

complaint

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

background

In January 2019, Miss T was supplied with a used car through a conditional sale agreement with Moneybarn. The agreement was for £6,050 over 43 months, with monthly repayments of £229.64. At the time, the car was just over eight years old and had done 72,000 miles.

A few days after taking possession of the car, the engine management light came on. The dealership who supplied the car unsuccessfully attempted a repair. An independent engineer inspected the car in April 2019, and said there was a timing chain issue which was likely to have been present when the car was supplied to Miss T. So Moneybarn said she had the right to reject the car.

But Moneybarn told Miss T that, if she rejected the car, she'd be charged for each mile she'd done in the car. And they told her she'd also be charged for any damage to the car that fell outside fair wear and tear guidelines.

Miss T decided not to reject the car, and have it repaired instead. She paid £1,709 for some repairs to be done and has been quoted £1,905 for the remaining repairs. She wasn't happy with how Moneybarn have dealt with this matter, and she's brought it to us for investigation.

Our investigator thought Moneybarn's rejection proposal was fair. But she thought they should pay for the repairs the independent engineers report of April 2019 had said were necessary – the replacement and refitting of the timing chain. And this had cost Miss T £569.21. She thought Moneybarn should also pay Miss T an additional £250 to compensate her for the inconvenience she'd been caused by the dealerships initial failed repair and for the time her car had been off the road while being repaired.

The investigator said that the repairs Miss T had paid for, and been quoted for, included things the independent engineer didn't include in their report. She thought these faults had likely developed since the car was supplied to Miss T. And, because of this, she didn't think Moneybarn were responsible for these.

Miss T said there were problems with the vanos units, the oil pumps and the head gasket; which were all present at the time the car was supplied. And this is confirmed by the diagnostic check done by the dealership. So she thought Moneybarn should be responsible for these repair costs as well.

The investigator didn't agree, and didn't think the diagnostic showed these faults were present when the car was supplied to Miss T. Because of this Miss T has asked for an ombudsman to 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. Miss T 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 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 Miss T 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.

It's not in dispute that there were faults with Miss T's car, or that these became apparent shortly after she took possession of it. Miss T has provided a photograph of the electronic diagnostic report done on her car. The photograph is dated 29 January 2019 – a few days after Miss T took possession of the car, and the car details on the diagnostic report match that of the car supplied to Miss T.

The diagnostic report shows fault codes relating to the oil pressure, the camshaft timing, the clutch switch input and the powertrain control module. But fault codes are only an indication of what's wrong, and usually an inspection is needed to establish the actual problem.

The car was inspected by an independent engineer on 15 April 2019. The engineer said he was inspecting the car because Miss T believed it needed a new timing belt, oil pump and vanos unit; and because the engine flush, pressure test and filter replacement done by the dealership hadn't fixed the faults.

After considering the issues raised by Miss T, the engineer said that the problem was with the timing chain, which needed checking and possibly replacing at the earliest opportunity. The engineer thought that *"the vehicle has had a underlying/developing issue at the date of purchase in regard to the timing chain"* but *"in all other aspects the vehicle is considered to be in a good general condition and considered road legal."*

The engineer was independent of Moneybarn, the dealership and Miss T; and their duty is to the courts, and not to who instructed them and/or who paid their invoice for the inspection. And the statement on the engineer's report confirms this. Given this, I'm satisfied it's reasonable for me to rely on this report as part of my decision.

Miss T has said there were other faults with the car, present at the time it was supplied to her, that the engineer didn't comment on. But the engineer did comment that these faults had been considered. And the lack of reference to any other faults shows me the engineer didn't think these made the car of an unsatisfactory quality. So I'm satisfied it was only the issue of the timing chain that made the car of an unsatisfactory quality at the point of supply.

The fact that the car was of an unsatisfactory quality, and that the dealership had already had their chance at repair, meant that Miss T had the right to reject the car. And Moneybarn allowed her to do this.

In making the rejection offer, Moneybarn said that Miss T would have to pay for the mileage she'd done while the car was in her possession. And the CRA says *"if the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered."* And the explanatory notes for the CRA say *"if the final right to reject is exercised within 6 months of the delivery of the goods ... the trader must generally give the consumer a full refund [but] there is an exception if the goods consist of a motor vehicle ... in this case a deduction for use may be made within the first 6 months."*

Moneybarn also told Miss T she'd need to pay for any damage to the car, over and above fair wear and tear. And I've seen the terms Miss T agreed to when she took possession of the car say *"you must maintain (at your expense) the goods in good order and condition and will be responsible for any loss or damage to the goods, except fair wear and tear."*

Given this, I'm satisfied that the rejection offer Moneybarn made was fair and reasonable in the circumstances. Miss T didn't accept this offer, and she's told us she preferred the car to be repaired and her keep it, rather than reject it. This is her choice, and in these circumstances, it'd be fair for Moneybarn to cover the costs of the repairs specified by the independent engineer's report – the timing chain.

Miss T has provided an invoice for £569.21 for the replacement timing chain on her car. She's also provided evidence of the costs for other work to be done on her car, which she says is to fix faults present at the time the car was supplied to her. For the reasons already stated, I'm satisfied that Moneybarn should cover the costs of the timing chain, but not the other work Miss T says needs doing on the car – the independent engineer didn't say this other work made the car of an unsatisfactory quality.

Miss T has already paid the invoice for the timing chain, so I think it's fair that Moneybarn also pay her interest on this money when they reimburse her. But the investigator didn't include interest in her recommendation. So I've contacted both parties about the inclusion of interest and asked for their comments. Neither Moneybarn nor Miss T have objected to the inclusion of interest, so this will form part of my final decision.

The investigator has also recommended Moneybarn pay Miss T £250 to compensate her for the inconvenience she'd been caused by the dealership's initial failed repair and for the time her car had been off the road being repaired. I'm in agreement that this would've been inconvenient for Miss T, so I'm satisfied that Moneybarn should also pay this to Miss T.

my final decision

For the reasons explained above I uphold Miss T's complaint. Moneybarn No. 1 Limited must:

- reimburse Miss T £569.21 for the cost of the timing chain repair to her car, plus simple interest at 8% a year from the date Miss T paid the invoice to the date of reimbursement; and
- pay Miss T an additional £250 to compensate her for inconvenience she's been caused as a result of the car being of an unsatisfactory quality when supplied.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 9 March 2021.

Andrew Burford
ombudsman