

complaint

Miss M complains Moneybarn No. 1 Limited won't repair her car which she acquired under a conditional sale agreement with it.

background

Miss M acquired her BMW 1 series car under a conditional sale agreement in December 2017. The car had recently passed its MOT. At the time it had done about 53,000 miles and was seven years old.

In March 2018 the car lost power and Miss M arranged for it to be towed to a garage, by this time she had driven an additional 9,000 miles. She contacted Moneybarn who arranged an inspection of the car and it was found the timing chain had broken and she needed a new engine. But Moneybarn refused to cover the cost as it said this was down to wear and tear. It did, however, pass on an offer from the dealership of £500 towards to cost of replacing the engine. Not happy with that Miss M asked us to look into matter.

Our investigator upheld the complaint. She wasn't persuaded Moneybarn had shown the timing chain breaking was due to wear and tear – there was no engineer's report identifying the cause.

Moneybarn didn't agree with the outcome. But it did agree to arrange an independent inspection to be carried out. Initially it said it didn't know the location of the car; which was where it had been towed to. And then it said the garage were charging significant storage fees and couldn't arrange the inspection until they were paid. It didn't think they were responsible for these since it had turned down Miss M's complaint.

It did ultimately arrange the inspection which concluded the timing chain breaking was likely due to wear and tear. But the investigator continued to uphold the complaint, pointing out no inspection of the actual timing chain had taken place as the engine had remained in place. So she didn't find the report persuasive. And as the timing chain had broken at around 62,000 miles she didn't think the car was of satisfactory quality as it wasn't sufficiently durable.

Moneybarn asked for the matter to be referred to an ombudsman. Since then I asked for further information. Moneybarn has confirmed:

- It paid the storage charges for the car and these have been added to Miss M's agreement with it.
- It now has the car in storage.
- Miss M stopped making repayments to the agreement when she received its final response to the complaint.

I issued a provisional decision upholding the complaint on 27 February 2019. I recommended Moneybarn either arrange for a repair of the car, but if that wasn't possible or economical, then it should either replace the car with a like for like car or write off the remaining balance of the finance agreement and reimburse associated costs, including the garage costs.

Miss M confirmed receipt of my provisional decision but didn't provide any further comment. Moneybarn has said it will carry out the second recommendation – write off the remaining

balance of the finance agreement, if it was confirmed this was an unwinding of the agreement so it would retain the car.

my findings

I've considered all the available evidence and arguments, including the responses to my provisional decision, to decide what's fair and reasonable in the circumstances of this complaint.

Miss M acquired the car using a conditional sale agreement in December 2017. When products are acquired on finance through a conditional sale agreement or a hire purchase agreement there is a transaction going on the background that means the seller sells the product to the finance provider, who in turn 'hires' it to the customer until final payment is made.

So as the finance provider Moneybarn is responsible for the quality of the car provided. And because the car was acquired in December 2017, the relevant legislation for me to take account of is the Consumer Rights Act 2015. In summary, this means the car provided using the agreement should be of satisfactory quality. Satisfactory quality encompasses a number of different factors, such as durability, safety, being free from minor defects, appearance and whether it was fit for purpose.

When deciding whether something was of satisfactory quality, there are a number of things to consider, such as the age and mileage of the car. This car was seven years old and had done over 53,000 miles so it's likely it would have shown signs of wear and tear. Moneybarn wouldn't be responsible for any wear and tear as this isn't a defect or fault but it would be responsible for any defects or faults you wouldn't expect (or reasonably be aware of) for a car of this age and mileage.

Miss M's car broke down within four months of acquiring it. By this time she had driven it a further 9,000 miles.

Under the Act goods which do not conform to contract at any time within a period of six months beginning on the day on which the goods were delivered, are taken to have not conformed on that day. The presumption under the Act applies unless it can be shown that it doesn't. Miss M raised problems with her car within four months. So what I must consider is whether Moneybarn has shown the car was of sufficient quality when it was sold.

My research has shown that timing chains, as opposed to timing belts, should last the lifetime of the car unless there is actually something wrong with it. Whereas timing belts are less durable and usually need to be replaced between 80,000-100,000 miles. However, my research has also shown this lifetime expectation wouldn't apply if the car hadn't been properly maintained or if a design or manufacturing fault led to excessive wear on the chain. Miss M wouldn't be responsible for any design or manufacturing fault. But she might be responsible if she hadn't properly maintained the car.

I've considered the reports that Moneybarn had carried out. The first inspection simply concluded the timing chain had broken. But it gave no reason for that; it was just a statement of what was wrong with the car. I therefore don't find it persuasive.

Moneybarn arranged for an independent inspection to be carried out. But it didn't arrange for the engine to be removed so that a full inspection could take place. As the onus is on

Moneybarn to show the presumption in the Act doesn't apply, I consider it should have arranged this. The report shows the engineer was unable to inspect the timing chain or the associated components. So although the engineer did conclude the timing chain likely broke due to wear and tear, I don't find this conclusion persuasive when an examination of the part in question didn't take place.

Although Miss M had driven an additional 9,000 miles, this car had relatively low mileage considering its age – 53,000 miles for a seven year old car. I think a reasonable person would expect a timing chain to last longer than it did, particularly as it's not a component of the car expected to wear in the same way as other components. Indeed, Moneybarn's engineer only established that in Miss M driving the car 9,000 miles, it alluded to the problem not being present when the credit was inception – and he was silent on the durability of the failed chain. As there is no persuasive evidence Miss M didn't maintain the car properly, I'm satisfied there is sufficient doubt about the durability of the timing chain, such that I find the car wasn't of satisfactory quality when it was acquired. And because of that I don't find Miss M is liable for any costs of repairing the engine.

Moneybarn has told us that it paid for the storage costs at the garage, although it has added these to Miss M's agreement. I appreciate it didn't uphold Miss M's complaint. But Miss M asked us to get involved within a matter of days of receiving its final response. So the matter was still being considered during that time. Moneybarn knew of the location of the car as it had arranged the first inspection, but I haven't seen any evidence that it told Miss M she would need to move the car and I don't think this would have been obvious just from its final response.

I understand Miss M has been able to use her father's car whilst this car has been waiting for repair. So she hasn't been put to the inconvenience of not being mobile – although having to borrow someone else's car is an inconvenience of itself. I've also been made aware that Miss M hasn't been making her repayments to the conditional sale agreement and Moneybarn has held in abeyance any arrears proceedings during that time (although arrears notices have been sent as required by regulations) which I consider it was fair to do. And I have borne all this in mind when deciding what Moneybarn needs to do to put this matter right.

how Moneybarn need to put this right

Moneybarn considers the repairs to the car are likely to be significant and it has agreed to redress Miss M using one of the recommendations I made in my provisional decision. It has asked for confirmation this is an unwinding of the agreement that means it retains the car.

As the car was acquired using a conditional sale agreement, the car remains Moneybarn's property until all payments have been made. My recommended redress in this matter means Miss M can walk away from the agreement, without having to make any further payments to Moneybarn and Moneybarn retains the car. I require Moneybarn to:

- write off the remaining balance of the finance agreement (including arrears and garage costs) at no further cost to Miss M; and
- it should reimburse the deposit Miss M made towards the car - £400; and
- clear her credit history in relation to the finance agreement; and
- reimburse any costs Miss M incurs for changing her car insurance, on provision of reasonable evidence of her changing the car insured and her paying any associated administration cost.

my final decision

For the reasons given above, I uphold this complaint and require Moneybarn No.1 Limited to redress Miss M's complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 29 April 2019.

Claire Hopkins
ombudsman