

The complaint

Mrs C 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 22 December 2023, Mrs C was supplied with a used car through a conditional sale agreement with Moneybarn. She paid an advance payment of £6,000 and the agreement was for £10,169 over 60 months; with monthly payments of £309.68. At the time of supply, the car was just over four years old, and had done 30,118 miles (according to the MOT record for 25 November 2022).

Mrs C contacted the supplying dealership on 11 January 2023 as she was experiencing problems with the car. She said the driver's door wasn't opening or closing properly *"during the cold winter months"*; the clutch was making a whistling noise; the Diesel Particulate Filter ('DPF') warning light was lit; and she was concerned the engine had been replaced. The dealership regenerated the DPF but said they couldn't find an issue with the door.

Mrs C wasn't happy with this, and she complained to Moneybarn. They arranged for an independent engineer to inspect the car. The engineer concluded the car was faulty when it was supplied to Mrs C, and that the dealership's attempt to repair the car had failed. The car went back to the dealership on 19 April 2023, and the issues with the car were fixed.

In June 2023, Mrs C took the car back to the dealership, reporting problems with the Electronic Stability Control warning light having come on, and an issue with the auto handbrake. But the dealership couldn't replicate these faults.

Mrs C wasn't happy with what'd happened, and she brought her complaint to the Financial Ombudsman Service for investigation.

As the engineer has said the car wasn't of a satisfactory quality when supplied, our investigator said Moneybarn should do something about this. However, as Mrs C had agreed to a second repair in April 2023, and this repair was successful, he didn't think she should be allowed to reject the car.

Instead, the investigator recommended that, as Mrs C had trouble with the car until April 2023, then Moneybarn should refund her 10% of the payments she'd made to that point, plus statutory interest, as well as paying her £150 for the trouble and inconvenience she'd been caused.

Moneybarn agreed with the investigator, but Mrs C didn't. She wasn't happy that Moneybarn hadn't responded to her complaint within the timescale they were supposed to, and she wasn't happy that she wasn't told that accepting the second repair meant she couldn't reject the car unless the car couldn't be fixed. Mrs C still wanted to reject the car and she asked for an ombudsman to make a final decision.

Mrs C has also raised the issue of further faults with the car, and she's said that warning lights came on and then went off. And the dealership hasn't been able to identify any problems. The investigator explained that she would need to get some evidence of a fault with the car i.e., a report from a suitably qualified expert, and then raise these issues with Moneybarn. And we wouldn't be able to consider these faults until Moneybarn have had the opportunity to deal with them. Given this, I won't be considering these new faults as part of my 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. Mrs C 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 Mrs C to show it was present when the car was supplied.

So, if I thought the car was faulty when Mrs C took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

I've seen a copy of the independent engineer's report, dated 14 March 2023. In this report, the engineer said there was no evidence the engine had been replaced and they were unable to replicate the clutch noise Mrs C had complained about. However, the engineer said the DPF warning light was on, and Mrs C had shown him video evidence of the problems she was having with the door.

The engineer concluded that the DPF regeneration carried out by the dealership *"has been a failed repair or misdiagnosed, the vehicle should be returned and fully investigated."* The engineer also said the door issues and Mrs C's concerns about the engine would require further investigation, and that the problems with the car *"would have been developing"* at the point of supply.

The engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

Based on this report, I'm satisfied there was a fault with the car when it was supplied to Mrs C, and this made it not of a satisfactory quality.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.*" This is known as the single chance of repair. As the engineer confirmed that the repair the dealership had done in January 2023 had either failed or was misdiagnosed, I'm satisfied that Moneybarn / the dealership have had this single chance of repair.

The CRA is clear that, if the single chance at repair fails, as was the case here, then the customer has the right of rejection. However, this doesn't mean that the customer is required to reject the car, and they can agree an alternative remedy i.e., further repairs to the car.

It's not disputed that Mrs C agreed to have the car repaired after the independent engineer had inspected it. And, in an email dated 6 March 2023 (just before the inspection took place) Mrs C had told Moneybarn that she was happy for the car to be looked at, so long as she was provided with a courtesy car, as this was needed for work and family commitments. Given this, I'm satisfied that she accepted an alternative remedy to rejection.

Mrs C has said that she wasn't advised of her right of rejection, otherwise she would've taken this. There's nothing in the CRA that requires Moneybarn to have advised her of her right to reject. However, I've seen that Mrs C asked to reject the car in early January 2023, and again after the post-inspection repairs were carried out. As such, I'm satisfied that Mrs C was aware she had the right to reject the car when she was offered repair in March 2023, but she chose not to do so at this point, accepting repairs instead.

Given the above, I won't be asking Moneybarn to give Mrs C the opportunity to reject the car. But I do think they need to do something to put things right.

Putting things right

Mrs C has been able to use the car while it was in her possession. And, while it was being repaired, she was also provided with a courtesy car to keep her mobile. Because of this, I think it's only fair that she pays for this usage.

However, given the issues with the car, especially the issues with opening and closing the driver's door, I'm also satisfied that Mrs C's usage and enjoyment of the car has been impaired. Because of this, I also think it's fair that Moneybarn refund 10% of the payments Mrs C made until the DPF issues were fixed.

It's also clear that Mrs C has been inconvenienced by what's happened, and the fact that the car needed to go in for repair twice before the DPF issues were fixed. So, I think Moneybarn should compensate her for this. The investigator had recommended Moneybarn pay her £150, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, Moneybarn should:

- refund 10% of the payments Mrs C made between December 2021 and April 2022 inclusive, to reflect her impaired usage of the car during this period;
- apply 8% simple yearly interest on the refunds, calculated from the date Mrs C made the payments to the date of the refund[†]; and
- pay Mrs C an additional £150 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

†HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mrs C a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Mrs C's complaint about Moneybarn No.1 Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 October 2023.

Andrew Burford
Ombudsman