

The complaint

Miss B complains AutoMoney Limited supplied her with a car that wasn't of satisfactory quality under a hire purchase agreement. She also complains the agreement was unaffordable for her.

What happened

In January 2022, Miss B acquired a used car using a hire purchase agreement from AutoMoney. The cash price of the car was £9,143. Miss B part-exchanged her existing car and the proceeds of that were used as a deposit (£937.50). She was required to pay an initial repayment of £281.48 followed by 58 monthly repayments of £232.48. There was an optional final payment of £331.48 if she wanted to purchase the car at the end of the agreement.

In July 2022, the car broke down while Miss B was driving it. The car was recovered to a local garage. Miss B contacted AutoMoney to arrange repairs to the car. AutoMoney arranged an inspection by a qualified third party which concluded that there was broken hose which caused a coolant leak. It said that coolant loss ought to have been evident to anyone regularly checking coolant levels and it appeared that rather than being topped up with more coolant, plain water had been used for hundreds or possibly a few thousand miles.

AutoMoney therefore didn't agree to assist Miss B with the costs of repairs as she had driven the car almost 6,000 miles. It concluded that the fault was therefore not present at the point of supply and had been caused by lack of proper maintenance.

Miss B complained to AutoMoney and wanted to hand the car back and end the hire purchase agreement. She also said that she could no longer afford the monthly repayments because of a change in her circumstances as a result of not having a working car. She said that had appropriate affordability checks been completed at the outset AutoMoney wouldn't have lent to her.

AutoMoney didn't uphold her complaint. It said that the faults with the car weren't its responsibility as they had developed after the point of supply and were due to Miss B not maintaining the coolant levels in the car. It said that it had carried out appropriate checks before lending which demonstrated Miss B could afford the payments at the time of the application.

Our investigator didn't recommend the complaint be upheld. She didn't think the car was of unsatisfactory quality when it was supplied to Miss B so she didn't think it would be reasonable to require AutoMoney to allow rejection of the car or to say it should pay for any repairs. She didn't think AutoMoney had made an unfair lending decision at the time it agreed to enter into the hire purchase agreement with Miss B.

Miss B didn't agree. In summary, she said the car had been serviced prior to her taking delivery of it, she had also had a service done which checked the oil levels only a few days before the car broke down. She said there was nothing further she could have done to prevent the issue and it was unfair that she had to cover the costs of the repairs.

The complaint has been passed to me for 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.

The lending decision

In deciding whether AutoMoney acted fairly and reasonably in lending to Miss B, I've had in mind the rules and guidance within the Consumer Credit Sourcebook (known as CONC) section of the regulator's handbook.

Prior to agreeing to the finance, AutoMoney were required to ensure the agreement would be affordable to Miss B. It had to completed proportionate checks to satisfy itself of this. There isn't a set list of checks AutoMoney had to complete, but in deciding what was reasonable and proportionate it needed to consider things such as (but not limited to): the amount borrowed, the size of the repayment, the total repayable, the term and Miss B's circumstances.

Miss B declared a monthly income of £1,200 on her application. AutoMoney says information provided by a credit reference agency confirmed this to be broadly accurate. The credit check AutoMoney completed showed that Miss B had some historic defaults, the last of which was around nineteen months prior to the application and she still had outstanding balances on those to repay. She only had three active accounts showing, two current accounts and a hire purchase agreement which was to be settled with the part-exchange into this new agreement. So, this indicated that other than repaying those defaulted debts, Miss B would have no other credit commitments except for the AutoMoney hire purchase agreement.

It's arguable that AutoMoney's affordability checks might have gone far enough. But given the historic payment difficulties and Miss B's relatively modest monthly income compared to the size and term of the loan, it could also be argued that AutoMoney should have done more. However, regardless of which it is, I don't think it makes a difference to the outcome I've reached. This is because even if AutoMoney had gone as far as to verify Miss B's income and expenditure in greater detail, I haven't been presented with anything to persuade me that she couldn't reasonably afford the repayments at the time.

The bank statements Miss B has provided to us indicate that the loan appeared to be affordable, so I can't see that AutoMoney would ever have likely concluded otherwise no matter how thorough their checks were. I therefore don't think AutoMoney made an unfair lending decision.

I understand Miss B's circumstances have since changed and she can no longer afford the repayments now. She would need to discuss her circumstances with AutoMoney and the options available to her.

The quality of the car

Under the hire purchase agreement AutoMoney is also the supplier of the car and is therefore responsible for a complaint about its quality. The Consumer Rights Act 2015 ("CRA") implies a term into any contract to supply goods that those goods will be of satisfactory quality. Satisfactory is taken to be what a reasonable person would expect, taking into account any description of the goods, the price and all other relevant circumstances. I think in this case those relevant circumstances include – but aren't limited

to – the age and mileage of the car.

The car that was supplied to Miss B was nearly eight years old and had travelled almost 80,000 miles. The cash price of the car was around £9,000. So, what would be considered satisfactory would be very different to a brand new car.

The car would however still need to be free from faults, but I think there is a reasonable expectation that certain components in the car are likely to be worn and in need of replacement sooner than on a brand new car. There might also be a reasonable expectation that more regular maintenance might be required and that some components would be more prone to failure as they were nearer the end of their expected life cycle.

Miss B says that the car was serviced just before she took possession of it and that she took it to a garage for another service a few days before it broke down. She says the garage that serviced it a few days before had checked the oil and coolant levels. While the invoice for that service doesn't show coolant levels were checked, the report by the roadside mechanic that initially assisted Miss B following the breakdown noted that coolant levels were ok. This initially appears to be inconsistent with what the independent inspection concluded. However, I note that the roadside mechanic also says it needed to top up the expansion tank (which they did with water) because it was empty. This suggests the levels might not have been ok and means I've placed less reliance on the content of that report.

This means the evidence isn't entirely clear and consistent as to the exact cause of the fault. However, what is clear is that the engine won't start due to damage caused to a head gasket. The independent inspection concludes this damage was caused because of the issue with a leaking hose causing coolant loss. From everything I've seen, I'm persuaded that's most likely to be the case. The issue therefore is whether AutoMoney is responsible for putting that right.

From everything I've seen it appears the fault materialised some time after the car was supplied rather than it being something that was already occurring or developing when Miss B took possession of it. I say this because there has been no persuasive evidence provided to indicate that she would have been able to drive almost 6,000 miles while this fault was developing.

I've also not seen anything to persuade me that a fault of this nature is unexpected or unusual for a car of this age and mileage. The hose which burst would understandably have worn over time and while very unfortunate for Miss B that it happened so soon after she took possession of the car, it appears to be an issue related to normal wear and tear associated with age and use, rather than any inherent fault with the car.

I accept that Miss B likely did all that she reasonably could to maintain the car and I accept that no warning lights told her there was a coolant leak. However, despite this, the only way I could reasonably direct AutoMoney to cover the repair costs is if the car was of unsatisfactory quality when it was supplied to her. Just because the car has developed a fault some time later, that doesn't automatically mean it was of unsatisfactory quality when supplied. In this specific case, the faults appear to have occurred due to age related wear and tear to certain components rather than due to any defect with the car. It is unfortunate that component caused further damage to other parts of the car, but this isn't something I could reasonably hold AutoMoney responsible for.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 18 May 2023.

Tero Hiltunen
Ombudsman