

The complaint

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

What happened

In February 2020 Miss A acquired a used car via a five-year conditional sale agreement. The car was around six years old and had a mileage of about 74,500. She says that shortly after taking possession of the car she noticed that a back wheel was "crabbing" and so she contacted the supplying dealer. Miss A says that the dealer was unwilling to assist.

Miss A says that she took the car to another garage where issues with a wishbone were identified. Miss A says she paid £185 for the repairs and also replaced two of the tyres. Unfortunately, a short time later Miss A was involved in a road traffic accident. Miss A says that the accident was due to the car not braking properly and she had collided with another car.

The car required over £4,000 worth of repairs which were covered by Miss A's insurance though she had to pay the £650 excess. The car was returned to her in April 2020. However only a short afterwards, Miss A says she experienced further problems with the car's braking system. This led to Miss A taking the car to another garage for investigation.

This second garage reported a number of faults with the car's braking system and Miss A paid a total of £666.20 to have the following items repaired; renewal of the rear left brake calliper as it was seized, a brake fluid change, renewal of all the brake pads and renewal of all the brake discs as they were worn below the manufacturer minimum spec.

Miss A says she contacted the dealer only to find them again unwilling to assist. So, in May 2020 she contacted Moneybarn and complained about the state of the car and also raised a concern that the mileage of the vehicle wasn't as had been originally advertised.

At the start of June 2020, Miss A told Moneybarn that the car had required further repairs to the drive shaft and the coil pack which had cost her £450.

Moneybarn made enquiries with an independent engineer about whether the faults with the braking system could have been the cause of the accident. The independent engineer said that the defect with the rear calliper and brake pads should have been picked up by the supplying dealer prior to the car being supplied to Miss A and that the calliper's seizure could have contributed to the accident. But they also said there would be a number of other variables that would need to be taken into account such as the weather and driving style when looking at the cause of the collision. The independent engineer said a brake efficiency defect should be generally evident prior to the point of failure due to noise and an impact on the handbrake's efficiency. The engineer concluded the calliper's seizure wouldn't have been the sole cause of the collision.

Moneybarn sent Miss A's its final response letter to her complaint and partially upheld her complaint. It said that it wasn't able to investigate her concern about the mileage since this

hadn't been included in the advert for the car. Moneybarn said the mileage was shown on the conditional sale agreement and the sales invoice so if there had been an issue for Miss A, it would have expected her to raise that either at the time she had collected the car or shortly afterwards.

Moneybarn said that Miss A, having authorised repairs on the car by other garages, meant that it couldn't now be established if there was any liability for any of the faults with the car as it couldn't be inspected as to when these faults had arisen or what had caused them.

However, in light of the independent engineer's opinion that the brake calliper would have been compromised at the point of supply, Moneybarn said it would reimburse Miss A the cost of the replacement brake calliper and sundries. It reimbursed her the £666.20 she'd spent on repairs in April 2020.

Moneybarn sent Miss A another letter at the end of June 2020 setting out that under the Consumer Rights Act 2015 the car must be of satisfactory condition at the point of supply. It explained that if there were issues with the car then the supplying dealer would have the right to attempt repairs, but by having the car repaired elsewhere then this opportunity had been removed and it wouldn't be possible to now establish if it had any liability.

In July 2020 Miss A spoke with Moneybarn. At that time Miss A said the car had now been repaired but she did raise either rejecting it or possibly exchanging it. Moneybarn sent a further final response letter to Miss A again setting out that due to the repairs that had been carried out, it couldn't establish what the causes of any faults had been.

In August 2020 Miss A says the car started to misfire, making a banging noise and smoking. Miss A says she contacted Moneybarn about this and was told she could now reject the car. However, Moneybarn says that when Miss A called it was to explain there had been a change to her financial circumstances and the agreement exit options were discussed. Moneybarn says Miss A told it that she couldn't afford the exit options.

