

The complaint

Mr R complains Moneybarn No. 1 Limited (Moneybarn) supplied him with a car that he doesn't believe was of satisfactory quality. He believes the agreement was mis-represented to him and he's unhappy they wouldn't allow him to reject the car and cancel the agreement.

What happened

In March 2022, Mr R entered into a 58 month conditional sale agreement for a used car. The car cost £16,500, it was first registered in 2015 and it had travelled in excess of 120,000 miles. He was required to pay monthly instalments of £526.

Shortly after acquiring the car, Mr R reported issues with it. Throughout the history of the complaint, he complained about a number of issues including but not limited to:

- The timing belt and water pump needed to be replaced;
- Issues with the paintwork including poor respray to the car's rear. He was told it would be machine polished when supplied;
- The steering 'wobbles' when driving at high speeds;
- The wheels were mis-aligned;
- The tailgate wasn't secured correctly as it only had one bracket;
- There was a loud noise coming from the heaters;
- The roof lining was dirty;
- There was a rip in the centre console with black tape to cover it up;
- The car's mileage at collection was over 128,000 not 125,000 as advertised;
- The car was advertised with full service history but that wasn't the case and that had contributed to the car's faults.
- Moneybarn delayed in responding to his complaint and ignored his request to reject the car within the cooling off period.

Mr R said he paid £130 for repairs to the wheels which he wanted to be compensated for. He said he wasn't willing for any further repairs and he wanted to reject the car and be refunded for the payments he made towards the agreement. He said he stopped driving the car around July 2022 as he had lost confidence in it.

Moneybarn said the dealership had agreed to contribute towards the cost of repairing the timing belt and water pump. They said there was no evidence the car had been advertised stating these parts had been replaced. Without an independent inspection, they were unable to determine what faults were present (if any) and who would be liable for them. They said the other issues were cosmetic related and would've formed a part of Mr R's due diligence checks before acquiring the car. Mr R is able to withdraw from the agreement but he must pay the credit and accrued interest before he takes ownership of the car. Lastly for the delays in answering the complaint, they credited his account with £100 to recognise the trouble and upset caused.

Unhappy with their response, the complaint was referred to our service. Our investigator recommended the complaint wasn't upheld. He concluded there was insufficient evidence the agreement had been misrepresented and although there may have been fault with the wheels, that didn't mean it wasn't of satisfactory quality given the age and mileage of the car. He said there was not enough evidence of the other faults. He also said there was no 'cooling off period' term which allowed Mr R to return the car at no cost to him.

The car was collected by Moneybarn in November 2022. They said the car was at risk as Mr R would be travelling abroad for work and he had placed Moneybarn as the registered keeper which would likely invalidate the car insurance policy.

As an agreement couldn't be reached, the complaint has been referred 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 decided not to uphold the complaint, I'll explain why.

Mr R acquired a car under a regulated credit agreement. Moneybarn was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

Misrepresentation

Mr R says the car was advertised with a full service history and he would've expected the water pump and timing belt to have been replaced prior to him acquiring it. He said had he known that didn't happen, he wouldn't have entered into the agreement. He's provided evidence the car wasn't serviced between 74,000 and 128,600 miles. He complains the agreement was mis-represented to him.

Under section 56 of The Consumer Credit Act 1974 (CCA), explains that finance providers are liable for what they say and for what is said by a broker before the consumer takes out the credit agreement. So I'm satisfied I can consider the statements made by the dealership about the car.

A misrepresentation is when:

1. A false statement of fact has been made; *and*
2. This false statement induces a customer to buy a car.

In this case, neither Mr R nor Moneybarn have provided a copy of the advert selling the car. Therefore I'm unable to confirm whether it was advertised with a full service history. On that basis, I can't reasonably say there's been a false statement of fact.

I also acknowledge Mr R's concerns that the car was advertised around 125,000 miles but when he collected it, it had over 128,000 miles. In the absence of the advert, I've referred to the agreement and the dealership invoice which both state the car had travelled around 125,000 miles. On balance, I believe it's most likely the car was advertised at that mileage. The car was serviced just before Mr R took possession of it and the service book shows the mileage as over 128,600 miles. The car's MOT carried out around that time, also confirms the same. Based on this evidence, I'm persuaded when the car was supplied to Mr R, it had travelled over 128,600 miles, not 125,000 so I find there was a false statement of fact about the car's mileage.

Although I find that to be the case, I must also be satisfied it induced him to buy the car for there to be a misrepresentation. However I'm not convinced it did. I say that because there isn't a huge difference in mileage, around 3,600. Mr R also had the opportunity to inspect the car before he took delivery of it therefore it's fair to say he would've seen the correct mileage.

Although I don't find there's been a mis-representation, I've gone on to consider whether the car was mis-described.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, the goods must be as described. For the reasons explained above relating to the difference in mileage I don't find it was meaning there was a breach of contract.

However I don't find Moneybarn needs to do anything to put things right as I'm not satisfied it caused detriment or material loss to Mr R. This is because having searched valuations of the car in March 2022 (which is when Mr R entered into the agreement), I find there was minimal difference (around £200/£300) between the car having covered 125,000 or 128,600 miles. Therefore I don't find asking Moneybarn to allow rejection on that basis would be fair or proportionate.

