

The complaint

Miss M is unhappy that a car supplied to her under a conditional sale agreement with Moneybarn No. 1 Limited (Moneybarn) was of an unsatisfactory quality.

What happened

In June 2023 Miss M was supplied with a used car through a conditional sale agreement with Moneybarn. The agreement was for £12,062 over 60 months; with an advance payment of £119 followed by 59 monthly payments of £202.43. At the time of supply, the car was around nine years old, and had done 81,148 miles.

Miss M complains that she had problems with the clutch after just six months use. She's unhappy as she said the supplying garage told her at the time of sale that the clutch and cambelt had recently been changed. She said she had taken it to a garage who had told her the original clutch had not been changed.

She said she asked that garage to carry out the repair as she needed the car to get to work. She wanted Moneybarn to pay for those repairs.

Moneybarn said that Miss M had travelled approximately 8,750 miles in the car before reporting the fault. They said that they were satisfied that the fault was more likely due to wear and tear and would not have been present at the time of sale.

They also said that Miss M had denied them the opportunity to fully investigate the complaints as she had arranged for "unauthorised repairs" to be done. So they didn't uphold her complaint.

Miss M was unhappy with this response, so she referred her complaint to our service for investigation. She provided information from a garage that stated its opinion that the clutch was an original part and had not been replaced. Miss M confirmed that she hadn't done the miles Moneybarn had claimed she had done. She said she didn't know the mileage at the time the clutch failed, but she confirmed that in March 2024 it had done 86,799 miles, meaning she had done only 5,650 miles in the eight months she had the car.

Our investigator didn't uphold Miss M's complaint. He agreed that she was told the clutch had been replaced but said there was no evidence that she was told the replacement part would be brand new. He also said she'd been able to travel a few thousand miles before the clutch failed so he felt it failed due to wear and tear.

Miss M didn't agree with the investigator. She said she was told by the supplying dealer that the replacement parts would be new. And she had relied on this statement when she decided to purchase the car and enter into the conditional sale agreement.

Because Miss M didn't agree, this matter was passed to me to make a final decision.

I issued a provisional decision on 1 October 2024, where I explained my intention to uphold the complaint. In that decision I said:

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 M was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Miss M 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. I think in this case those 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 M 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.

Complaint Handling

Before I explain why I've reached my decision, it's important for me to set out exactly what I've been able to consider here, and how. I note Miss M has complained about how Moneybarn handled and responded to her complaint. She was unhappy that they failed to update her contact details, and failed to explain their complaints procedure to her. She was also unhappy that they didn't inform her that she shouldn't arrange repairs without their authorisation. But complaint handling is an unregulated activity and so, falls outside of our service's jurisdiction to consider. So, the way Moneybarn handled Miss M's complaint hasn't been considered as part of my decision.

Fault

I'm satisfied that there was a fault with the clutch. I'm persuaded by the report from the garage that repaired the car. It said that Miss M reported the clutch was slipping and vibrating. They inspected and found a faulty "flywheel, clutch assembly and slave cylinder".

Miss M said the supplying dealer told her the clutch had been replaced and this was the deciding factor in going ahead with the purchase. This was because the car she had at the time had issues with the clutch, and she didn't want the same issues with this one. Especially as she needed transport to visit an ill relative.

She has provided me with a copy of the advert for the car. It states the car was "in good working order". Importantly it also states it had a "recent cambelt and clutch changed".

So I'm satisfied that Miss M was supplied with a car that she believed had undergone a recent repair and was in good order. I don't think it's necessary for me to consider whether the parts used were brand new, new, or used – what is critical is that Miss M was told the clutch had been repaired. And I'd expect that repair to be durable.

That means I'd expect the repair to last more than six or seven months, and certainly more than 5,000 miles. I don't know the exact mileage at the time the clutch failed, but it's likely based on the mileage recorded in March 2024 that she would've done less than 5,000 miles. So based on this, I'm satisfied that the faulty clutch, as diagnosed by the garage, made the

car not sufficiently durable, as required by the CRA.

I'm also satisfied that the car was unlikely to have been of satisfactory quality at the time of supply. I say that because I'm persuaded by the statement from the garage that repaired the car. It said that the clutch and flywheel was "an original item fitted from new and not a replacement part". So I'm persuaded that it's more likely than not that the clutch wasn't properly replaced, or repaired – I say that because I think it's unlikely the clutch would have failed in such a short time if a full repair had been done.

