

The complaint

Miss B complains that a car she acquired via a conditional sale agreement with Moneybarn No.1 Limited wasn't of satisfactory quality.

What happened

In January 2023 Miss B was looking for a used car and approached a broker who sourced a car and arranged a conditional sale agreement with Moneybarn to finance it. The agreement was for five years, and the car was around eight years old with a mileage of about 72,500.

Miss B says that on the day she collected the car from the dealer and drove it home the engine management light ("EML") illuminated, and black smoke billowed out of the exhaust making her concerned that it wasn't safe to use.

Miss B says she raised the fault with the car with both the dealer and the broker but found them to be dismissive. She says she was asked to provide a video of the exhaust fumes which she did but was told that it looked normal for a car of that age and mileage. Miss B was also asked to provide diagnostics as to why the EML had come on. There then followed a series of emails between Miss B and the broker as she didn't think it fair she pay for diagnostic testing.

The broker outlined two options to Miss B in respect of the car which were that she provided proof of the fault and, if she did, the dealer would accept rejection or the dealer would take the car to a garage local to Miss B and arrange for the necessary repairs.

Eventually Miss B arranged for a garage to conduct diagnostics which were carried out in April 2023. The third-party garage identified that the engine was smoking, and they said they suspected a fault with the turbo which may have been due to the engine being run with low oil. Miss B paid for this inspection. Miss B also says that this garage found around 20 faults with the car and due to the number being so high was unable to give her a sheet setting out all the issues found.

The broker offered to have the car repaired by the dealer. Miss B says she only agreed to this as she added a condition that after the repairs the car had to be independently inspected by another company to verify it was safe to use.

In June 2023 the broker confirmed the car had been fully repaired. They said a fault had been found with the exhaust manifold gasket which had been worn and which had been replaced. The car was returned to Miss B although she says she didn't not agree to this and didn't want it. Miss B says she was conned into accepting the repair because no independent inspection of these repairs had taken place. Miss B also says she wasn't provided with evidence as to what repairs that had been carried out and the fault that was described didn't fit with those found during the diagnostics.

Miss B says she hasn't used the car and because of the way the matter had been handled took the decision to stop paying her direct debits under the agreement to force the car to be repossessed.

The agreement was defaulted, and the car was repossessed in June 2023 and sold at an auction in July 2023. The outstanding balance on Miss B's agreement is £8,597.23.

Miss B complained to this service about the actions of the broker. We informed Miss B that she needed to make a complaint against Moneybarn as it was the credit company who had provided the conditional sale agreement. Moneybarn opened a complaint and carried out an investigation.

Moneybarn didn't uphold Miss B's complaint about the quality of the car. It said the information it had seen didn't confirm that the car had or was developing faults at its point of supply.

Miss B was unhappy at the response from Moneybarn and requested that her complaint still be investigated by this service. Our investigator didn't recommend her complaint should be upheld as he said he didn't think Moneybarn had acted unfairly.

Our investigator said that on the evidence provided it seemed likely there had been a fault with the car when it had been supplied to Miss B as repairs had been carried out by the dealer to the manifold gasket. However, he said, he could not comment on any other faults as no evidence as to the diagnostics that had been carried had been provided.

Our investigator said that although there had been a fault, he couldn't ask Moneybarn to do any more about the car. He said that if an issue with the quality of goods is raised in the first 30 days, then a consumer can seek either rejection or agree to repair. If the issue was raised after 30 days, he said, then the retailer had the right to have the opportunity to repair. Our investigator said that here, the car had been repaired and there was no evidence that these repairs had failed. He also said that if repairs are agreed, then there isn't any requirement for them to be independently inspected.

The car had been repossessed because Miss B had stopped making any payments and our investigator said he'd seen that Moneybarn had made repeated attempts to talk with her about her account, but she hadn't responded. Our investigator said in the circumstances Moneybarn had been entitled to take the action it had, and he didn't consider it was responsible for the losses Miss B said she had incurred, nor the adverse information recorded on her credit file.

