

The complaint

Miss O complains that the car supplied to her by Moneybarn No. 1 Limited ("Moneybarn") under a conditional sale agreement wasn't of satisfactory quality.

What happened

Miss O entered into a conditional sale agreement in January 2021 to acquire a used car. The car had a cash price of just less than £13,000, it was nearly 10 years old, and it had travelled nearly 95,000 miles at the point of supply.

Miss O says the car supplied by Moneybarn wasn't of satisfactory quality. She told us:

- Within a month of taking the car, the tyres needed replacing;
- she asked the manufacturer to look at the car and it told her that the cam belt hadn't been replaced; the car hadn't been serviced; and the front brakes were worn;
- these things would've been picked up and rectified if the car had been correctly serviced by the dealership;
- a week later the front brakes failed and Moneybarn sent an independent engineer to inspect the car. But the engineer wouldn't confirm that any of the issues or faults were present at the time the car was supplied;
- recently an engine warning light has illuminated, but she's not been in a position to have this looked at yet.

Moneybarn told Miss O that it had investigated each of the things she'd raised with it: worn brake pads; worn tyres and an overdue cam belt change. It said it had rejected her complaint, but it did pay Miss O £100 in recognition of the time it had taken to investigate and respond to her complaint.

Moneybarn explained that not all vehicles are sold 'fully serviced' and it did not require them to be. And although the advertisement stated that full-service history would be provided with the car, it did not state that the vehicle would be serviced again before it was acquired by Miss O.

Moneybarn said it had reviewed an independent report supplied by Miss O herself. This report stated that although worn, and nearing the end of their in-service life, the brakes were within current MOT standards. And the service history showed that the cam belt had been replaced by an independent third party just three years earlier.

Moneybarn concluded the car had passed its most recent MOT just one week before Miss O acquired it; the car met current MOT standards; and no inherent fault was identified with the car by the independent engineer. And it said the issues Miss O had reported with the brakes and tyres were likely due to normal wear and tear and were commensurate with the age and mileage of the vehicle.

Our investigator looked at this complaint and said he didn't think it should be upheld. He explained that he wasn't persuaded that there was actually a fault with the car. He said the state of the tyres and brakes was consistent with a vehicle of this age and mileage and that

their condition was simply due to expected wear and tear. He said he'd seen no evidence that the cam belt was actually faulty, just that the manufacturer said it should've been replaced four years previously. He did go on to say that he couldn't be certain that the cam belt had not in fact been changed. This was because the service book said the cam belt had been replaced in 2018 at an independent garage – something the manufacturer's records wouldn't necessarily show. But in any event, he didn't think that the act of not changing the cam belt, if that were the case, made the car of unsatisfactory quality at the point of supply.

Finally, he explained he wasn't disputing what Miss O had said about the engine warning light, only that the absence of anything about it in either the independent engineer's report or the manufacturer's health check meant he couldn't reasonably conclude that there was an actual fault or, if there was a fault, whether any such fault would make the car of unsatisfactory quality at the point of supply.

Miss O disagrees so the complaint comes to me to decide.

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've reached the same overall conclusions as the investigator, and for broadly the same reasons.

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. Miss O was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate 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 and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also says goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed 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, the CRA implies that it's for Miss O to show it was present when the car was supplied. So, if I thought the car was faulty when Miss O 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.

Miss O says the tyres were worn and should've been replaced before the car was supplied to her. She also says the car was faulty because the independent report referenced the significant wear on the brakes. But I have to tell Miss O that I don't agree with her.

When Miss O took possession of the car, it was almost ten years old and had done nearly 95,000 miles. I'd expect to see substantial wear and tear in a vehicle of that age and mileage. And I think that any reasonable person would expect major components to need replacing much sooner than would be the case with a low mileage car, and for there to be costs associated with this.

The independent report notes the state of the tyres, but it also goes on to confirm that they meet the legal requirements and would pass an MOT. The report says the wear on the brakes is high and that they're nearing the end of their service life – but they also currently meet MOT requirements. And I understand that the car did indeed pass its MOT just a week or so prior to Miss O acquiring it.

The tyres and brakes are items that I wouldn't expect to last the lifetime of the car, and I'd not be surprised if these needed replacing soon after supply given the age and mileage of the car. Because of this, and without any evidence to the contrary, I'm satisfied their condition is due to normal in use wear and tear. And any need for their repair or replacement doesn't mean the car was of an unsatisfactory quality when it was supplied.

Next, I've considered the matter of the cam belt and Miss O's complaint that it should've been changed some years earlier. But this in itself doesn't make the car of unsatisfactory quality – the complaint isn't that the cam belt is faulty or has failed – just that it should've been replaced.

The service history says the cam belt was replaced at the right time and the details of where and by whom are recorded. Miss O says that this didn't happen so the car was misrepresented to her. She told us in January that she would provide additional information to support this position, but to date, some four months later, she hasn't.

I find the service history persuasive not least because accompanying it is a contemporaneous note detailing some additional work that was undertaken at the same time. And, in the absence of any persuasive evidence or information that would allow me to reach a different conclusion, I do not consider I can do so.

Finally, I've considered the point Miss O makes about the engine warning light. But for the same reasons given by our investigator; the absence of any reference to a fault in either the independent engineer's report, or the manufacturer's own health check, it's simply not possible for me to say that the car has a fault, never mind that this fault would make the car of unsatisfactory quality at the point of supply.

Given the above, I'm satisfied that, under the CRA, the car was of a satisfactory quality when it was supplied to Miss O. And, although she's had issues and concerns with the car since supply, these are more likely than not a result of ongoing wear and tear, given the age and mileage of it.

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 O to accept or reject my decision before 9 June 2022.

Andrew Macnamara
Ombudsman