

The complaint

Mrs G is unhappy that a car supplied to her under a conditional sale agreement with Moneybarn No 1 Limited (Moneybarn) was of an unsatisfactory quality.

When I refer to what Mrs G has said and what Moneybarn have said, it should also be taken to include things said on their behalf.

What happened

In March 2023 Mrs G was supplied with a used car through a conditional sale agreement with Moneybarn. The date of the broker invoice is 16 March 2023 but the car was not physically supplied until 1 April 2023. The retail price of the car was £5,950 and Mrs G paid no deposit with 46 payments of £193.99. At the time of supply the car was approximately 11 years old and had covered 106,796 miles

The delay in delivery was due to the dealer/broker handling the supply needing to sort an issue with the engine management light (EML) coming on. Mrs G is complaining that there has been on going issues with the car and the EML coming on. There have been various repairs undertaken on the car both by an independent garage and the supplying broker. Mrs G has stated this led to significant inconvenience for her.

Mrs G states that the issue first manifested itself approximately two weeks after supply and on contacting the broker garage they advised her to take it to a more local garage to her, due to the distance the broker garage was from where Mrs G resides. She did this but due to delays in obtaining parts, some 7-8 weeks according to Mrs G, she returned to the broker. Whilst the issues appeared shortly after supply, the evidence supplied to us it appears that the dialogue with the supplying broker began in June 2023. The supplying broker agreed to pay for the labour, but Mrs G has had to pay for the parts, which have totalled £450. This work included repairing the turbo, oil and filter change plus a new PCV valve.

The car was returned to Mrs G in early August having been repaired by the supplying broker. On 11 August Mrs G contacted Moneybarn to let them know that there was still a problem with the EML coming on and the car revving up and down.

There were further three-way communications between Mrs G, Moneybarn and the supplying broker. As a result of this Moneybarn arranged for an independent inspection of the car in early December 2023. This inspection found faults with the car including a coolant leak and 3 error codes on the EML. It did further conclude that these faults were not the responsibility of the selling agent to cover costs.

On 20 of December Moneybarn wrote to Mrs G explaining that they were not upholding her complaint in part based upon the independent engineers report. They did offer her £75 compensation due to the delays in dealing with her complaint.

Mrs G rejected this offer and complained to us.

Our investigator stated the car was 11 years old and travelled 106,768 miles at the time of supply, and this history needs to be taken into account in deciding what constitutes reasonable wear and tear. The independent expert report is clear that there are faults with the car, but these are not the responsibility of Moneybarn. They concluded that the car was therefore of satisfactory quality and Moneybarn were not obligated to do anymore in relation to Mrs G's complaint.

Mrs G felt that because the car failed shortly after delivery and has had on going issues the car was not of satisfactory quality. It was explained to Mrs G by the investigator that the evidence we have primarily consists of the expert report and records dated from June 2023. It was up to Mrs G to commission her own report if she wanted to and she could explain to the expert the pre-June 2023 history.

Because Mrs G 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.

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 G was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". The CRA says the quality of goods is satisfactory if they 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. So it seems likely that 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 sale and the vehicle's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. Where goods are second hand, as in this case, due regard must be had to the price, age and any description applied to the car.

So, if I thought the car was faulty when Mrs G 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.

As stated earlier the age, mileage and price of any vehicle has to be taken into account when deciding what is satisfactory quality. Second hand cars also have an element of fair wear and tear that needs to be taken into account when coming to any decision.

It is clear that there is a fault with the car and this is accepted by all parties. However, having a fault does not necessarily mean that a car is not of satisfactory quality. I have to decide on the balance of probabilities whether the car was of satisfactory quality at the time of supply. This means that all elements of the car including EVAP valves, turbos and seals will be deemed to be of a similar age and mileage to the car and will therefore have all the inherent issues associated with such usage. Mrs G states the issues started shortly after being collected, around two weeks. Evidence shows that contact with the supplying garage started

in June 2023, so there is no evidence as to what the issues were prior to that and engine management lights can come on for a variety of reasons.

Key to any deliberations is any independent expert examination and report on the car. To that end the report issued by the independent consulting engineer is informative. Whilst identifying that there is an issue with the car I find their statement "We do not consider selling agent/previous repairer responsible for the costs of the repairs" a compelling statement. Whilst Mrs G does not feel that issues prior June 2023 were taken into account in the experts examination I do not have any evidence to contradict their statement.

Whilst I can empathise with Mrs G I feel that based on the available evidence the faults she has experienced with the car are commensurate with a car of the age, mileage and price at the time of supply. I find that the car was of satisfactory quality at the time of supply.

Given the able there is insufficient evidence to uphold Mrs G's complaint and Moneybarn are not obliged to do anymore in relation to Mrs G's complaint. In which case it is open to her to pursue the matter by other means should she wish to do so.

My final decision

My decision is that I do not uphold this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 27 December 2024.

Leon Livermore
Ombudsman