Moneybarn say that they didn't have the opportunity to fully investigate Miss M's complaint because she arranged repairs before they could investigate and "establish liability". I agree that Miss M should've contacted Moneybarn before arranging for repairs. But in this case I think it's reasonable that Moneybarn pay for those repairs.

I say that because Miss M took the car to an independent garage, and Moneybarn would've likely asked her to do the same. She has provided a report and a description of the work that was done. This appears to me to relate directly to the replacement of the clutch. I understand why Miss M asked the garage to proceed with the repair. She needed the car for family and work reasons, and to delay could've led to more financial difficulty for her. So I think it was reasonable for her to go ahead.

I don't think this is unfair on Moneybarn, as it is likely that their investigation would've led to the same outcome: the car wasn't of satisfactory quality and repairs should be authorised.

Putting things right

Repair Costs

Miss M has provided evidence of the costs she incurred in having the car repaired. And, given that the car wasn't sufficiently durable and likely not of a satisfactory quality when supplied, I think it's only fair that Moneybarn reimburse these costs.

D&I

It's clear that Miss M was inconvenienced by having to arrange for the car to be repaired, and by this repair being unsuccessful. Miss M would not have had to do this, had Moneybarn supplied her with a car that was of a satisfactory quality. And she had to go back to the garage in her own time to obtain evidence of the faults found, and the repairs done. So, I think they should pay her £150 in compensation to reflect the distress and inconvenience caused.

Therefore, Moneybarn should:

- refund the full cost of the repair, £1,154.28, as shown on the invoice provided*
- apply 8% simple yearly interest on the refund, calculated from the date Miss M made the payment to the date of the refund†; and*
- pay Miss M an additional £150 to compensate her for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

Responses

Miss M asked that I reconsider the amount of compensation I had proposed. She said that she was left with significant repair costs that left her in a dire financial position. She explained her circumstances at that time, and said that Moneybarn continued to harass her

for payments. She said they continued to do so despite her informing them of her financial situation.

She asked that the arrears for the period be cleared, and that any negative markers are removed from her credit file.

Moneybarn didn't respond to my provisional decision, but they did provide further information about the status of Miss M's account, and up to date contact notes.

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.

As Moneybarn and Miss M haven't said anything to the contrary, I'm taking their comments to mean they don't object to my provisional decision.

I've carefully considered Miss M's comments about the amount of compensation she thinks Moneybarn should pay her. She says this is because Moneybarn "*harassed*" her for payments when she said she'd told them she was in financial difficulty.

It's important for me to say that I haven't considered whether or not Moneybarn treated Miss M fairly and reasonably when she was in financial difficulty. That's for two reasons: the first is that Miss M would need to make that complaint to Moneybarn – and if she's unhappy with their response she can raise her complaint with us. The second reason is that I do not have all the information I need to consider that complaint.

What I can look at is the circumstances around this complaint about the quality of the car Moneybarn supplied to Miss M. I accept that having to pay the repair costs impacted on Miss M's financial situation. But I also note that Miss M was already in arrears. And in her own words, she has described how her financial situation had been impacted by her employment situation, and she was grieving following the loss of her father.

I would've considered asking Moneybarn to refund any fees or interest arising from the missed payments after January 2024. I've reviewed the statement of account and note that no charges were added to Miss M's account. So, there is nothing for Moneybarn to refund.

And I won't be asking them to amend Miss M's credit file. It's important for all parties that credit files show accurate information. Miss M missed payments, and the reason for that wasn't solely because she had to pay for the repair. So it wouldn't be reasonable to have those missed payments removed.

I'd like to thank Miss M for her response. She has clearly explained her circumstances at the time, the impact of having a faulty car, and having to pay for that repair certainly added to the distress she was feeling. But for the reasons I've explained above, I am now adopting my provisional view as my final decision.

Putting things right

Moneybarn should:

- refund the full cost of the repair, £1,154.28, as shown on the invoice provided
- apply 8% simple yearly interest on the refund, calculated from the date Miss M made the payment to the date of the refund†; and

- pay Miss M an additional £150 to compensate her for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

†If Moneybarn considers that tax should be deducted from the interest element of my award, they should provide Miss M with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

My final decision

For the reasons explained, I uphold Miss M's complaint and Moneybarn No. 1 Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 14 November 2024.

Gordon Ramsay
Ombudsman