

The complaint

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

Miss F has been represented during the claim and complaint process by Mr R. For ease of reference, I will refer to any comments made, or any action taken, by either Miss F or Mr R as “Miss F” throughout the decision.

What happened

In March 2023, Miss F was supplied with a used car through a conditional sale agreement with Moneybarn. The agreement was for £4,999 over 48 months, with monthly payments of £147.52. At the time of supply, the car was around 11 years old. The agreement states the car had done 114,000 miles, however the MOT record for 28 February 2023 (around a month before the car was supplied to Miss F) shows the mileage to be 114,266 miles.

Miss F says that, a few days after being supplied with the car, a warning light came up on the dashboard. She says she contacted the supplying dealership about this, but they didn't reply. However, despite this, she continued to use the car.

The car broke down on 21 April 2023 and was recovered by a breakdown company. After a further attempt to contact the dealership, in May 2023 Miss F took the car to a garage for a diagnosis. The diagnostic report detailed a number of faults relating to the electrics, sensors, and the transmission. Miss F raised these issues with the broker who arranged the agreement, and with Moneybarn.

Moneybarn arranged for the car to be repaired in June 2023, but Miss F didn't believe it had been repaired to a satisfactory standard – she thought that the time taken to repair the car was too short given the number of faults listed on the May 2023 diagnostic report. So, Moneybarn arranged for the car to be inspected by an independent engineer.

This inspection took place on 20 July 2023. The engineer said that the issues that had caused the breakdown had been satisfactorily repaired. However, there was also an issue with the nearside front headlight bracket, as a previous repair was unsatisfactory – the incorrect type of screw had been used in an attempted repair. The engineer considered this to have been present when the car was supplied to Miss F and said that Moneybarn are liable for the repair.

Following this, Moneybarn agreed to pay Miss F £150 to repair the headlight bracket and offered her an additional £200 for what had happened. Unhappy with this offer, and wanting to be able to reject the car, Miss F brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said there was no evidence that Miss F had initially asked to reject the car within the first 30-days after supply, so Moneybarn had acted reasonably by arranging for the car to be repaired. The investigator also said there was nothing to show these repairs had been unsuccessful. As such, Miss F didn't have the right to reject the car.

The investigator also said that, given the age and mileage, although the fault with the headlight bracket was present when the car was supplied, this didn't make it of an unsatisfactory quality. So, they thought Moneybarn's offer of repair, and to pay Miss F £200 compensation, was reasonable.

However, the investigator also thought that Moneybarn should also refund the diagnostic and recovery charges Miss F incurred, as well as refunding her the payments for the period 21 April to 8 June 2023 – the period between the breakdown and the car being repaired.

Moneybarn agreed with the investigator's opinion, and explained they'd already paid Miss F £350 - £150 for the headlight bracket repair and £200 compensation. They also said that, if the headlight repair was more than £150, they would also pay any difference.

Miss F didn't agree with the investigator's opinion. She said that Moneybarn should take the car back, end the agreement, and refund her all the payments she'd made since the car broke down on 21 April 2023, including road tax and car insurance. Miss F believed this was fair because Moneybarn had already had a chance at repair and failed to repair the headlight bracket at that time. She also maintained her belief that the car hadn't been repaired to a satisfactory standard. So, under the Consumer Rights Act 2015 ('CRA') she should now be allowed to reject the car.

Because Miss F didn't agree, 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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 F 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 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 F to show it was present when the car was supplied.

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

It's not disputed that Miss F had problems with the car, and it broke down on 21 April 2023, around a month after it was supplied to Miss F. She paid £49.99 for a diagnostic report, which identified a number of different faults. She obtained quotes for repair, and then paid an additional £150 to have the car towed to a garage for repair. The car was repaired at no cost to Miss F in June 2023 and was ready for collection from this date. However, it's my understanding that Miss F hasn't yet collected the car because she was unhappy with the speed of repair, and that the repair costs were substantially less than what she'd been quoted. As such, she believes the car hasn't been repaired to a satisfactory quality.

During the course of the investigation, Miss F has said that she asked to reject the car within the first 30 days of it being supplied to her. While she's referred to conversations with the dealership and credit broker about this, she didn't speak to Moneybarn about rejection within this period. I also haven't seen anything, for example an email, where Miss F asked to reject the car within the first 30-days.

