

The complaint

Miss D complains that a car she acquired via a conditional sale agreement with Moneybarn No.1 Limited wasn't of satisfactory quality.

What happened

In February 2021 Miss D acquired a used car via a five-year conditional sale agreement with Moneybarn. The car was just under six years old and had a mileage of 42,120. It was supplied with a six-month warranty.

One week after taking the car Miss D complained to the supplying dealership that the engine management light had illuminated. She was advised to take the car to a garage where it could be inspected under the warranty. Miss D says she followed this advice and the garage informed Miss D that there had been an issue with a sensor, but no repair was required.

In June 2021 Miss D attempted to use the air conditioning system for the first time but found that it didn't work. The car was booked in for repairs which cost a total of £378.01 but the warranty only covered £168.01 of the cost leaving Miss D to cover the additional £210 herself.

Around this time Miss D also experienced issues with the car's windscreen wipers and with a tyre which she then replaced. Neither of these items were covered by the warranty.

Due to the car misfiring, Miss D arranged for the car to have a diagnostic carried out in July 2021. This diagnostic recorded fault codes found with the knock control cylinders 1 to 4. Miss D says this diagnostic report was provided to the supplying dealer.

In August 2021 the car developed further faults and the misfiring became worse and the dashboard lights would not turn off leading to a drain on the battery. Miss D says she was advised not to use the car by a third-party garage that she took the car to.

Miss D complained to Moneybarn about the condition of the car. As Moneybarn wasn't able to conclude its investigation into her complaint within eight weeks it informed her of her rights to raise a complaint with this service. Miss D therefore complained to us in September 2021.

In November 2021 Moneybarn arranged for the car to be independently inspected. Unfortunately, due to the discharged state of the car's battery the engineer's investigation was limited. The engineer said that they couldn't confirm the exact cause of the faults with the car but considered that they would have most likely occurred due to an electrical fault and which had arisen after the car had been supplied.

Moneybarn agreed for a new battery to be fitted to the car and, once this had been carried out, arranged for the car to be independently inspected for a second time. This second inspection was carried out in January 2022. The independent engineer reported that they had found fault codes with the super knock detection for cylinders 1 to 4 and that there

was an excessive bearing rattle type noise evident. The engineer concluded that *“the vehicle was suffering from auxiliary area noise, possible bearing collapse which will require further investigation under workshop conditions due to limited visibility and also multiple electronic engine codes being detected in relation to internal engine issues which will also require further investigation.”*

The engineer also stated that *“Due to the mileage covered by the vehicle of approximately 6’000 miles over a period of 6 months since the point of purchase at the first recorded failure a total time of approximately 11 months since purchase to the time of inspection the vehicles faults would not have been developing at the point of purchase and have developed in the time of ownership”*

Our investigator recommended that Miss D’s complaint should be partially upheld. He said there wasn’t sufficient evidence that the current fault/s with the car had been present or developing at the point of supply and he thought unlikely she would have been able to drive nearly 4,000 miles in the car if they had.

Our investigator said he also thought that the repairs required to the windscreen wipers and tyres had arisen from wear and tear that would be expected of a car of this age and mileage.

However, our investigator thought that it had been unfair Miss D had to pay part of the costs in fixing the air conditioning as he accepted this fault was only discovered when Miss D attempted to use it for the first time in June 2021. He said he thought likely this fault had been present at the point of supply so it would be fair for Miss D to be reimbursed the additional amount she had paid for the repairs carried out in June 2021. Our investigator also said that £100 compensation for the distress and inconvenience caused by dealing with the faulty car at that time would be fair.

Moneybarn agreed with our investigator’s view. Miss D disagreed. She said the car had been deteriorating since she’d acquired it and she didn’t accept the independent’s engineer’s reports.

As the parties were unable to reach an agreement the complaint was passed to me. I issued the following provisional decision.

When looking at this complaint I needed to have regard to the relevant law and regulations, but I was not bound by them when I consider what was fair and reasonable.

As the conditional sale agreement entered into by Miss D was a regulated consumer credit agreement this service was able to consider complaints relating to it. Moneybarn was also the supplier of the goods under this type of agreement and was responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied 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.

The relevant law also says that 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.

Here the car was just under six years old and had a mileage of 42,120 at the point of the

agreement's inception. So, some issues of maintenance and repair would be expected by a reasonable person over a reasonable period of time. The car wouldn't have been expected to be fault free unlike a new one.

Looking at the issues and repairs that have been carried out with the car, I'd seen that within one week of acquiring the car the engine management light had illuminated although this subsequently didn't appear to have required a repair. However, in June 2021, around four months after acquiring the car, Miss D discovered that the air conditioning didn't work. As this was the first time she had tried this function, then I thought it was more likely than not that this fault had been present or developing at the point of supply. So, I agreed with our investigator that it was unfair for Miss D to have to pay the shortfall of £210 that had arisen when the warranty would only cover repairs up to £168.01. Looking at the repair invoice, I couldn't see that there had been additional work other than fixing the air conditioning which had been charged for.

Miss D said that she hadn't used the car since the beginning of August 2021 due to the faults that had developed with the car, in particular the issues with the engine misfiring and the battery being drained because the dashboard lights had remained on. By August 2021, Miss D had driven around 4,000 miles.

Miss D said the issue with the car misfiring had been present for several weeks. I've seen the results of the diagnostic that was carried out in July 2021 which identified fault codes relating to the knock control cylinders. These fault codes appeared to be the same as those noted by the independent engineer in January 2022. I'd seen that Miss D said that the earlier diagnostic report had been provided to the supplying dealer, but it appeared no further investigation or repair work was undertaken.

