

The complaint

Miss H is unhappy that a car supplied to her under a conditional sale agreement with Moneybarn Limited (Moneybarn) was of an unsatisfactory quality. When I refer to what Miss H has said and what Moneybarn have said, it should also be taken to include things said on their behalf.

What happened

On the 20th March 2023 Miss H was supplied with a used car through a conditional sale agreement with Moneybarn. The retail price of the car was £6,150 and Miss H paid a deposit of £500 with 59 payments of £224.52. At the time of supply the car was approximately 9 years old and had covered 80,518 miles.

Miss H is complaining that within 5 weeks she experienced problems with the car's clutch. She contacted both Moneybarn and the dealer that had dealt with the original supply of the car. The response Miss H received was that as she had not taken out an extended warranty any replacement clutch would be considered fair wear and tear, so they could not assist her. This contact would have taken place around mid-May 2023. Therefore, on the 17th May 2023 Miss H paid £450 to an independent garage to replace the clutch, with this bill including recovery. The mileage covered at this stage was 83252.

Miss H has subsequently complained with issues relating needing to replace the battery and a flat tyre. These issues occurring in October 2023 and Miss H raised a complaint with Moneybarn.

On the 5th November 2023 Moneybarn wrote to Miss H requesting that she provide them with evidence that the issues were present within the first six months. She was given until the 12th October 2023 to respond.

On the 21st December Moneybarn wrote to Miss H explaining that they had not been able to complete their investigations within the 56 days so she was entitled to refer the matter to us. Which she has done.

Our investigator stated the car was 9 years old and travelled 80,518 miles at the time of supply, and it was a further 2,734 miles before the issue with the clutch came to light and seven months before any issue with the battery came to light. Because of this history they decided that both issues were reasonable wear and tear. The car was therefore of satisfactory quality and Moneybarn were not obligated to do anymore in relation to Miss H's complaint.

Miss H didn't agree with the investigator. She said that she would have expected the car to have lasted two and a half years not 2,000 miles. She felt that the car was a scrap heap.

Because Miss H didn't agree, this matter has been passed to me to make a final decision.

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.

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 H 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.

Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here, and how. I note Miss H has complained about how Moneybarn handled and responded to her complaint and want any compensation to reflect the impact this had. But complaint handling is an unregulated activity and so, falls outside of our service's jurisdiction to consider. So, the way business handled Miss H's complaint hasn't been considered as part of my decision.

The Consumer Rights Act 2015 applies to this contract and there is an implied term that goods supplied must be of satisfactory quality. Where goods are second hand, as in this case, due regard must be had to the price, age and any description applied to the car. Whether the consumer has purchased a warranty or not does not impact on their statutory rights.

So, if I thought the car was faulty when customer 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 business to put this right.

As stated earlier the age, mileage and price of any vehicle has to be taken into account when deciding what is satisfactory quality. Second hand cars also have an element of fair wear and tear that needs to be taken into account when coming to any decision. The replacement of a battery and tyre puncture fall into the category of fair wear and tear, so there is no duty on Moneybarn to take any action in relation to them.

Whether a clutch failing after 5 weeks and travelling just under 3,000 miles constitutes the car not being of satisfactory quality at the time of purchase will depend on the circumstances of each individual case. There is no independent expert report, although the invoice from the independent garage who carried out the repair to the clutch shows that the vehicle had to be recovered.

Whilst with any failure occurring within the first 6 months after supply the onus is on Moneybarn to prove that the vehicle conformed to contract at the point of supply, I still have to decide on the balance of probabilities whether the car was of satisfactory quality at the time of purchase. In this case the car was 9 years old and had travelled over 80,000 miles at the time of supply. That means that all elements of the car, including the clutch, would be deemed to be of a similar age and mileage. The usage of the car by Miss H after supply, namely travelling 2,734 miles over a 5 week period needs to be taken into account; as does the short period between supply and the fault being evident.

Whilst I can empathise with Miss H I feel that the faults she has experienced with the car are commensurate with a car of the age, mileage and price at the time of supply. I find that the car was of satisfactory quality at the time of supply.

Given that there is insufficient evidence to uphold Miss H's complaint, Moneybarn are not obliged to do anymore in relation to Miss H's complaint. In which case it is open to her to pursue the matter by other means should she wish to do so.

My final decision

My decision is that I do not uphold this case.

Under the rules of the Financial Ombudsman Service I am required to ask Miss H to accept or reject my decision by 12th September

Leon Livermore
Ombudsman