

The complaint

Miss K complains about a defective car she acquired under a conditional sale agreement with Moneybarn No. 1 Limited.

What happened

In April 2022 Miss K bought a used car under a five year conditional sale agreement with Moneybarn. She made an advance payment of £5,099. At the time, the car was about five and a half years old and the mileage was 72,387 miles.

A couple of weeks later, Miss K told the dealer that there was a leak which was allowing water into the car. After getting nowhere with the dealer, she complained to Moneybarn in July. Moneybarn commissioned an inspection by an independent expert, which was carried out in September 2022. The expert reported that there was indeed a significant leak, and also some fault codes, but he thought that these defects had not been developing at the point of sale. For that reason, Moneybarn told her it was not liable for them.

Miss K referred this complaint to our service. Our investigator decided that the leak probably had been developing when Miss K bought the car, notwithstanding what the report said. This was because the fault had appeared so soon afterwards. She also took into account the cash price of the car (£24,399), and said it wasn't reasonable for a car at that price to develop faults so soon. She recommended that Miss K be allowed to end the agreement and reject the car.

Moneybarn accepted that the car had probably been faulty when Miss K acquired it, and that it was liable. But it did not agree with the investigator's proposed solution. Moneybarn argued that the dealer should be allowed to attempt to repair the car first. The investigator did not agree, because the damage caused by the water ingress was by now extensive, and she said it was unlikely that the car could be restored to its original condition when Miss K first had it. So this case has been referred to me for an ombudsman's 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.

As it is no longer in dispute that Moneybarn is liable for the defects, I will confine myself to considering what would be fair redress.

Under section 24(5)(a) of the Consumer Rights Act 2015, when goods sold to a consumer are faulty, the seller is usually allowed one chance to repair or replace them first, before the consumer is allowed to reject them. However, there is an exception to that rule in section 24(5)(c), which says that the consumer may still reject the goods without the seller being allowed to try and repair them, if the consumer has previously asked the seller to repair them but the seller has failed to do so "within a reasonable time and without significant inconvenience to the consumer."

In deciding how long is a reasonable time, I have taken into account the fact that a leak which allows water into the interior of a car will inevitably lead to more and more damage over time. I have seen videos of the water in the car, and Miss K has described mould and an unpleasant smell, which have deterred her from driving it while her complaint was being dealt with. As I've said, the dealer did not agree to repair the car right away, and I think that too much time has passed since for it to be realistic to expect the car to be restored to a reasonable state now (when compared with the car Miss K saw when she chose it in April 2022).

So on balance, I am persuaded that rejecting the car and ending the agreement would be fair redress in this case. I will require Moneybarn to follow the investigator's recommendations.

My final decision

My decision is that I uphold this complaint. I order Moneybarn No. 1 Limited to:

- End the conditional sale agreement with nothing further to pay;
- Collect the car at no further cost to Miss K (if this has not been done already);
- Refund Miss K's advance payment of £5,099 in full;
- Refund all of Miss K's monthly rental payments in the period from July 2022 to the date of settlement;
- Pay simple interest on each of these refunds at the rate of 8% a year from the dates on which the payments were made to the date of settlement;
- Pay Miss K £250 for her inconvenience;
- Remove from Miss K's credit file any adverse information relating to the conditional sale agreement.

Moneybarn No. 1 Limited must pay the compensation within 28 days of the date on which we tell it Miss K has accepted my final decision. If it pays later than this, then it must also pay simple interest on the compensation at 8% a year from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 14 April 2023.

Richard Wood
Ombudsman