

Complaint

Miss B and Mr L complain about a car supplied to them under a conditional sale agreement with Moneybarn No. 1 Limited.

background

In January 2018 Miss B took out a conditional sale agreement with Moneybarn to finance the purchase of a used car. The car was seven years old, had travelled more than 76,600 miles, and cost £5,400. She gave Mr L authority to help with her complaint, and he called and messaged Moneybarn many times during the complaint.

Miss B said she noticed faults with the car from March 2018. She said the car struggled to start, and the engine often cut out. She said warning lights often showed up on the dashboard. She said she had to call out a breakdown company on several occasions. On one occasion it reconnected the battery terminal. She said she reported this to Moneybarn, and the dealer who supplied the car, but she said they didn't seem interested.

She said the car's performance started to be affected. She said it juddered, and there was black smoke coming from the exhaust. She said it would go into "LIMP" mode. She said this and the electrical faults made the car feel extremely dangerous.

She said she raised this with Moneybarn. She said they agreed she should take it to a garage for inspection. She said when this garage refused to inspect the car, Moneybarn agreed to arrange for it to be taken to the original dealer. She said it took many weeks for this to happen.

She said the original dealer was unable to replicate the faults. Miss B and Mr L work in the motor trade. She said she told Moneybarn, and the dealer, that the faults were likely to be related to the DPF, or an injector fault, or both.

She said Moneybarn then told her that the car had been remapped and this was the cause of the faults. She said they told her they wouldn't be able to do anything. She said she did not remap the car.

She said after several months of arguing with Moneybarn, they arranged to have an independent report done. She said she was shocked by the report, because it said the DPF had faulted again because the car had possibly been remapped, and because the car only did short journeys.

She said none of these were true, and that the independent report was influenced by Moneybarn and the dealer. And she said the engineer didn't even look for the electrical faults.

She said this has taken too long to resolve, and feels the issues weren't properly investigated. She also said that Moneybarn have issued defaults because she stopped making the monthly payments.

Moneybarn said they tried to arrange an inspection at a dealer local to Miss B. For many reasons this didn't happen, so they arranged for the car to be taken to the supplying dealer. They said he cleaned and refitted the throttle position sensor and replaced the DPF sensor. Moneybarn said in September 2018 they instructed an independent engineer to inspect the car because Miss B complained that the issues hadn't been fixed. They said the engineer

reported the DPF needed replacing, and that the car should be checked for signs of remapping as this could have contributed towards the problems Miss B was having with the car. He also reported that the problems could have been caused by Miss B only making short journeys. He said these were maintenance issues and weren't the responsibility of the supplying dealer.

Moneybarn said they were aware of the electrical problems Miss B had reported, but the dealer and the independent engineer hadn't been able to replicate them. They said they were also aware of the problems with the electric windows, and the air conditioning system. They said these were also maintenance issues and not faults present when the car was supplied.

They acknowledged they hadn't provided Miss B with the service they'd expect to, and credited more than £200 towards the outstanding arrears on the agreement.

Our investigator didn't think Moneybarn were liable for the repair. He didn't think the faults were likely to have been present or developing at the point of supply. This was because Miss B had done 7,000 miles before it was inspected and he felt this was significant usage in a relatively short period of time. He didn't think the car could have covered this distance if it was faulty at the point of supply.

In July 2019 Moneybarn informed our investigator that they'd been told the supplying dealer had gone into liquidation. They said they'd been advised that the car had been sold at auction by the administrators, without their knowledge. Although this wasn't part of Miss B's complaint, our investigator included this in his investigation. He said that because Miss B had left the car at the supplying dealers' premises, Moneybarn hadn't done anything wrong in these circumstances.

He felt that Moneybarn were fair in recognising they could've provided a better service. He felt that the amount they awarded Miss B was fair, and in line with what he would've suggested had it not already been done.

Miss B disagreed with his view and asked for an ombudsman 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.