Faults with the car

Mr R has complained about a number of issues with the timing belt, water pump, steering, wheels, tailgate, etc.

The CRA says under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". The goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of supply, the car's history, safety, durability, etc.

Mr R was supplied with a used car that was over six years old and had travelled over 128,600 miles. For used cars, it's reasonable to expect parts may already have suffered notable wear and tear when compared to a new car or one that is less travelled.

Mr R has provided evidence that shortly after acquiring the car, repairs were carried out on the wheels (tracking and balancing). This demonstrates there was a fault but although I find that to be the case, I'm not persuaded that meant the car was of unsatisfactory quality. I say this because the car was several years old and covered a significant amount of miles at supply so it's reasonable to expect some parts may need repairing or fixing sooner than others.

In respect of the other faults mentioned, I haven't been presented with any documentary evidence to show they exist such as diagnostic reports, repair estimates, pictures or videos. Nor is there any evidence to indicate whether they were present or developing at supply. I note Moneybarn offered to arrange for an independent inspection however Mr R didn't agree for this to happen. That's unfortunate as it would've been beneficial for a qualified expert to determine what faults existed and whether in their professional opinion, they were present or developing at supply. I consider Moneybarn's offer to arrange such an inspection was a reasonable course of action so it's a shame it didn't happen.

In the absence of an inspection report or any other evidence, I find there's insufficient evidence of the issues reported by Mr R. So it follows I can't reasonably say the car wasn't of satisfactory quality at supply, on balance I find it was given its age and mileage. Therefore I won't be asking Moneybarn to allow rejection of the car.

Even though there was no clear evidence of the issues with the timing belt and water pump, I note the dealership said they were willing to arrange repairs at no cost to Mr R if it was returned to them or alternatively they would pay 50% if it was taken to a dealer local to Mr R. Later, Moneybarn told our service they agreed to pay the remaining 50% if it was fixed locally. Given the lack of evidence to support Mr R's assertions, I can't say this offer wasn't a fair one.

Withdrawing from the agreement

Mr R says due to the issues with the car, he asked on more than one occasion to reject it and he said he done so within the 14 day cooling off period.

The CRA says consumers have a short term right to reject the car (30 days) if it's of unsatisfactory quality. For the reasons explained above, I find the car was of satisfactory quality therefore this right wouldn't apply.

The relevant law that applies to the cancellation of credit agreements such as conditional sale agreements is found within section 66 of the CCA. There are many parts that apply but the most relevant says consumers can withdraw from the credit agreement within 14 days if certain conditions are satisfied. It says:

"(9)Where the debtor withdraws from an agreement under this section—

(a)the debtor must repay to the creditor any credit provided and the interest accrued on it (at the rate provided for under the agreement), but

(b)the debtor is not liable to pay to the creditor any compensation, fees or charges except any non-returnable charges paid by the creditor to a public administrative body".

In this case, the agreement says the following in regard to withdrawing from the agreement:
"Should you decide to go ahead with the finance agreement, you will have the right to withdraw from the agreement without giving any reason before the end of 14 days beginning with the day after the day you are informed by us in writing that the agreement has been signed by us. You may exercise this right in person or by informing us in writing".

It goes on to say:

"If you withdraw from the agreement you must repay the amount of credit and any accrued interest on that amount to us without delay and in any event within 30 days after giving notice of withdrawal (interest accrues from the date the credit was provided until you repay) Once you have paid the amount of credit and any accrued interest, title (ownership) in the vehicle will pass to you. As you will not own the vehicle until the final payment is made, you cannot sell the vehicle in order to pay off the finance on the agreement or withdraw from the agreement".

I find Moneybarn's terms is in line with the CCA. I wish to stress withdrawing from the finance agreement doesn't mean Mr R is withdrawing from the contract to acquire the car. The CCA and Moneybarn's terms make it clear he would remain liable for this. Moneybarn

had already paid for the car so to cancel the agreement, Mr R would be required to pay this back plus any accrued interest.

Based on Moneybarn's contact notes and the emails I've seen, I accept Mr R asked to withdraw from the agreement within 14 days. The above term allows him to do so but as explained above, he would still be liable to pay costs. I must emphasise, there's nothing in the terms which permit Mr R to simply return the car at no cost to him. In response to the complaint, Moneybarn made him aware of the same so I can't say they did anything wrong but I would've expected them to have made this clear and explained the same sooner.

Lastly, I'm aware Moneybarn credited the account by £100 in recognition of the trouble and upset caused by the delays in answering the complaint. As mentioned by the investigator, the handling of a complaint isn't a regulated activity that our service can look into so it wouldn't be appropriate for me to comment on the same.

Summary

Taking everything into account, I'm satisfied the car was of satisfactory quality when supplied and the agreement wasn't misrepresented. Although the car wasn't as described (due to the mileage), I don't find there was a material loss to Mr R. Lastly, I find Moneybarn acted fairly and in line with their terms in informing Mr R about withdrawing from the agreement.

My final decision

For the reasons set out above, I've decided not to uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 March 2023.

Simona Reese
Ombudsman