this time. I don't think it's fair to expect Miss L to pay for a car when she couldn't use it, so I'm asking Moneybarn to refund one month's payment to cover the total period Miss L was without her car.

It's clear that Miss L has suffered inconvenience due to the issues with the car. She's had to take it to several garages and has been caused distress because she needed a reliable car to take her children to school and get to work. Miss L was also left in a position where she had no option but to pay for repairs herself. She's explained that she had to borrow money to do this. Considering the impact all this has had on Miss L, I think Moneybarn should pay compensation of £150 for distress and inconvenience.

My final decision

My final decision is that I uphold the complaint. Moneybarn No 1 Limited must:

Refund Miss L the cost of repairs of £1860 pursuant to the invoice dated 3 August 2020, plus interest of 8% from the date of payment to the date of settlement

Refund one monthly payment to cover the period Miss L was without the car plus 8% interest from 28 January 2020 to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 2 March 2022.

Emma Davy
Ombudsman