Moneybarn supplied Miss B with the car under the conditional sale agreement they had with her. There's a term implied in the agreement that the car would be of satisfactory quality. What is satisfactory is determined by what a reasonable person would consider satisfactory given the price, description and other relevant circumstances. In this case this would include things such as the age and mileage of the car.

Miss B's car was seven years old and had travelled more than 76,600 miles when she got it. So, a reasonable person might expect to have to repair or replace some parts of the car over time.

Miss B wanted to reject the car as she said it was faulty. This is a right given under the relevant legislation, the Consumer Rights Act 2015 (CRA). The 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.

The CRA also says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. So, if I thought the car was faulty when Miss B 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.

I don't think the faults were present at the point of sale. I agree with our investigator – I think it's more likely than not that the issues can be expected to have been caused by wear and tear.

The dealer who supplied the car arranged for the car to be inspected. It replaced the DPF sensor. It continued to road test the vehicle, and when the engine light came back on it realised the DPF itself need replacing. I think it's reasonable for the dealer and Moneybarn to say this is a wear and tear issue. DPFs can be expected to last up to 100,000 miles, but can need replacing before then. I also think it's unlikely that Miss B would have been able to travel 7,000 miles if the DPF was faulty at the time of supply.

This is supported by the report provided by the independent engineer in September 2018. He found the pressure reading in the DPF was high and this indicated the DPF need replacing. He also said he didn't think the fault wouldn't have been present when the car was supplied to Miss B.

I'm also satisfied that it was reasonable for Moneybarn to rely on the dealer and the expert's statements that they couldn't replicate the electrical problems Miss B complained about. The dealer told Moneybarn they kept the car for an extra week to do further road testing. This identified the DPF failure, but it didn't show up the problems Miss B complained about. And the independent engineer didn't report any electrical faults, or the injector faults Miss B had suggested.

In June 2018 Moneybarn told Miss B the faults couldn't be replicated, and this was likely to be because they were intermittent. They invited her to submit video or other evidence when the faults occurred, but this was never done. I think it's reasonable for Moneybarn to rely on the fact that two separate investigations by mechanics failed to find the electrical faults she complained about. So I'm satisfied there were no other faults present at the time of supply.

Miss B questions the integrity of the independent expert. The report makes clear that the engineer's duty is that of an expert to help the court. So, regardless of who instructed the engineer, and who paid for the inspection, the engineer is independent of Moneybarn, the supplying dealer, and Miss B. Because of this, it's reasonable for Moneybarn to rely on the contents of this report, regardless of the outcome.

So I'm satisfied the car was of a satisfactory quality when supplied to Miss B, and that Moneybarn doesn't need to do anything more.

I agree with our investigator that Moneybarn's handling of this complaint could've been better. There was a lot of toing and froing between both parties throughout June and July 2018 whilst they tried to agree who and where the car should be inspected. This was because Miss B lived some distance from the supplying dealer. Moneybarn agreed it could've done more to progress matters. I agree with our investigator their award of more than £200 is fair. So Moneybarn need to do no more.

For completeness I'll also address the issue of the car being sold by the administrator, leaving Miss B with no car. It must have been distressing for Miss B to hear this news. Moneybarn advised Miss B in their final response letter issued in December 2018 they were not upholding her complaint. Miss B left the car at the dealer, so I can't hold Moneybarn responsible for actions that happened after this time.

I know she was extremely unhappy and upset by the whole situation, but I would have expected her to look after the car and to continue to make payments during this dispute. Her agreement with Moneybarn required her not to abandon the goods and to keep the goods in her possession.

If Miss B is in financial difficulty, I expect Moneybarn to treat her positively and sympathetically and do what they can to help Miss B pay what she owes.

my final decision

For the reasons explained above I don't uphold Miss B's complaint against Moneybarn No. 1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 12 March 2021.

Gordon Ramsay
ombudsman