What's more, by Miss F's own testimony, the breakdown didn't happen until she had had the car for 31 days. While it's not disputed that a dashboard warning light had already come on at that stage, I haven't seen anything to show me that Miss F had even raised the issue of the car not being of a satisfactory quality with Moneybarn during the first 30-days. So, and while I appreciate this is not the answer Miss F is looking for, I'm satisfied that Miss F doesn't have the short-term right to reject under the CRA.

I've seen a copy of the independent engineer's report, dated 20 July 2023. In this report, the engineer confirmed the car had been repaired, and that Miss F was unhappy with this repair. However, after a full inspection of the car, the engineer didn't conclude that the June 2023 repair had failed. I've seen that 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.

While I appreciate Miss F's concerns about the speed and cost of the repair, I haven't seen anything, for example a report from a different independent engineer, that shows me the repairs that took place in June 2023 have failed, or that the issues that caused the car to breakdown haven't been fixed. Given this, I'm satisfied that the June 2023 repairs were successful.

However, the independent engineer, in their report of July 2023, did confirm there was a broken headlight bracket that had had an unacceptable repair – the incorrect type of screw had been used. The engineer said that this would've been present when the car was supplied to Miss F, and that Moneybarn were responsible for resolving this.

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 conform to contract."* This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Moneybarn – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

As I've already stated, the single chance of repair took place in June 2023, and the pre-existing issue with the headlight bracket wasn't discovered until July 2023. Miss F has said

that, given these circumstances, then she should now be allowed to reject the car as the single chance of repair didn't repair all faults. However, I don't agree this is the case, and I'll explain why.

For Miss F to be able to reject the car, then it needs to be of an unsatisfactory quality when supplied. While the initial faults that were repaired in June 2023 make this the case, the same is not true for the headlight bracket. Given the age and mileage of the car at the point of supply, if the only issue with the car was the headlight bracket, this would not make the car of an unsatisfactory quality – a repair had taken place but, given that the wrong type of screw was used, the repair wasn't of a satisfactory standard. And had this been the only issue with the car, I would not be directing Moneybarn to allow rejection. So, and while I appreciate this will come as a disappointment to Miss F, for this same reason I won't now be directing them to allow rejection.

However, this doesn't mean that Moneybarn don't need to do something to put things right.

Putting things right

The car broke down on 21 April 2023 and was repaired and ready for collection on 8 June 2023. During this period Miss F wasn't supplied with a courtesy car, so she was paying for goods she was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Moneybarn failed to keep Miss F mobile; I'm satisfied they should refund the payments she made during this period.

In her comments, Miss F had said that she should be refunded the payments until at least November 2023, as this was when Moneybarn asked her to collect the car. However, I don't agree this was the case. I'm satisfied that Miss F was aware on (or shortly after) 8 June 2023 that the car was repaired and ready to collect. I say this because she was unhappy with the speed and cost of the repairs, which is what led to the inspection in July 2023.

Although she was unhappy, Miss F could've collected the car, and the inspection could've taken place at her home address. What's more, Miss F could've used the car to see if the faults reoccurred, as she believes they would. As such, I'm satisfied that Miss F paying for the car after 8 June 2023 when it wasn't in her possession was as a result of her own choices and decisions, and not because the car wasn't available for her to collect. So, I won't be asking Moneybarn to refund any additional payments.

Moneybarn had also agreed to refund Miss F for the cost of the diagnostic report and the towing, as well as pay anything over and above £150 for the repairs to the headlight bracket. I'm satisfied this is a reasonable offer.

Finally, it's clear that Miss F has been inconvenienced by the car breaking down, and by having to arrange for the car to be taken for diagnostics and repair. While she's explained the ongoing issues caused by not having access to a car, as I've said above, this was as a result of her choice, and not something Moneybarn did or didn't do. So, while I think Moneybarn should compensate Miss F for the inconvenience she's suffered, I'm satisfied this compensation should only cover the period to 8 June 2023.

Moneybarn offered to pay Miss F £200, 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, if they haven't done already, Moneybarn should:

- refund the equivalent of the payments Miss F would have to make for the period 21 April to 8 June 2023;
- upon receipt of proof of payments, reimburse Miss F the £49.99 diagnostic cost and £150 towing charges she incurred;
- pay Miss F £150 for the cost of the repair for the headlight bracket; if the cost of repair is more than £150, upon receipt of proof of payment, reimburse Miss F the additional cost over £150 for this repair;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Miss F made the payments to the date of the refund[†]; and
- pay Miss F an additional £200 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Moneybarn to take off tax from this interest, Moneybarn must give Miss F a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss F'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 Miss F to accept or reject my decision before 11 June 2024.

Andrew Burford
Ombudsman