

The complaint

Miss M is unhappy that a car supplied to her under a conditional sale agreement with Moneybarn No.1 Limited was of an unsatisfactory quality.

What happened

On 19 October 2021, Miss M was supplied with a new car through a conditional sale agreement with Moneybarn. She paid an advance payment of £1,000, and the agreement was for £13,995 over 60 months; with monthly repayments of £439.25. At the time of supply, the car was around five years and nine months old.

Both the agreement and sales invoice show that the car had done 115,000 miles. However, these are incorrect as the MOT record for 27 July 2021 (almost three months before the car was supplied to Miss M) shows the car had done 118,416 miles.

Within a week of being supplied with the car, Miss M contacted the supplying dealership and said the car had two slow punctures, the screen washer didn't work, the V5 hadn't been supplied, and the car hadn't been taxed. And she asked to reject the car. However, she instead agreed to let the dealership fix the problems.

In January 2022, Miss M told the broker who arranged the finance about further issues with the car. She told the broker she would sort this out and send them the bill. The broker didn't respond. Miss M had further problems with the car in March 2022, as it was losing power and the accelerator was sticking. And she had the exhaust and the battery replaced. However, the car lost power again on June 2022 when it had done 125,936 miles. She was told there was an issue with the EGR valve and timing chain and, after unsuccessfully trying to contact the broker and dealership about this, Miss M raised a complaint with Moneybarn.

Moneybarn arranged for an independent engineer to inspect the car. And the engineer said there was an oil leak, fault codes associated with the EGR valve, the engine management light was illuminated, and the car couldn't be driven due to a timing chain rattle. However, the engineer didn't think these issues were present when the car was supplied to Miss M. So, Moneybarn didn't uphold her complaint.

Miss M wasn't happy with this, and she brought her complaint to us for investigation. She said that she'd been without use of the car since June 2022, while still paying for it; that no courtesy car had been provided, that the warranty company won't cover the work, and that she was reliant upon taxis to get to work. She thought the car was unsafe when it was supplied to her, which had meant that she's been unable to attend medical appointments, and this has had a considerable impact on her finances and mental health.

Our investigator said there was a fault with the car. But she said the initial problems had been fixed by the supplying dealership, and the problems that occurred in January 2022 were repaired by Miss M. So, Moneybarn weren't given any opportunity to inspect the car to determine whether these issues were present at the point of supply.

The investigator also said that the problems with the EGR valve and timing chain had happened after Miss M had had the car for a number of months. And she thought that, if the issues had been present or developing when the car was supplied, then they would've been obvious sooner and would've been brought to Miss M's attention when she had the car repaired in March 2022. Because of this, she thought the issues with the car were due to wear and tear and didn't think Moneybarn needed to do anything more.

Finally, with regards to the tax and warranty, the investigator said she'd seen no evidence to show that the car would be supplied taxed and/or with a warranty. And, as Miss M hadn't already raised these issues with Moneybarn, she would need to do so before we could consider this complaint.

Miss M didn't agree with the investigator. She provided a copy of the warranty and said the warranty company won't help her, the dealership hasn't dealt with her complaint about this, and Moneybarn have also said they aren't able to help. The investigator explained that this isn't something we can look into as the dealership aren't a regulated company, and the warranty isn't a regulated agreement. However, the investigator said that the Motor Ombudsman may be able to consider this.

Because Miss M didn't agree with the investigator, this matter has been passed to me to make 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss M was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability.

The CRA also says that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it implies that the fault was present when the car was supplied, unless Moneybarn can show otherwise. But, where a fault is identified after the first six months, it implies that it's for Miss M to show that it was present when the car was supplied. So, if I thought the car was faulty when Miss M took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

I haven't seen anything to show me what the mileage was on the car when it was supplied to Miss M. As the mileage showing on the MOT was recorded around three months before the car was supplied, I can't rely on the MOT mileage as being the supply mileage.

