DRN-5068047

The complaint

Miss A complains about a car supplied to her under a conditional sale agreement by Moneybarn No.1 Limited.

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 A says that she had problems with the car losing power from an early stage. She says that the dealer agreed to look into it and replaced the thermostat and water pump. However, later on Miss A broke down again – and it transpired that the engine's head gasket had failed.

Miss A wants Moneybarn to do something about the engine failure – and wants to be compensated for being unable to use the car since.

Our investigator upheld the complaint and proposed rejection of the car. Miss A did not agree – she wanted the car repaired or replaced. So the matter was passed to me for a decision.

I issued a provisional decision which said:

What I've provisionally 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.

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. Moneybarn 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 ('CRA from now on') 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.

At the end of March 2023 Moneybarn supplied Miss A with a second-hand car that was around 7 years old and had done 88,500 miles at the point of supply. The dealer priced it at just under £7,000 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.

However, saying that, I would not expect the car to have significant inherent issues at the point of supply. And Miss A's testimony is that very shortly after taking the car it was losing power and the dealer agreed to take it in for repairs in June 2023. The dealer has not provided very much information at all about the diagnosis and extent of repairs it carried out at the time. However, Miss A says she recalls that it told her the issue was with the 'coolant system' and as a result it changed a pump and thermostat.

Miss A's testimony is credible. And I note it is backed up by the following:

- *An invoice from June 2023 which shows the dealer replaced a thermostat; and*
- *an expert inspection commissioned by Moneybarn ('Report A') and carried out in March 2024 confirms that the water pump appeared to be 'of recent origin'.*

It also appears, from the nature of the repairs, that the car was not cooling itself properly – leading to overheating and issues with power loss.

While the car was of a high mileage at the point of supply – the symptoms of significant engine issues were almost immediate. So I am reasonably satisfied that the underlying problems were inherent at the point of sale here. It follows – that the car was not of satisfactory quality when supplied in accordance with the CRA.

The question appears to be whether the subsequent failure of the car in December 2023 is as a result of these early issues with the cooling system.

Miss A says that it definitely is connected because her engineer told her. She says:

- *he told her the thermostat had been fitted using the incorrect sealant and this had melted and caused the thermostat to fail;*
- *he said if the coolant wasn't bled properly when the thermostat was changed then this can cause an air lock and can blow the head gasket;*
- *the head gasket was damaged when the engine overheated; and*
- *whoever had repaired the car had done a bad job.*

I have carefully considered what Miss A has said along with the written report Miss A has submitted.

The written report isn't quite as conclusive as what Miss A has said. It appears to state the thermostat was replaced – and speculates what might occur 'if' the coolant system wasn't bled properly. But it doesn't comprehensively conclude that the current issues are due to

poor repairs. I think this makes this case more difficult to decide – however, I note the following:

- *The report does persuade me that the later issues are likely connected to the earlier issues as these also relate to an improperly functioning engine cooling system and subsequent overheating of the engine. It states that the error codes found indicate that the coolant flow to the engine was insufficient and has caused the head gasket failure.*
- *Miss A's recollection about what the engineer told her about the poor standard of repairs is credible, and is not ruled out by Report A (which simply comments on the presence of sealant around the replaced water pump).*

I turn to Report A more specifically which concludes the head gasket has failed and links this to a failure in the coolant system. However, it concludes that the matter is related to wear and tear, and notes the mileage that Miss A has covered since supply of the car to show it is unlikely this is due to an inherent issue from the point of supply. Miss A has pointed out that the mileage has been overstated by about 3,000 miles. While I accept this appears to be a clerical error – it still stands that she had covered around 8,800 miles before the head gasket failed – suggesting there was no inherent fault at the point of sale. The car had also cumulatively travelled around 97,000 miles by this point. Which overall, does indicate a high probability of wear and tear related component failure – rather than a car which was not sufficiently durable.

However, the particular circumstances here are not quite as straightforward – in that there is persuasive evidence of an inherent engine fault at the point of sale, due to the overheating issues and repairs much closer to the point of supply. It stands to reason that if these overheating issues were not properly addressed they could have led to or significantly contributed to the issues that then occurred in December 2023. I also note that Miss A's engineer has explained in his report that in the event of ongoing cooling issues the head gasket would not necessarily have failed immediately. I find that one of the problems with Report A is that it does not acknowledge the history of early issues/repairs or attempt to address it. It appears to focus an assessment based on the age and mileage of the car from a durability perspective – rather than sufficiently cover the events that occurred shortly after supply and the possibility of an inherent and ongoing issue since the point of sale.

