

The complaint

Miss G complains that the car she acquired through Moneybarn No. 1 Limited (“Moneybarn”) wasn’t of satisfactory quality. She wants Moneybarn to cancel her agreement, collect the car and compensate her for the troubles she’s experienced.

What happened

Miss G entered a conditional sale agreement in June 2022 to acquire a used car. At the time of acquisition, the car was almost ten years old and had been driven more than 50,000 miles. Miss G told us:

- She’s recently noticed that the rear window leaks and water pours in;
- when undertaking some research into similar problems with cars of this type, her partner identified an outstanding safety recall from January 2019, which had not been dealt with;
- the dealer should not have sold the car with an outstanding recall notice – it should’ve been rectified first;
- her car is now mouldy on the inside, and is no longer fit for purpose;

Moneybarn rejected this complaint. It said if an issue is reported with a vehicle after the first six months of the agreement commencing, the onus on proving that these issues were present at the time of sale falls on the customer. And it asked Miss G to provide evidence of the issues she’d reported, and that they’d been present within the first six months of the vehicle purchase. It said that upon receipt of this evidence, it would investigate things further.

Moneybarn said that Miss G hadn’t raised the issue with water ingress until more than 19 months after she’d acquired the car, in which time she’d drive nearly 7,000 miles. And with no evidence from Miss G that the issue with water ingress had been present or developing at the point of supply, it closed her complaint.

Miss G brought her complaint to this Service, and she also complained about the dealer selling a car with a live recall notice – she says this should’ve been addressed by it prior to sale.

Our investigator looked at this complaint and said he didn’t think it should be upheld.

Our investigator said he accepted there was a fault with the car but – given the given the time Miss G had been in possession of it, and the mileage she’d driven – he’d seen no evidence it was present or developing at the point of supply and it was possible the fault she’d experienced was simply a result of normal wear and tear. He told Miss G that he’d spoken with her local garage – it had completed the work required under the recall safety notice – and it had advised him that the recall notice in respect of a rear window was unrelated to the issues she was experiencing with water ingress.

Our investigator acknowledged Miss G's additional complaint point about the dealer selling a car with a live recall notice and said she should direct her concerns about this to another body – the DVSA.

Miss G disagrees so the complaint comes to me to decide. She confirmed that the work required under the recall notice had been completed, and that she would raise the issue about the dealer selling a car with a recall notice with DVSA, but she said she wanted her complaint about Moneybarn looking at again because the car it supplied was not of satisfactory quality.

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 agree with our investigator – I don't think this complaint should be upheld – and I'll explain why.

When looking at this complaint I need to have regard to the relevant laws and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the conditional sale agreement entered into by Miss G is 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 it is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 ("CRA") 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. So, what I need to consider in this case is whether the car *supplied* to Miss G was of satisfactory quality or not.

The CRA also says that, where a fault is identified *within* the first six months, it's assumed the fault was present when the car was supplied, unless the business can show otherwise. But, if the fault is identified *after* the first six months, as is the case here, then it's for Miss G to show the fault was present or developing when she first acquired the car.

Moneybarn supplied Miss G with a used car – it was nearly ten years old and had been driven more than 50,000 miles – so the price of the car was lower than it would've been if it had been supplied new. Because of this I think it's fair to say that a reasonable person would expect that parts of the car might've already suffered wear and tear. And there'd be a greater risk in the future that this car might need repairs and maintenance sooner than a car which wasn't as road-worn when supplied.

I don't think there's any dispute that Miss G has experienced problems with the car - that has been well evidenced by both her testimony and the photographs and videos she's sent us. I've seen clear evidence of the water ingress in the driver's foot well together with the effects this has had on the condition of the car's interior. But just because Miss G has had problems

with the car, and things have gone wrong, it doesn't necessarily follow that the car supplied to Miss G wasn't of satisfactory quality.

Our investigator has already explained that Miss G can refer some aspects of her complaint directly to DVSA – The Driver and Vehicle Standards Agency – and I've seen Miss G confirm her intention to do this. So, I won't be considering responsibilities and liabilities of the dealer in respect of its obligations when there was a live recall notice. I'm only going to consider whether the faults associated with water ingress, highlighted by Miss G, lead me to conclude the car was of unsatisfactory quality when supplied.

Miss G told us that the car had water pooling in it – and the photographs and videos she's provided show significant amounts of water collecting in the driver's foot well – and that she raised these matters with Moneybarn in January 2024. But Moneybarn would only be responsible for putting things right if I'm satisfied that these issues were present or developing when the car was supplied – that is to say, the car wasn't of satisfactory quality when Miss G acquired it in June 2022.

I've considered very carefully the subject of *durability*. But, having done so, I can't uphold this complaint. I say this because the complaint was made more than six months after the car was supplied, so it's for Miss G to *prove* that these faults existed (or were developing) when she first acquired the car. And I haven't seen anything, for example, an independent engineer's report, that shows me that these faults were present or developing when the car was supplied to Miss G.

Furthermore, I've also noted that the car passed its MOT in November 2019; November 2020; December 2021; May 2022; and April 2023, and although there were some defects and advisories concerning a lamp; the car tyres and the break pipe corrosion, there's no reference at this time to these levels of water ingress in the footwells – something that I would've expected had this fault been present at this time.

I've also listened to the comments of the mechanic at the garage responsible for rectifying the recall issue. He explained that the recall related only to the bonding on one pane of glass in the rear of the car – the issue was that the bonding was substandard and the pane of glass *could* detach. But he went on to say that in his opinion, this was unrelated to the water ingress issues raised by Miss G. He simply couldn't say that the two things were related, or that the water ingress was a result of the substandard bonding on the rear window.

Because of this, and in the absence of an independent engineer's report provided by Miss G, then considering all the relevant circumstances, I'm not persuaded that Miss G's car was of unsatisfactory quality when supplied. So, I can't hold Moneybarn responsible for the water ingress problems Miss G has experienced with it.

But were an independent inspection to evidence a fault that likely was present or developing at the point of supply, this Service would expect Moneybarn to review its position in respect of Miss G's claim. And in the event Miss G was unhappy with Moneybarn's position following a review of any independent engineer's report, she'd be entitled to bring a new complaint to Moneybarn, and ultimately to this Service.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept

or reject my decision before 2 January 2025.

Andrew Macnamara
Ombudsman