

The complaint

Miss C complained about the quality of a car she acquired under a conditional sale agreement with Moneybarn No. 1 Limited trading as Moneybarn ('Moneybarn').

When I refer to what Miss C and Moneybarn have said or done, it should also be taken to include things said or done on their behalf.

What happened

In December 2023, Miss C was supplied with a used car under a conditional sale agreement with Moneybarn. The cash price of the car was £20,700. The total amount payable under the agreement was £30,299.70 payable over 60 months, to consist of a deposit/part-exchange of £800.29 and 59 monthly payments of £499.99. At the time Miss C entered into the agreement the car was around six years old. The invoice at the time of sale said the car had travelled around 74,573 miles.

Miss C says she was told by the supplying dealer that any faults would be fixed before she took possession of the car, a full service would be done, and any repairs would be done using genuine manufacturer parts.

She collected the car on 22 December 2023 and on the journey home one of the door handle caps blew off and on further inspection it transpired that the handle gasket was faulty. As the supplying dealer had told her that all faults would be fixed before she took possession of the car, she became concerned that the car might have other faults, so she arranged a diagnostic inspection on 3 January 2024, which identified a number of issues:

- Splits in the offside front bottom arm ball joint boot split.
- Nearside front anti-roll bar droplink ball joint boot split.
- Oil leak – possibly from the turbo boost pipe on top of the gearbox.
- Intermittent fault codes displayed for the Diesel Exhaust Fluid Heater Control Unit.
- Permanent fault code displayed for the Gateway Module ('GWM') Quiescent Relay Box
- Intermittent fault code displayed for the AHU (InControl Touch Audio Head Unit) Private Bus Circuit.

On 10 January 2024, the engine transmission warning light came on. Miss C contacted the supplying dealer who came to look at the car because Miss C didn't want to drive it with the engine warning light on. The dealer told Miss C that there was generally nothing to worry about, although a new Ad Blue pipe was needed. The car was booked in for repairs two weeks later.

After the car returned from the garage, on 29 January 2024 Miss C arranged for a further diagnostic inspection because she still had concerns. This identified the following issues:

- ECM (Engine Control Module) 5 fault codes displayed – four historic and one intermittent, which appeared to be related to the Ad Blue pipe issue which should have been repaired.
- Permanent fault code still displayed for the GWM (Gateway Module) Quiescent Relay Box.

- A few historic fault codes, including one that appears to be the camera's image processing system.

On 30 January 2024, the car returned to the supplying dealership for repairs, but Miss C couldn't leave the car there for long as the courtesy car provided was not suitable, therefore only one repair was completed, which was a software update.

Following this, Miss C made arrangements with the supplying dealer to carry out the remaining repairs between 28 February 2024 and 1 March 2024. After this period the dealer assured Miss C that everything had been fixed, apart from the satellite navigation issue, but the car was booked into a manufacturer dealership for resolution of this issue.

However, Miss C experienced issues with the car's throttle response and on 28 March 2024 she experienced issues with the transmission. Miss C booked the car in for further diagnostics on 3 April 2024, the results of which indicated issues with the transmission as well as with the torque management signal and the car's camera systems.

On 8 April 2024, while the car was with a manufacturer dealership to resolve the satellite navigation issue, a further diagnostic inspection was carried out which identified outstanding issues with the car, including a faulty door handle gasket, which Miss C understood the dealer had already fixed on a previous occasion. The other issues identified were:

- DPF welds failed.
- Fuel cap failed.
- Engine mount clip failure causing fuel pipe damage.
- Fuel tank cradle corroded, requiring replacement.
- Oil on back of engine – further investigation recommended.
- Door cap loose, new gasket required.
- Rear engine cover mounting fractured/missing – needs new crankcase breather.

On 18 April 2024, Miss C complained to Moneybarn and said:

- She didn't believe the major service she had been led to believe had been carried out had actually taken place, because the supplying dealer's documentation was incomplete and the car's service light was illuminating.
- She didn't believe that parts had been replaced with genuine manufacturer parts as no receipts were provided to her when requested.
- Repairs hadn't been carried out as agreed.
- As she had already given Moneybarn the opportunity to repair the car and the repairs had not been carried out successfully, she now wanted to reject the car.

In a letter dated 27 March 2024, but which Miss C says was not provided to her until 24 April 2024, Moneybarn contacted Miss C to say that they were sorry they hadn't been able to resolve her complaint by that time and she could now refer the matter to the Financial Ombudsman Service.