The following day Miss A returned the car to the supplying dealer. She says the supplying dealer agreed she could reject the car, though they wanted to check if a price for it could be agreed. Miss A provided the supplying dealer with a letter setting out that she wanted to reject the car.

Miss A told Moneybarn she had left the car at the supplying dealership and this was confirmed by the dealership who said she had left it as she said it wasn't fit for purpose and she was rejecting the vehicle in line with the Consumer Credit Act 2015.

A few days later a vehicle condition report was undertaken for the car which recorded that it was in an acceptable condition.

As Miss A's account had fallen into arrears Moneybarn served a default notice on her in September 2020. Miss A didn't clear the arrears and so didn't remedy the breach of contract leading Moneybarn to terminate the agreement and repossess the car. The car was subsequently sold at auction. Moneybarn then applied for a County Court Judgement for the outstanding balance of the agreement and the costs of the court action. This amounted to £15,482 plus interest.

Miss A complained to this service as she didn't agree with the actions taken by Moneybarn. She said the car had been supplied to her with serious faults and that it had been agreed she could reject it.

Our investigator recommended that Miss A's complaint should be partially upheld. She said that although Miss A had experienced faults with the car, by having them repaired by a third party then it wasn't possible to say whether the issues had been due to an inherent fault or wear and tear. As the car was over seven years and had a mileage of 74,500, then wear and tear of the car's components would be reasonably expected.

Our investigator said Miss A hadn't provided any job sheets for the work she said had been undertaken on the car save for one receipt in respect of the car's brakes. And looking at the braking system, our investigator said Moneybarn had agreed to cover the costs of these repairs in light of the conclusion reached by the independent engineer. She said she thought this was fair and she wouldn't ask it to do more than this reimbursement.

While Moneybarn agreed with our investigator's view, Miss A disagreed. She said that Moneybarn had agreed she could reject the car and return it to the dealership. Miss A also said she disagreed with the amount that Moneybarn said was owing under the agreement.

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.

Miss A says that both the dealership and Moneybarn told her she could reject the car and return it due to the faults she had experienced. Moneybarn disagrees with this. Unfortunately, the dealership is now closed, so I'm not able to confirm their position though from the earlier correspondence with Moneybarn it would appear that they wouldn't agree with Miss A.

When looking at this complaint, I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable. And where evidence is missing or contradictory then I have to decide what I think is the most likely thing to have happened.

As the conditional sale agreement entered into by Miss A is a regulated consumer credit agreement this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement and is 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 over seven years old and had a mileage of about 74,500. So, some issues of maintenance and repair would be expected over a reasonable period of time. Miss A says that it was only a short time after she had acquired the car that she needed to raise concerns about the back wheel. She says the dealership wouldn't assist her and so she had to take it to another garage where an issue with the wishbone was found and repairs including the replacement of two tyres were carried out.

Unfortunately, Miss A hasn't provided any evidence about this repair, so I can't reasonably say that the issue arose because of a fault with the car. Problems with a car's wishbone can arise through wear and tear but also accidental damage. Without evidence from the garage that repaired the car I can't fairly say that this was a fault that was either developing or present at the point of supply. I also can't reasonably say that the car wasn't sufficiently durable.

Miss A was then involved in a traffic accident and the car sustained damage. Repairs were covered by Miss A's insurance although she had to pay for the excess. I haven't seen any evidence as to what those repairs entailed though Miss A says the accident was due to the braking system not acting correctly. However, it doesn't appear that when the repair work was undertaken issues with braking system were raised with Miss A.

Miss A says that she was then involved in a second incident when driving the car because the brakes didn't operate correctly. This led her to take the car to another garage for investigation. Following that inspection Miss A paid £666.20 to have repairs undertaken to the braking system. She has provided the invoice for that work.

Following these repairs, and because Miss A says she had a lack of assistance from the supplying dealer, she made her complaint to Moneybarn about the condition of the car. She also says that shortly after this a further £450 worth of repairs were needed for the car's drive shaft and coil pack. Unfortunately, again, Miss A hasn't supplied a job sheet or invoice for this work so I can't be clear what work or why it was carried out on the car.