Given the age of the car, and the mileage it had done up to the point of the MOT in late July 2021, this works out at an average of 1,800 miles per month. Public records show that the car was advertised for sale in early September 2021, so it's reasonable to assume that the car was being used by the previous owner to this point (at an average of 1,800 miles a month) and was then not used afterwards. So, I'm satisfied it's reasonable to conclude that the supply mileage would have been around 121,500 miles.

The MOT record also shows that the car had initially failed a MOT in July 2021. It then had two replacement tyres fitted, and work done on the suspension, before it then passed the MOT. At the time the car passed the MOT, there were no outstanding advisories.

Miss M contacted the dealership about the car by text message on 8 November 2021, complaining that *"its got a wrong spare key and the screenwash doesn't work and it's got a slow puncture."* She also said *"I am well within my rights to have a full refund and you collect the car. Let me know a Day and time you will be collecting."*

Subsequent text conversations indicated that Miss M wanted to return and reject the car. However, in an email dated 12 November 2021 she confirmed *"I've decided to let the dealership fix the car."*

The CRA allows Miss M to reject the car within the first 30 days if it's of an unsatisfactory quality. While I appreciate that Miss M would've found the situation to be frustrating, I'm not convinced that an issue with the screenwash, two slow punctures, and a missing spare key made the car of an unsatisfactory quality given its age and mileage. But, even if it did, Miss M accepted a repair and there's no evidence that these faults reoccurred.

Miss M sent a further text to the dealership on 8 January 2022, complaining that she still hadn't received a copy of the warranty, that the spare key was still missing, the car vibrated at 70mph, and the brakes were grinding. After receiving no reply, she arranged for repairs herself. The car was inspected, and she was charged around £800 for a replacement exhaust (including actuator and clamp), and battery.

Again, I appreciate Miss M's frustration at the situation. But exhausts and batteries are parts that deteriorate with age and usage and require replacement over the lifetime of a vehicle. Again, given the age and mileage of the car when it was supplied, and in the absence of any other evidence, I'm satisfied it's more likely than not that these parts failed due to wear and tear. So would form part of a regular maintenance schedule.

I've also noted that, following the inspection of the car on 31 March 2022, there is no mention of any issues with either the timing chain or EGR.

The car broke down in June 2022. An inspection on the car on 24 June 2022, when it had travelled 125,936 miles (likely around 4,500 miles after it was supplied to Miss M), showed substantial wear to the brakes and tyres. It also noted *"timing chain dangerously worn. Requires new egr and timing chain."*

I've seen a copy of the report by the independent engineer, for an inspection that took place on 9 September 2022. In this report, the engineer confirmed *"the timing chain displayed rattling noises on start up and also the engine management light was illuminated ... however the back up button [on the centre screen] did not function and the screen could not be scrolled through."* The engineer also confirmed *"there were signs of oil leakage between the engine and gearbox joint. The oil appeared to be consistent with crankshaft rear main oil seal leakage"* and that there were fault codes present relating to the EGR.

However, the engineer concluded that *“we would consider that all faults found would not have been developing or present at purchase ... the faults have occurred since purchase due to in service wear and deterioration.”* The engineer also confirmed that their duty was to the courts, and not to whomever instructed and/or paid for the report. Given this, I'm satisfied the report is reasonable to rely upon.

The issues the engineer has raised – timing chain, EGR, and oil seals – are also items that will require replacement over the lifetime of the car, as part of a regular maintenance schedule. And, especially with an item like the timing chain, I'd expect this to require replacement after 120,000 miles. Given this, the independent engineer's comments, and the fact there was no indication of the timing chain, EGR, or oil seal problems when the car was inspected and repaired in March 2022, I'm satisfied that the car was of a satisfactory quality when it was supplied to Miss M, and the current issues with the car have developed since supply.

Turning to the warranty and the tax, the warranty wasn't supplied by Moneybarn, nor did it form part of the finance agreement. Due to road tax having changed to being electronic, it's more unusual for used cars to be sold taxed. And I haven't seen anything to show me that the car was advertised as being sold with road tax.

So, as a result of all the above, I won't be asking Moneybarn to do anything more.

My final decision

For the reasons explained, I don't uphold Miss M's complaint about Moneybarn No.1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 26 May 2023.

Andrew Burford
Ombudsman