Miss C referred the matter to this service on 10 May 24 and said:

- She was dissatisfied with Moneybarn's communication and lack of response.
- She believes the supplying dealership misrepresented the car and had breached the Consumer Protection from Unfair Trading Regulations 2008 ('CPUT').
- She wants to reject the car due to it being of unsatisfactory quality.
- She wants a refund of her deposit, all payments under the agreement, the cost of the warranty she bought, her GAP insurance payments, and all her diagnostic costs.

After our investigator made contact with Moneybarn they said that the supplying dealer was prepared to inspect the car again. Our investigator suggested that an independent inspection would be appropriate based on the fact that previous attempts at repair seemed not to have succeeded, however Moneybarn declined to do this.

Our investigator then considered all the facts of the case and concluded that, on the balance of probabilities, there was sufficient evidence to determine that the car was not of satisfactory quality when supplied to Miss C, and therefore Moneybarn needed to take steps to put things right. The investigator thought that Moneybarn should:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to the customer.
- Refund the customer's deposit/part exchange contribution of £800.29.
- Pay a 10% refund of the monthly payments made under the hire agreement from 2 December 2023, to reflect impaired use of the car.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay a further amount of £200 for any trouble and upset that's been caused due to the faulty goods.
- Remove any adverse information from the customer's credit file in relation to the agreement.

Moneybarn accepted our investigator's findings, but Miss C didn't agree with some of what the investigator said.

Because Miss C didn't agree with the investigator, this matter has been passed to me to make a 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 C was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we can investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Miss C entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. In this case I believe that the relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

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

I understand that in this case both parties have now agreed that the car wasn't of satisfactory quality when supplied, and Moneybarn have agreed that Miss C can reject the car. Therefore, I don't intend to repeat all the merits of the case in detail in my decision. However, I do want to confirm that I have reviewed all of the evidence and I am in agreement with our investigator's decision that the car was faulty and that, most likely, the faults made the car of unsatisfactory quality. My reasons for this are broadly the same as our investigator's but I will summarise them briefly.

Moneybarn supplied Miss C with a car at the end of December 2023. At that time the car was six years old, the mileage on the agreement was noted as 75,473 miles, and the cash price of the car was £20,700. Taking the age, price and mileage of the car into account, I think a reasonable person would expect that parts of the car might have some wear and tear and that there's a higher risk this car might need repairs and/or maintenance sooner than a more expensive car, or one which was newer or had lower mileage when it was supplied.

Having said that, Miss C says that the dealer told her that any faults with the car would be fixed before she took possession of it and the car would undergo a full service.

As outlined above, by the end of January 2024 Miss C had experienced a number of problems with the car and two diagnostic tests had been done, all of which indicated that faults were present. By the end of April 2024 Miss C was still having problems with the car and further diagnosis indicated previous issues had not been addressed and that further problems were arising, despite the car having been into the garage for repair on more than one occasion.

I have taken into account what Miss C has told us about the car, including the problems she experienced and the timing of those problems, as well as the diagnostic reports and other evidence presented. Based on all of this I'm satisfied that the car is faulty. I also agree with our investigator that, whilst in isolation some of these faults might be considered wear and tear for a car of this age, mileage and cost, when taken together, I think that the number and nature of problems with the car, along with how soon they presented after Miss C acquired the car, lead me to conclude that the car was, more likely than not, not of satisfactory quality when it was supplied.

I now want to focus on what I think Moneybarn should do to put things right for Miss C.

Moneybarn accepted the findings of our investigator.

Miss C accepts some of the investigator's findings but disagrees with some of the redress. She says that Moneybarn should refund all the monthly repayments she made under the agreement and should pay £750 for the distress and inconvenience, rather than £200, in addition to the other payments our investigator said Moneybarn should make.

Refund of payments

Miss C says she should have all repayments refunded because:

- She didn't have the opportunity to have the car inspected until January 2024 because she was unable to collect it until 22 December 2023, due to delays by the dealer in preparing the car and carrying out pre-delivery works, and therefore her ability to exercise her right of rejection of the car was curtailed.

- Moneybarn gave her false information about when she could reject the car, stating that she only had 14 or 30 days from the date of purchase to do so.
- She attempted to contact Moneybarn many times to resolve the issues, but they ignored her. She feels Moneybarn effectively forced her to keep the car by ignoring her and, therefore it's unfair that they should retain almost half of the interest they have charged her.