Miss B disagreed with our investigator's view. She said she had raised the fault with the broker and the dealer from day one and had been refused the right to reject. She said she had stopped paying to force the car to be repossessed because she was too scared to drive it. Miss B said she had been conned into having the car repaired.

I issued a provisional decision along the following lines.

When looking at this complaint I needed to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable. And where there is evidence that is missing or contradictory then I must decide what I think is the most likely thing to have happened.

As the conditional sale agreement entered into by Miss B was a regulated consumer credit agreement this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is

satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that 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 can be aspects of the quality of the goods.

Here the car was around eight years old and had a mileage of about 72,500. So, some issues of maintenance and repair would be expected over time. However, I'd seen that Miss B had raised issues with the car on the day she had collected it due to the EML illuminating on the dashboard and the exhaust smoking.

There then followed a number of email exchanges and I presumed there were also phone calls as I didn't appear to have seen a full history of the contact between Miss B and the broker. However, I thought Miss B had raised a complaint about the quality of the car within the first 30 days. She would therefore have had the short-term right to reject the car and I'd seen that the dealer had appeared to be open to that if she could provide evidence of the car's fault.

Miss B said that it had been unfair for her to have to provide the evidence as she hadn't wanted to drive the car as she thought it could be dangerous to do so. But I didn't think a request that she provided proof of any faults was unusual or unfair, so I didn't think this request was unreasonable. I'd seen that Miss B said she discovered that the car had earlier been bought by someone else and returned because of an issue with the turbo but I hadn't seen any clear evidence that this had been the case.

I'd seen that Miss B had then arranged for the car to be inspected and that as a consequence she said a number of faults had been discovered. While I'd seen that the garage had found a potential fault with the turbo I hadn't seen evidence of any other faults so I couldn't reasonably say the car had suffered from multiple issues.

Miss B passed the findings of the garage on to the broker. It was at this stage that repairs were agreed to by Miss B and the dealer arranged for the car to be taken and fixed. It was returned to Miss B in June 2023.

Miss B said she was conned into these repairs as she had demanded that a condition of her agreement to the car being fixed was for it to undergo a safety check by a third-party company that was independent. I didn't know what had been said between Miss B and the broker but I'd seen that the dealer had declined to pay for this inspection. I didn't have enough evidence to say that it had been agreed between the parties that this inspection would be part of the repairs, it wasn't something that was required and wasn't something I would have expected a dealer to agree. So, I couldn't reasonably say that Miss B had been tricked or conned into having the car repaired.

On the evidence I'd been provided with, while I acknowledged Miss B had the short-term right to reject the car for having a fault, I thought it was reasonable to say she had agreed to have the car repaired instead of rejecting it. Having done so, then Miss B could only then reject it if the repairs had been unsuccessful.

Miss B said she didn't want the car back as she didn't trust the dealer to have had it properly repaired. She also said the car was supposed to have come with a full-service history and that this wasn't supplied which made her doubt the dealer's integrity. But it appeared the dealer had offered to obtain and provide this history. I couldn't reasonably say that the car didn't have a full-service history and the dealer had deliberately misled her about that.

I'd also seen that Miss B had never driven the car after it had been returned to her in June 2023 and so, she wasn't able to say whether the repairs had been successful or not. She said the faults that had been identified by the garage she'd used, weren't the ones that had been repaired. But as set out above, I had no evidence about other potential issues and so I'd no evidence the car hadn't been properly repaired. I'd seen it sold at auction and passed its MOT in July 2023 without any advisories. I therefore couldn't reasonably say that the car hadn't been repaired, and that Miss B had the right to reject it because of failed repairs.