I think Moneybarn acted fairly in making enquires with an independent engineer about the brake system repairs that had been undertaken. I also note that the engineer concluded that they didn't think this would have been the sole cause of the accident as there would have been other factors in play and the faults with the braking system would have been noticeable. In light of the conclusion of the independent engineer, I think it was reasonable for Moneybarn not to have offered to reimburse Miss A for any of the excess she had to pay under the insurance policy.

However, I've seen that Moneybarn accepted that the calliper would have been compromised at the point of the car's supply to Miss A. And although this would mean the car wasn't of satisfactory quality when it was provided to Miss A this doesn't mean she was entitled to reject it. Under the Consumer Rights Act 2015 there would have been a right to repair. As Miss A had already arranged this, then it was fair that Moneybarn offered to reimburse these repairs to her. I've seen this reimbursement was made to Miss A in June 2020.

I also think that Moneybarn's response in respect of the other earlier repairs was fair. The car having been repaired, couldn't now be inspected to ascertain the cause of those previous matters and so it wasn't possible to decide if Moneybarn had any liability for those issues or not. As set out above, due to the age and mileage of the car, it would be reasonable to expect repair and maintenance issues to arise. Just because a fault developed with the car wouldn't necessarily mean that Moneybarn would be liable for those repairs.

Due to the lack of evidence as to what the repairs were or why they were carried out together with the inability to now investigate the faults, I think Moneybarn acted fairly in saying it couldn't assist with those matters. I have seen enough evidence to say that other than braking system there were faults with the car which would make it of unsatisfactory quality.

Looking at the notes made by Moneybarn in respect of her account I've seen she

contacted it in July 2020. She raised the possibility of rejecting the car, but I haven't seen any evidence that Moneybarn agreed to this. It sent her a further letter setting out again that it wasn't able to establish liability for any faults due to the repairs that had already been conducted.

The notes also set out that Miss A contacted Moneybarn the following month, this was to report a change in her financial circumstances and that wished to discuss her exit options. Again, there is no evidence Moneybarn agreed that Miss A could reject the car.

Miss A says she returned the car to the dealership because it developed further faults. She provided a letter stating she was rejecting the vehicle because it wasn't fit for purpose. The dealership informed Moneybarn of this but they didn't say they had agreed she could take this action. While at the dealership the car was inspected and no faults with it were found.

I appreciate Miss A feels very strongly that it was agreed she could reject the car but I'm afraid this isn't supported by the evidence I've seen. Moneybarn had been clear it would reimburse for the braking system repairs but not any of the other repairs. It has not accepted that when the car was handed back to the dealer that it was faulty. Similarly, I haven't seen any evidence that would indicate the dealership had agreed to take the car back. I therefore think it's more likely than not that Miss A wasn't told she could reject the car and return it.

Looking at the evidence, I think Moneybarn's offer to reimburse Miss A for the cost of the repairs to the car's braking system was fair and I'm not asking it to reimburse any of the other repairs that were undertaken.

As Miss A had left the car at the dealership and stopped paying under the agreement, I think Moneybarn acted reasonably in terminating the agreement after the expiry of the default notice. I've seen Miss A disputes the amount Moneybarn says is outstanding, but this is now the subject of County Court proceedings. And in light of that it will be a matter for the court to decide what is due under this account.

Although our investigator had partially upheld Miss A's complaint this was only on the basis that Moneybarn hadn't reimbursed her for the repairs on the braking system. As I've seen that Moneybarn had in fact paid Miss A this amount prior to her making the complaint to this service then, having reached the same overall conclusion as our investigator, I'm not upholding her complaint.

My final decision

For the reasons set out above and, although I appreciate this will be of disappointment to Miss A, I'm not upholding her complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 27 September 2022.

Jocelyn Griffith
Ombudsman