

The complaint

Miss W complains about the quality of a car she financed with Moneybarn No.1 Limited ('MB').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Miss W took out a Conditional Sale agreement with MB to finance a second-hand car in May 2022. However, she says that she had problems with the car early on and more recently including some electrical issues which resulted in her being unable to drive it. She says she stopped paying for the car because she doesn't think it fair to pay for a car she no longer drives and considers unsafe.

Miss W wanted MB to accept rejection of the car, or replace it. However, it did not agree to this so Miss W escalated a complaint about the car to this service.

Our investigator did not uphold the complaint so Miss W has asked for the matter to be considered by an ombudsman for 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally. For clarity, I know Miss W has mentioned some other things during the course of this complaint – however, I am only dealing with the complaint in respect of the quality of the goods here. That doesn't prevent Miss W from pursuing other complaints as she sees fit.

Firstly, I am very sorry to hear about the difficulties Miss W has described to this service. I wish her well for future. However, I think it is worth noting at this early stage that I am not upholding her case. I know Miss W is unlikely to be happy with this decision. However, my role is to resolve disputes informally. She does not have to accept it and may choose (after seeking legal advice as appropriate) to take more formal action, such as through a court.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. MB is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 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 Consumer Rights Act 2015 says the quality of goods are 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 Consumer Rights Act 2015 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 can be aspects of the quality of goods.

MB supplied Miss W with a second-hand car that was around 7 years old and had done around 117,000 miles at the point of supply. The dealer priced it at £6,000 which is notably less than what a new or newer model with less mileage would cost. It is fair to say that in these circumstances (particularly noting the mileage) a reasonable person would consider that the car had already suffered significant wear and tear – and was likely to require more maintenance and potentially costly repairs much sooner than you might see on a newer, less road worn model. And I can't see evidence that the dealer described the car in such a way that would alter those expectations.

I know Miss W has said she has had quite a few issues with the car from the start– and I can see that would be frustrating. I think evidence does indicate she had some issues a few months in which she contacted the dealer about which it looked at and in some cases repaired. But with a car of considerable age and mileage like this having maintenance issues a shorter time after sale is not necessarily something which renders it not of satisfactory quality. I note that many of the issues Miss W has described (such as problems with air conditioning, or brakes) are often associated with reasonable wear and tear while others like the Bluetooth connection to her phone do not necessarily indicate a likely inherent fault considering the other variables around compatibility of older equipment and handsets.

Noting the age and mileage of the car there is currently no persuasive evidence showing Miss W had issues with it shortly after MB supplied it which were significant enough to render it not of satisfactory quality at the point of supply. When coming to this finding I note the lack of early diagnostics or reports showing there were significant faults shortly after the point of supply. I also note that Miss W has since been able to use the car to cover considerable mileage (the MOT history shows it had done 121,695 by December 2022 which would mean she had travelled around 4,500 miles in it) before she appeared to report other more significant issues with the car around 7 months after taking supply of it.

I know Miss W has indicated that she raised quality issues with MB sooner than when MB says she did and just weeks into having the car. There isn't persuasive evidence that she did. And from the contact notes I have seen prior to this point Miss W appears to have spoken to MB about payments/arrears but didn't mention any ongoing quality issues (as I might have expected considering her testimony).

But in any event, putting aside this point about whether Miss W did call MB at an early stage like she says - I am not disputing there were some issues with the car prior to the point MB says she got in touch with it about its quality. Or that Miss W didn't contact the dealer about these earlier (in fact messages show she did contact it about certain things). It just isn't clear if any quality issues that might have occurred at this point were anything more than reasonable wear and tear. They don't appear connected with the later arguably more serious issues she has described with the electrical systems in the car. And while the more recent

issues might be more significant it remains that Miss W was able to have considerable use of the car before she says these problems stopped her driving it. It follows that due to the time passed and the mileage covered it is now more difficult concluding any outstanding problems with the car are inherent faults, rather than reasonably expected wear and tear. And I note that Miss W does not have an expert report or other persuasive evidence showing the car had inherent faults at the point of supply beyond what would be reasonably expected wear and tear.

Despite the expectation of quality and durability being considerably lower with a car like this it still needs to be sold in a safe condition. And I note Miss W has mentioned some things she had been having issues with which would appear to be more directly related to safety like the seat belt indicator and doors. I have carefully thought about this. It isn't really clear what the nature or extent of any safety issues are with the car due to the lack of diagnostics but there isn't anything persuasive to show the car was suffering from safety related issues around the time of supply. For example, it appears that the seat belt indicator issue was videoed more recently. Nor is there any persuasive evidence that any wider electrical and possibly safety related issues that may have developed later are due to something other than reasonably expected wear and tear in a car of this age and mileage.

It is also worth noting for completeness that even though Miss W took out a warranty with the car this does not mean that MB is liable for fixing all issues with it. MB is liable as the supplier for the quality of the car in accordance with the implied terms in the Consumer Rights Act 2015 but not subject to the terms of the warranty. In any event, most warranties will not cover faults due to reasonably expected wear and tear.

I am sorry to hear that the issues with the car have caused Miss W distress. I understand that now MB has taken the car back due to non-payment and is demanding payment of arrears. MB needs to treat Miss W positively and sympathetically in respect of any arrears. However, for reasons I have already given I can't fairly conclude it needs to provide a remedy in respect of the quality of the goods (such as a refund/replacement or write off of arrears).

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 29 June 2024.

Mark Lancod
Ombudsman