Miss B said she had been forced to stop her direct debits so that car would be repossessed. But looking at the statement of her account I couldn't see that she had made any payments towards the car as per the contract. The only reason the outstanding balance had reduced from its original figure was because the sale proceeds from the car had been credited to it. Miss B hadn't been entitled to make no payments and cancel the direct debit because the car had faults.

Miss B had complicated her complaint about the car by not dealing with Moneybarn until after the car had been repossessed. I'd seen that Moneybarn had sent various letters to her asking her to get in touch about her account and I didn't know why she hadn't done so. It was also reasonable to have expected Miss B to have attempted to mitigate her position and by failing to engage with Moneybarn then any charges and fees that were added for missed payments were reasonable as they would be in line with the agreement's terms and conditions. Her failure has also meant that Moneybarn wasn't now able to carry out any investigations of its own about the condition of the car.

However, where a car wasn't of satisfactory quality and required repairs and a consumer hadn't been able to use it for a period, then I might ask the business to reimburse them for that period. Here, I thought it was fair to say that Miss B wouldn't have been able to use the car between the point of its supply to her and it being returned to her in June 2023 after the repairs. I accepted that it would have been reasonable for Miss B not to have wanted to use a car that had the EML illuminated. And although Miss B hadn't made any payments under the agreement meaning there was nothing to reimburse, I thought it would be fair for Moneybarn to deduct the amount of the monthly payments that had fallen due in that period from the outstanding balance. Miss B had been inconvenienced by having to deal with the faulty car. However, as she hadn't kept to the agreement, I didn't think it was fair I asked Moneybarn to also compensate her for that.

For the reasons given above, and although I appreciated my provisional decision would be of disappointment to Miss B, I was intending to only partially uphold her complaint. I thought that Moneybarn should credit back the payments that were due from the point of supply of the car in January until the car's return to Miss B in June 2023. This would reduce the outstanding balance. But, I wasn't going to ask Moneybarn to do more.

Miss B has disagreed with my provisional view. She says she believes she has been unfairly treated and disagrees that she agreed to having the car repaired without it then being inspected by an independent third-party company. Miss B also says that the broker misled her by telling her it was liaising with Moneybarn. She is concerned about the contact she has had in respect of repaying the outstanding balance.

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.

I'm sorry that Miss B has found this distressing to deal with and that she will now have to make arrangements with Moneybarn about settling the balance. However, on reviewing all

the evidence provided, I haven't changed my view.

As set out in my provisional view, I haven't seen enough evidence to say that Miss B was tricked or misled into agreeing for the car to be repaired. I wouldn't expect the dealer to have agreed for the repairs to be independently inspected before the car was returned to Miss B as part of any arrangement to fix the faults. And once the car was repaired and returned to her, I haven't seen any evidence that these repairs weren't successful. I can't reasonably say Miss B was entitled to reject the car.

Miss B says the broker misinformed her that it was liaising with Moneybarn, but again I haven't seen anything that would corroborate that in the copies of the emails between the broker and Miss B that have been provided. I also don't know why Miss B didn't respond to Moneybarn when it sent a number of letters to her about the missed payments on the account. So, I can't reasonably say Miss B had been misled and believed she was dealing with Moneybarn as well as the broker when she spoke with the broker and dealer about the car.

I appreciate Miss B's concerns about now dealing with the outstanding debt and I would expect Moneybarn to deal with her sympathetically. She will need to speak with it about how this matter will move forward with an affordable repayment plan.

Putting things right

For the reasons given above, I'm partially upholding Miss B's complaint. I'm asking Moneybarn to credit back to Miss B's account the payments that fell due from the point of supply of the car until the date it was returned to her in June 2023. This will reduce the outstanding balance that she owes.

My final decision

As explained, I'm asking Moneybarn No.1 Limited to credit back to Miss B's account the payments that fell due from the point of supply of the car until the date it was returned to her in June 2023. This will reduce the outstanding balance that she owes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 21 May 2024.

Jocelyn Griffith
Ombudsman