

The complaint

Miss M is complaining that a car Moneybarn No. 1 Limited supplied her under a conditional sale agreement was of unsatisfactory quality.

What happened

In August 2020 Miss M entered into a conditional sale agreement to acquire a car. The car had a cash price of around £7,000, it was around seven years old and had travelled around 91,500 miles at the point of supply.

In December 2020 Miss M contacted Moneybarn to complain about issues she'd had with the car, namely the clutch had failed, it needed a new flywheel and also issues with the gears. She also stopped making her monthly payments.

Moneybarn arranged for an independent inspection of the car. The engineer concluded the flywheel had come to the end of its life due to wear and tear. He said Miss M's car had travelled a further 4,600 miles since supply, so he didn't think the fault was present when Miss M first acquired it. Given this, Moneybarn didn't think it was responsible for the repair cost.

Our investigator didn't uphold this complaint. She said the independent inspection concluded the failure was down to wear and tear and she didn't think the fault was present at the point of supply, given the miles Miss M had travelled.

Miss M didn't agree with the investigator's opinion. She said she hadn't travelled 4,600 miles since she got the car. She said she'd only had it around three months and used it to go on the school run. She didn't think a reasonable person would expect to have to replace the flywheel so soon after acquisition. She also said she was unhappy it had taken Moneybarn around six months to respond to her complaint.

As Miss M didn't agree with the investigator, she asked for an ombudsman to review the complaint.

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.

I've decided to not uphold this complaint and I'll now explain why.

Miss M acquired the car under a conditional sale agreement. Legislation – in this case the Consumer Rights Act 2015 – implied a term into the agreement that the car must be of satisfactory quality. As the supplier and finance provider, Moneybarn is responsible for the quality of the car it's provided under the agreement. There's no dispute that there's a fault with the car, but the issue is whether it was present at the time of sale, and whether that fault makes the car of unsatisfactory quality when it was supplied.

In deciding whether this car was of satisfactory quality, I take into account the relevant circumstances, such as the cash price, its mileage and age. In this case, Miss M paid around £7,000 for the car. The car was around seven years old and had travelled around 91,500 miles at the point of supply.

The issue here is whether those problems were likely to have been present or developing at the time of sale, as opposed to natural and inevitable wear and tear in a used car. I've also considered whether a reasonable person would expect there to be problems such as Miss M has experienced in a car of this price, age and mileage – in short is the car sufficiently durable.

I can understand why Miss M is so unhappy to incur such a cost to have to replace the flywheel around four months after acquiring the car. But she didn't acquire a new car and it had travelled over 91,000 miles when Moneybarn supplied it to her. So she needed to expect it to have suffered some wear and tear when she got it and that it wouldn't be fault free for as long as a newer car. It's the risk one takes by acquiring a car with higher mileage.

I note Miss M disputes she had travelled the number of miles the independent engineer says she'd done. But I understand this mileage was taken from the car's odometer. And I haven't seen anything to support she hadn't travelled this mileage. But, irrespective of this, she had used the car continuously for over three months before any failures first arose and around four months before the flywheel failed.

Miss M wouldn't have been able to drive the car with a failed flywheel. So I don't think the fault was present at the point of supply and this was also the opinion of the independent engineer. I do not dispute the faults may have been developing at the point of supply. But, as I said above, Miss M couldn't reasonably expect the car to be fault free when she acquired it due to the number of miles it had already travelled.

It's also to note that the flywheel, clutch and gearbox are all wearable parts – i.e. they are likely to break over time owing to usage. Importantly, the independent engineer has concluded the fault was down to wear and tear. I naturally sympathise with the situation Miss M has found herself in. But, given what I've said above, I can't say the car was of unsatisfactory quality at the point of supply.

I also note Miss M is unhappy with the length of time Moneybarn took to review her complaint. I do think it took longer than it should have done – it took around five months for Moneybarn to issue its final response on her complaint. I note it needed to request further evidence from Miss M and it was also fair for it to arrange an independent engineer. But it seems it took around two and a half months to start investigating her complaint in the first place.

I recognise Moneybarn were suffering a number of operational challenges at the time – not least due to the impact caused by Covid-19. But I think it could have looked at this complaint sooner. That said, I'm not persuaded Miss M has significantly lost out because of this delay because, ultimately, she's in the position she's in because she disagrees with Moneybarn's decision to not cover the cost of repairs. And, as I said above, I don't think this decision was unfair. So I don't think Moneybarn needs to compensate her for this delay.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 11 March 2022.

Guy Mitchell
Ombudsman