

The complaint

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

Miss B is being represented in this complaint by Mr W. However, for ease of reference, I'll refer to any actions or comments by either Miss B or Mr W as being by Miss B.

What happened

On 5 May 2022, Miss B was supplied with a used car through a conditional sale agreement with Moneybarn. The agreement was for £21,355 over 60 months; with monthly repayments of £544.41. At the time the car was just over six and a half years old and had done 91,060 miles.

Miss B says that, within a week of collecting the car, the engine management light (EML) came on. She advised the broker who'd arranged the finance, and they arranged for the supplying dealership to inspect the car. The dealership identified and fixed issues with the glow plugs and EGR valve, and the car was returned to Miss B.

Miss B says that, two days after the car was returned to her, the EML illuminated again. And she says she asked to reject the car on 23 May 2022. However, the broker asked that the dealership be given the opportunity to fix the new issue, and Miss B agreed.

The car was returned to Miss B in late-June 2022 and she says the EML illuminated within 20 miles. After asking the broker to reject the car, and the broker refusing this, Miss B complained to Moneybarn, raising the following issues:

- the EML came on within the first six days, and diagnostics showed it was a NoX sensor issue;
- the car was making a noise and using more fuel than it should;
- there was an intermittent smart key warning on the dashboard;
- the battery cover was missing screws;
- there was a diesel exhaust fluid (AdBlue) warning on the dashboard;
- there was 'white stuff' all over the engine;
- the car kept dropping into first gear;
- a mudflap was held on by cable ties; and
- there was an unsecured light that was wobbling.

The dealership repaired the car and then Moneybarn arranged for an independent engineer to inspect it. And the engineer said no faults were present, and the car was as expected for its age and mileage. As such, Moneybarn said Miss B couldn't reject the car.

Miss B wasn't happy with Moneybarn's response, and she brought her complaint to us for investigation. During the investigation, Miss B also raised additional issues with the car's DPF, turbo, tyre pressure sensors, oil light, and with noise and smoke coming from the car.

Our investigator said there were initially some faults with the car, but these had been repaired. And, while Miss B may've asked to reject the car within the first 30-days, she accepted a repair instead. Additionally, there was nothing to show that these faults had reoccurred. A second independent engineer's report took place on 25 January 2023, and the engineer identified an issue with the DPF. However, the engineer thought this developed after the car had been supplied to Miss B.

Because of this, the investigator didn't think that Miss B should have the right of rejection.

Miss B didn't agree with the investigator. She said that she was coerced into taking a repair, instead of being allowed to reject the car, and that she can supply recordings of phone calls to show this was the case. However, despite being given the opportunity to provide these call recordings, neither Miss B nor Mr W has done so. As such, 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 B was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate 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. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed 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, the CRA implies that it's for Miss B to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss B 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.

Based on the evidence I've seen; it's not disputed that the car developed some faults shortly after it was supplied to Miss B. Miss B has provided a copy of a text message she sent on 23 May 2022, which says *"I have taken the car in and they have found quite a lot of faults. I love the car but given all of the faults I think I'm best to return it within the 14 days as they said when these things start to go wrong they are very expensive and I have only had it a week when the light came on."*

Given this, I'm satisfied that, at the point this message was sent, Miss B was considering rejecting the car, although she didn't specifically say she wanted to do this, only that she was thinking about it. And this was within the 30-days the CRA allows for a short-term right to reject. But, for this right to reject to be valid, the faults need to mean that the car was of an unsatisfactory quality when supplied.

Regardless of this, it's also not disputed that Miss B authorised repairs on the car instead of rejection. While she's now saying that she was coerced into accepting repairs, and that she has call recordings that show this to be the case, these have not been supplied. And I've seen no other evidence of any coercion. As such, based on what I've seen, I'm not satisfied that Miss B was refused her short-term right to reject and she was in any way forced to accept repairs instead.