As the investigator explained, the time limit relevant to the rejection of the goods under the CRA is 30 days from collection of the goods and the 14-day limit relates to the ability to withdraw from the finance agreement only. Miss C collected the car on 22 December 2023 and therefore under the 30-day CRA time limit she could have expressed an intention to reject the car up until 21 January 2024. Miss C arranged for the first diagnostic test to be done on 3 January 2024 and this identified a number of possible issues. Miss C didn't reject the car at this stage or before 21 January 2024, but she gave the supplying dealer the opportunity to repair the car.

Based on the information provided, I haven't seen enough to conclude that Moneybarn gave Miss C false information about her rights around rejecting the car.

I also don't think that Miss C was forced by Moneybarn to keep the car or make the payments, beyond what she had agreed to as part of the requirements of the hire agreement.

I have taken into account what Miss C has said about her impaired use of the car since she took possession of it, including that she didn't use it for trips out with her family during holidays and that she had concerns about the safety of driving it with her family, particularly after the transmission failure. But I have also taken into account the usage which Miss C has had of the car. The diagnostic report of 8 April 2024 shows the mileage as 78,320. The mileage around the time Miss C acquired the car in December 2023 was 74,573. This indicates that the car was driven on average in excess of 900 miles per month during this period.

Having considered all of this, I think that Miss C has been able to use the car quite extensively and therefore, I don't think it is reasonable to ask Moneybarn to refund all of her repayments.

However, given the number of issues with the car, I'm also satisfied that Miss C's usage and enjoyment of the car has been impaired. Because of this, I think it's fair that Moneybarn refund some of the payments Miss C made, and, in the circumstances of this particular case, I think a refund of 10% of the payments made while Miss C has had the car fairly reflects the impaired use caused by the car not being of a satisfactory quality.

Impact on Miss C

Miss C thinks £200 for distress and inconvenience is insufficient in the circumstances and she has referred to the guidance on this service's website as well as the extent of inconvenience, upset and worry caused to her as a result of being supplied with a car that wasn't of a satisfactory quality.

I have considered what Miss C said about being unable to make any travel plans that involved long distance during holidays, taking time out of work to travel to the supplier garage in Leeds, and her fear of breaking down when her children were in the car.

However, as I said above, Miss C has been able to use the car quite extensively, and whilst I acknowledge that her use was impaired, as also outlined above that impairment is being reflected by means of a partial refund of monthly payments.

Therefore, taking all of the circumstances into account, I think £200 in compensation to reflect the distress and inconvenience caused is a reasonable amount and isn't out of line with this service's guidelines.

I know that Miss C also said that the car was misrepresented to her, and that the supplying dealership breached the CPUT. It may be that Moneybarn are not the ones responsible for some of the supplying dealership's actions, but I don't think I need to make a finding on this. I say this because I am already asking Moneybarn to take action to put things right, and even if there was a valid misrepresentation that I could decide on, which I am not saying there is, I think most likely the outcome I would have reached would be very similar to the one I'm already reaching in this decision.

My final decision

For the reasons explained above, I uphold Miss C's complaint and direct Moneybarn No. 1 Limited trading as Moneybarn to:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Miss C.
- Refund Miss C's deposit/part exchange contribution of £800.29.
- Pay a partial refund of monthly payments, based on 10% reduction of each monthly payment made by Miss C under the agreement to reflect impaired use of the car, for all payments made from the date she acquired the car to the date of return.
- Refund Miss C for the following expenses which have been incurred as a result of the inherent quality issues with the car, subject to satisfactory evidence:
 - The cost of the GAP insurance Miss C bought in relation to this car, including any cancellation charges, less any pro-rata refund received from the insurance provider on cancellation, which Miss C should attempt to recover.
 - A refund of the cost of the warranty Miss C bought for this car, including any cancellation charges, less any pro-rata refund received from the warranty provider on cancellation, which Miss C should attempt to recover.
 - A refund of £186 for the costs of the three diagnostic reports paid for by Miss C.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay £200 for distress and inconvenience caused.
- Remove any adverse information from the customer's credit file in relation to the agreement.

If Moneybarn No.1 Limited trading as Moneybarn considers that tax should be deducted from the interest element of my award, it should provide Miss C with a certificate showing how much they have taken off so she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 18 November 2024.

Liz Feeney
Ombudsman