This is not a clear cut case – but Miss A had engine related overheating issues at an early point – and there is not really sufficient information from the dealer or Report A for me to rule out these being connected to the later failure of the head gasket. Meanwhile, Miss A has produced her own credible testimony and an expert report which goes some way to supporting this. All things considered, I think it fair to say that the more recent head gasket failure is likely as a result of the car not being of satisfactory quality at the point of supply – and it follows that this is something Moneybarn needs to fairly put right.

I know Miss A wanted repairs or a replacement. And there is nothing to stop her negotiating this with Moneybarn as an alternative to my decision. But I don't consider these are fair in the circumstances here. The CRA says that after one attempt at repair a consumer can exercise their final right to reject. And I think this is the most appropriate solution here noting:

- *The likely disproportionate cost of engine repairs compared to the value of the car;*
- *the likely further significant inconvenience caused to Miss A by further attempts at repairing the car; and*
- *the likely difficulty sourcing a 'like for like' replacement of a second-hand car in any event.*

Moneybarn should therefore collect the car at no further cost to Miss A and end the agreement with no adverse information on her credit file from said agreement.

I understand Miss A did not make a deposit contribution and has not paid for repairs – so there is nothing to reimburse in this sense.

Miss A has used the car up until it failed on 4/12/23 so she should fairly pay for this use. However, any payments she has made relating to the period following this should be reimbursed to her. I know that Miss A has said she has had alternative travel costs while she has been without the car – however, she would always have some travel costs so the refund of her monthly rentals during this time should sufficiently cover this.

Miss A should also be reimbursed any tax or insurance costs from 4/12/23 while the car has been unused (on production to Moneybarn of proof of payment).

Miss A has described to this service the impact of the issue with the car on her life – such as doing the school run and getting to work. She has clearly been extremely stressed out by it all. She has explained the impact on her mental health as well. I am very sorry to hear about this and have carefully thought about appropriate further compensation for this. I note our investigator has suggested £400 – and in the particular circumstances here I consider this fair as the matter has gone on for a considerable time and led to a notable impact on Miss A.

My provisional decision

I uphold this complaint and direct Moneybarn No.1 Limited to:

- *Take back the car at no further cost to Miss A and end the agreement – ensuring there is no adverse footprint left on her credit file as a result;*
- *refund Miss A all monthly payments relating to the period from 4/12/23 to the point of settlement;*
- *refund Miss A (on production to Moneybarn of proof of payment) her tax and insurance costs related to the period from 4/12/23 to the point of settlement;*
- *pay Miss A simple yearly 8% interest on all refunds from the date of payment to the date of settlement; and*
- *pay Miss A £400 compensation for distress and inconvenience.*

If Moneybarn considers it necessary to deduct tax from any interest award it should provide Miss A with a tax deduction certificate.

Miss A accepted my decision. Moneybarn said:

1. It does not feel the refund of the tax and insurance is appropriate as it forms part of the terms of Miss A's agreement and is a legal requirement;
2. Miss A has already been awarded £100 compensation so it wishes to clarify if I want it to pay £300 instead; and
3. the car has already been collected as it was impounded at a cost to Moneybarn of £1,209.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below.

I will deal with Moneybarn's comments in line with my numbering above:

1. I do not disagree that tax and insurance is a legal requirement. However, it is unfair that Miss A is out of pocket for this expense in the circumstances here - during a period she hasn't had use of the car and has had alternative travel costs.
2. I am unclear whether Moneybarn has paid £100 compensation for distress and inconvenience already – but if it can show it has done (in relation to resolving this specific complaint) then it can deduct this from the compensation due under my ruling as my intention is not to provide double recovery.
3. I am unclear if Moneybarn is saying it wants the cost of impounding the car deducted from my redress – however, I don't think that would be fair in the particular circumstances here as from what Miss A has explained it seems the financial difficulties she suffered and impounding of the car was a direct result of the quality issues with the car (which I have established are the liability of Moneybarn).

Putting things right

Moneybarn should put things right as I have set out below.

My final decision

I uphold this complaint and direct Moneybarn No.1 Limited to:

- Take back the car at no further cost to Miss A and end the agreement – ensuring there is no adverse footprint left on her credit file as a result;
- refund Miss A all monthly payments relating to the period from 4/12/23 to the point of settlement;
- refund Miss A (on production to Moneybarn of proof of payment) her tax and insurance costs related to the period from 4/12/23 to the point of settlement;
- pay Miss A simple yearly 8% interest on all refunds from the date of payment to the date of settlement; and
- pay Miss A £400 compensation for distress and inconvenience.

If Moneybarn considers it necessary to deduct tax from any interest award it should provide Miss A with a tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 5 November 2024.

Mark Lancod
Ombudsman