While the evidence isn't clear on this, it implies that the car went in for repair on two or three occasions between May and July 2022, during which time a number of issues were repaired. It's my understanding that, for the period of time Miss B was without use of the car or a courtesy car while these repairs were taking place, her alternative transport costs were covered and refunded to her. In addition to this, when Miss B was provided with a courtesy car, she travelled almost 3,000 miles. The usual excess mileage charge associated with this was also paid by the broker. Given the circumstances, I'm satisfied this was reasonable.

As part of the evidence, I've been provided with a diagnostic report for a 2016 model of the same make of car supplied to Miss B, with 154,268 miles on the clock, and dated 6 July 2022. However, Miss B's car was first registered in 2015, and (in early July 2022) had done less than 100,000 miles. As such, I'm not satisfied that this diagnostic report related to the car supplied to Miss B.

I've seen a copy of an independent engineer's report dated 18 August 2022. At the time of this report the car had done 97,195 miles – 6,135 miles more than when it was supplied to Miss B around three months earlier.

The engineer said the supplying dealership had rectified all the issues Miss B had raised, detailing what had been done. The engineer also said that, during a road test, *"the vehicle handled and performed in a satisfactory manner, steering the chosen path of travel correctly and was free from any abnormal noise or vibration. During the road test there was no evidence of any excessive smoke from the exhaust, undue abnormal noises from the transmission and no evidence of overheating. With final checks revealing no evidence of coolant leaks in and around the engine bay, or evidence of major oil leakage around the engine bay or on the underside of the vehicle."*

In conclusion, the engineer confirmed that none of the issues Miss B had raised were still present and that the car was *"commensurate for a vehicle of its age and mileage."*

I haven't seen any evidence that the issues Miss B had raised before this inspection took place have subsequently reoccurred. As such, I'm also satisfied that the repairs were successful. And, where a successful repair has taken place, the CRA doesn't allow for a subsequent right of rejection for the same issue.

I've been provided with a report from a manufacturer's main dealer dated 6 January 2023. This says *"carried out investigation into eml light on dash, found the car in a dismantled state, found turbos not connected, dpf has a hole in, car has been worked by another garage and [manufacturer] will not work off the back of another garage."*

As the independent engineer's report of 18 August 2022 makes no reference to the turbos being disconnected, or that the EML was still illuminated, it's reasonable for me to conclude that the work referred to in the report of 6 January 2023 took place after the report of 18 August 2022, and was therefore not present when the car was supplied to Miss B on 5 May 2022.

I've also seen a copy of the independent engineer's report for the inspection that took place on 25 January 2023. At the time of this report the car had done 107,058 miles – 15,998 miles more than when it was supplied to Miss B around eight months earlier.

The engineer said there were no issues relating to the EGR valve, glow plugs, AdBlue system, exhaust, turbochargers, or oil level sensors. However, there was *"an excessive amount of smoke emitting from the engine bay"* due to issues with the DPF. And there was an indication that the software may've been changed to mask the issues with the DPF, and a possible abnormal repair taken place, which no reputable garage would do *"without the customer [sic] knowledge or payment."*

The engineer said that a DPF has a life expectancy of between 80,000 and 120,000 miles before it would need replacing. Based on the engineering evidence, and the age and mileage of the car, the engineer concluded that the DPF issues weren't present or developing at the point of supply and were an age-related in-service wear and tear issue.

With no evidence to the contrary, I'm satisfied the current issues with the car are wear and tear related, and they may've been exacerbated by an unorthodox repair undertaken to mask the issue at some point between August 2022 and January 2023.

The independent engineer's report of 18 August 2022 specifically says there was *"no evidence of any excessive smoke"*, and excessive smoke was present in the inspection on 25 January 2023. What's more, it's unlikely that the car would've travelled almost 16,000 miles before any issues present at the point of supply would've presented themselves. Given this, I'm satisfied that the issues with the DPF weren't present when the car was supplied to Miss B.

As such, and while I appreciate it will come as a disappointment to Miss B, I won't be asking Moneybarn to allow her to reject the car, nor will I be asking them to cover the costs of the repairs to the DPF.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 29 June 2023.

Andrew Burford
Ombudsman