

complaint

Ms P is unhappy that a car supplied to her through a conditional sale agreement with Moneybarn No.1 Limited, trading as Moneybarn, was of an unsatisfactory quality.

background

In October 2018, Ms P was supplied with a used car through a conditional sale agreement with Moneybarn. The agreement was for £4,628 over 52 months, with monthly repayments of £191.35. At the time the car was 7½ years old and had done 84,422 miles. The dealership who sourced the car offered a limited 3-month warranty.

The car broke down in December 2018. Ms P says this was because the Diesel Particulate Filter (DPF), which filtered out soot in the exhaust, was blocked. The dealership examined the car and replaced the fuel injector under warranty. The dealership said this was the issue, not the DPF.

But Ms P then said the car was making a noise when driven at 60-65mph. She took it back to the dealership, who said it was a worn wheel bearing which wasn't covered by the warranty. On 29 January 2019 Ms P complained to Moneybarn saying:

- The issue with the DPF hadn't been fixed when the dealership repaired the car under warranty.
- The dealership said there was a worn wheel bearing issue, but the bearings weren't showing as an advisory on the MOT. Ms P believed the juddering was to do with the DPF as the DPF warning light was illuminated.
- One of the tyres blew out, and another had to be replaced because of illegal tread depth, but the tyres weren't an advisory on the MOT either.

Moneybarn didn't accept the faults had been present, or were developing, when Ms P was sold the car. So they arranged for an independent engineer to inspect the car. The engineer agreed there were faults with the car but said these weren't present when it was supplied to Ms P. Ms P didn't agree with the engineer. She said she took the car to a garage in April 2019 and had been told the faults would cost between £2,500 and £4,000 to fix.

But Moneybarn said the engine faults, DPF and tyres were wear and tear items which were Ms P's responsibility not theirs. They also say the car had done over 10,000 miles before any concerns were raised with them, which was sufficient mileage for wear and tear to occur. So they didn't think any faults were present when Ms P was supplied with the car, and they didn't think they should do anything more.

Ms P was still unhappy and brought her complaint to the Financial Ombudsman Service. Our adjudicator thought that the faults on Ms P's car were attributable to normal wear and tear. So she didn't think Moneybarn had done anything wrong by not fixing the faults or allowing Ms P to reject the car.

Ms P didn't agree with the adjudicator and she sent in some additional evidence relating to the tyres – a letter from a garage saying the rear tyres had been below the legal limit and this was the cause of the car juddering at high speeds, not a worn wheel bearing. The adjudicator didn't think this made a difference to her initial view and issued a second view explaining why.

Ms P still didn't agree with the adjudicator, providing her comments why. She's asked that an ombudsman review her complaint and make a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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. Ms P was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The relevant law – the Consumer Rights Act 2015 (CRA) - says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale; and the vehicle's history.

The CRA also says that, where a fault is identified within the first six months, it's assumed that the fault was present when the car was supplied. But this doesn't apply where it's established the goods conformed to contract when they were supplied, for example where the fault is the result of wear and tear. So, if I thought the car was faulty when Ms P took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

When Ms P took possession of the car, it was 7½ years old and had done 84,422 miles. I'd expect wear and tear in a vehicle of that age and mileage. And I think any reasonable person would expect to have to repair or replace some parts of the car over time.

It's not disputed there were some issues with the car. It was inspected by an independent engineer on 11 April 2019 (10 weeks after Ms P reported the faults to Moneybarn) when its mileage was recorded as being 94,574. This means the car had travelled 10,152 miles between supply and inspection.

But Ms P's car first broke down on 29 December 2018, with mileage of 89,216 according to the breakdown report. So it'd done 4,794 miles since supply. And it did a further 191 miles in the 30 days between the first breakdown and the second breakdown – this was so low because the car had been with the dealership for repair for the majority of the time.

At the time of the second breakdown, which happened on 28 January 2019, the recorded mileage was 89,407, meaning that the car had travelled 4,985 miles when the issues were reported to Moneybarn the following day. And, as the independent engineer was only considering the faults Ms P has reported in January 2019, it's reasonable to conclude that these faults had become obvious within the first 5,000 miles.

The independent engineer concluded that the DPF filter was blocked, and other faults were present, but no faults occurred during the road test. The engineer also said that *“the faults were not developing at the point of the finance inception.”* But, crucially, the engineer considered the faults were wear and tear items that had happened within the first 10,000 miles, and not the first 5,000 miles as was actually the case.

I asked Moneybarn to provide an updated report from the independent engineer, saying whether the mileage at the time of the second breakdown changed their view about when the faults started developing. Moneybarn did this and the engineer said *“we confirm that we see no reason to change our report as the miles are still excessive.”*

The engineer is independent of both Moneybarn and Ms P. And the declaration on their report that explains their duty is to the courts, and this over-rides any obligation to whoever requested the report and/or pays for it. Because of this, I’m satisfied that it’s reasonable to rely on the conclusions of the independent engineer – that the faults weren’t present when the car was supplied to Ms P, and that they result from wear and tear due to mileage.

Turning to the issue of the tyres I’ve seen that, on 3 October 2018, the car failed an MOT because both rear tyres were below the legal limit. But the car passed an MOT the following day, so the tyres must have been changed. But I can’t say whether they were changed for new or part worn tyres, and if it was new tyres, what quality of new tyres had been put on.

But the car had done 4,985 miles between the MOT and the tyre blowing. And not knowing what type of tyres had been put on, I can’t say conclusively that the tyre issue wasn’t wear and tear. The juddering stopped when the tyres were replaced and juddering at high speed is a symptom of worn tyres. So I believe the dealership misdiagnosed the tyre wear as a wheel bearing issue. But this doesn’t mean that either the dealership or Moneybarn are responsible for the tyre blowing.

Because of the above, I’m also satisfied that Moneybarn don’t need to do anything more.

my final decision

For the reasons explained above I don’t uphold Ms P’s complaint about Moneybarn No.1 Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms P to accept or reject my decision before 22 February 2021.

Andrew Burford
ombudsman