From the evidence that had been provided I was unclear as to the exact faults with the car or their cause since both independent engineers carried out rather limited inspections. There were no test drives and the recommendation at the end of the second inspection was for further investigations for internal engine issues. However, it appeared more likely than not from the evidence that I'd seen, that the fault causing the car to misfire had been present at least from July 2021 and probably earlier.

Although the nature of the actual faults with the car were unknown, I was satisfied that the car was faulty and that it had been undrivable since August 2021. Due to the lack of evidence I didn't think I could reasonably conclude the faults were either present or developing at the point of supply so I considered the question of whether the car had been as durable as would have been reasonably expected. And I didn't think a reasonable person would have expected a car of this age and mileage to have developed the number of issues that it had with its engine and electrical systems after only four months and 4,000 miles. Neither of the independent engineers had expressed any view as to the durability of the car nor did the second engineer comment on the same fault codes having been present for six months at the point of their inspection. I didn't think the independent engineer reports adequately addressed how long the car had been faulty for nor the nature of those faults.

I'd also noted that there was no suggestion by either of the independent engineers that the issues with the car were due to any actions of Miss D.

So, I wasn't persuaded by the second independent report that these faults had developed after six months from the agreement's inception nor that Moneybarn wasn't liable for the faults with the car. Taking into account the evidence that had been provided, I thought it was reasonable to say the car wasn't as durable as would be reasonably expected and I didn't think it was of satisfactory condition.

However, in regard to replacing the windscreen wipers and tyre, as these are serviceable items, I thought it wouldn't be unusual for a car that was four years old to require maintenance and repair for these particular parts. I wouldn't be asking Moneybarn to reimburse Miss D for the costs of these replacements.

Under the Consumer Rights Act 2015 there's usually a right of repair for the retailer, however here Miss D had been unable to use the car since August 2021 and had lost confidence in it. As the actual fault/s with the car and the extent of the needed repairs were unknown, I thought, in these circumstances, that it would be fair for Miss D to return the car and for the agreement to be cancelled.

Miss D had been unable to use the car since August 2021 and I understood the car had been SORN. Prior to this, Miss D had been able to use the car and drove around 4,000 miles, and I thought it would be fair that she paid for that use. So, I wouldn't be asking Moneybarn to reimburse all the payments she had made under the agreement. However, I thought it would be fair for Moneybarn to reimburse her any monthly payments she had paid for using the car from August 2021 onwards under the agreement.

I also thought that Miss D had suffered inconvenience and distress dealing with the faulty car. I thought compensation of £250 would be fair taking into account the impact this has had on her.

For the reasons given above I intended to uphold Miss D's complaint and I asked Moneybarn to do the following:

- Arrange for the car to be collected at no cost to Miss D.
- Cancel the conditional sale agreement with nothing further to pay.
- Reimburse Miss D any payments made under the agreement from August 2021 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Reimburse Miss D £210 being the cost she was required to make in respect of the repairs to the air conditioning. Yearly interest at the rate of 8% simple to be added from the date of payment until the date of settlement.
- Pay Miss D £250 compensation for the distress and inconvenience caused by dealing with the faulty car.
- Remove any adverse information about this account from Miss D's credit file.

Miss D agreed with my provisional view and Moneybarn said it had nothing further to add to what it had already provided.

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.

Although neither party has asked me to look at any parts of my provisional decision again, I have reviewed the evidence and the conclusions that I reached. I haven't changed my view and I am upholding Miss D's complaint. I'm still satisfied that the car wasn't as durable as a reasonable person would have expected and it wasn't therefore of a satisfactory quality.

I also haven't changed my view as to the fair and appropriate settlement for Miss D's complaint. I think it's fair for Miss D to return the car and for the agreement to be cancelled with nothing further to pay. As she has been unable to use the car since August 2021 then any payments made by Miss D from that date should be reimbursed together with the costs she had met for the air conditioning.

Finally, Miss D should receive compensation from Moneybarn for the distress and inconvenience caused to her dealing with this faulty car.

Putting things right

I'm asking Moneybarn to do the following:

- Arrange for the car to be collected at no cost to Miss D.
- Cancel the conditional sale agreement with nothing further to pay.
- Reimburse Miss D any payments made under the agreement from August 2021 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Reimburse Miss D £210 being the cost she was required to make in respect of the repairs to the air conditioning. Yearly interest at the rate of 8% simple to be added from the date of payment until the date of settlement.
- Pay Miss D £250 compensation for the distress and inconvenience caused by dealing with the faulty car.
- Remove any adverse information about this account from Miss D's credit file.

My final decision

For the reasons set out above I'm upholding Miss D's complaint. I'm asking Moneybarn No.1 Limited to do the following:

- Arrange for the car to be collected at no cost to Miss D.
- Cancel the conditional sale agreement with nothing further to pay.
- Reimburse Miss D any payments made under the agreement from August 2021 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Reimburse Miss D £210 being the cost she was required to make in respect of the repairs to the air conditioning. Yearly interest at the rate of 8% simple to be added from the date of payment until the date of settlement.
- Pay Miss D £250 compensation for the distress and inconvenience caused by dealing with the faulty car.
- Remove any adverse information about this account from Miss D's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept

or reject my decision before 18 August 2022.

Jocelyn Griffith
Ombudsman