

The complaint

Miss A complains about a car supplied under a conditional sale agreement with Moneybarn No. 1 Limited.

What happened

Around May 2023 Miss A acquired a used car using a conditional sale agreement with Moneybarn. The car was just over seven years old, had covered around 68,100 miles and cost £8,270. Miss A was due to make repayments of £281.14 over 60 months.

Unfortunately, Miss A says the car soon developed issues. She says the day after getting it, an engine management light ('EML') illuminated. She says it was returned to the dealer who cleared the EML and said nothing was wrong with the car.

Miss A says this happened again three times throughout June 2023. Miss A says she was then told the car had a 'sensor issue' and must have been in an accident. She says the dealer told her to ignore the EML.

Later, around November 2023 Miss A said the car showed an EML again and developed further issues including smoke coming from the bonnet and overheating. She said two mechanics diagnosed a fault with the 'clutch release bearing'. Miss A says this shouldn't have failed as the car is an automatic.

Miss A complained to Moneybarn towards the end of November 2023. Moneybarn asked Miss A to provide evidence the car had faults that were present or developing at the point of supply.

An independent inspection took place on 4 December 2023. The mileage at this point was recorded as 74,249. The report noted various issues with the car, including stored fault codes, previous repairs to the bodywork and a *"constant screeching noise from the clutch/transmission area"*.

Moneybarn then issued its final response on 15 December 2023. This said Miss A had also later raised issues with the tyres, gearbox, catalytic converter and bodywork. Moneybarn noted Miss A believed the car had been in a front end impact and the car did not have its original bonnet.

Moneybarn said that the dealer had replaced the battery when Miss A took the car back to it when the car showed an EML. But it said all the other issues she complained about either hadn't been evidenced, or these hadn't been shown to be present or developing at the point of supply. It said Miss A had been able to cover around 6,149 miles in the car and so Moneybarn thought it was of satisfactory quality when supplied.

Miss A remained unhappy and referred the complaint to our service. She said she'd been unable to drive the car since 21 November 2023 due to the smoke coming from the bonnet. Miss A has explained she has a young family and that this situation has been traumatising and it has affected her mental health.

Our investigator issued an opinion and didn't uphold the complaint. In summary, she said she thought the EML meant it was likely the car had a fault that was present when Miss A got the car, which made it of unsatisfactory quality. But, she said she thought it was likely this was repaired by the battery being replaced. She said she thought the bodywork issues identified in the report didn't make the car of unsatisfactory quality. And she explained she wasn't persuaded the recent issue with the clutch meant the car was of unsatisfactory quality due to the mileage covered and the time since supply.

Miss A disagreed. In summary, she said the battery either wasn't replaced or she hadn't been told that it had been. She reiterated the car had shown a red EML from the day after she got it and that she'd been told to ignore it as it was caused by a sensor. And she said the independent report showed further faults.

Miss A then sent what she said was a report from another garage. This stated the car had been seen in November 2023. It listed some fault codes and concluded that "*the automatic gearbox and centralised maintenance device voltage faults are long term issues*" and said "*the gearbox could not have been in good working condition in May*".

Our investigator said that this document didn't change her opinion. Miss A still disagreed. She thought what she'd sent in showed the car wasn't roadworthy. So, the case has been passed to me to decide.

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.

Having done so, I do not think this complaint should be upheld. I'll explain why. Miss A complains about a car supplied under a conditional sale agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Miss A's complaint against Moneybarn.

Firstly, I'd like to explain to both parties that I may not comment on every point raised nor every piece of evidence. I'll instead focus on what I think are the key facts and what I consider to be the crux of Miss A's complaint. This reflects the informal nature of our service.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. This says, in summary, that under a contract to supply goods, the supplier – Moneybarn here – needed to make sure the goods were of 'satisfactory quality'.

Satisfactory quality is what a reasonable person would expect, taking into account any relevant factors.

I'm satisfied a court would consider relevant factors, amongst others, to include the car's age, price, mileage and description.

I'll consider that Miss A's car was used. It was over seven years old and had covered over 68,000 miles. The car cost under £8,500, which represents a significant discount over what it would've cost new. So, I don't think a reasonable person would expect the car to be in the same condition as a newer, less road worn one. And I think they would expect parts of the car to have suffered from wear and tear. But, I still think they would expect it to have been free from anything other than reasonably minor faults, and would expect to have trouble free motoring for at least a short time.

What I need to consider in this case is whether the car was of satisfactory quality or not when it was supplied to Miss A. If it wasn't, I need to think about what, if anything, Moneybarn needs to do to put things right.

I firstly need to consider if I think the car had a fault present or developing when Miss A got it. Having reviewed things, I think it's likely it did. I'll explain why.

I've seen a screenshot Miss A says is from her phone of a message to the dealer. This shows a photo with a red EML and the mileage can be seen as 68,483. A date can be seen on the photo of 21 May 2023. I've also seen a screenshot of a video from the same date with a red warning on the dash stating "*Engine fault: Repair needed*".

So, I think it's likely what Miss A says is correct here. A red EML, generally, can be the sign of a serious fault. And it would also mean the car would fail an MOT. Given how soon this appeared after Miss A got the car, I think it's likely whatever issue was causing this was likely present or developing at the point of supply. And I don't think a reasonable person would expect this fault on this car.

It follows that I don't think the car was of satisfactory quality when it was supplied. So, I now need to consider what happened next and if Moneybarn needs to take any further action here.

I should point out there is something of a lack of evidence about exactly what happened. And I have conflicting versions of events. Miss A says the car was returned to the dealer several times, but it took no action and told her to ignore the EML. Moneybarn says a repair was carried out and a battery was replaced.

Here, I need to think about what most likely happened based on the limited information I do have. I want to reassure Miss A that I've carefully considered everything she's said. But I think, on balance, it's most likely a battery was replaced which resolved the issue. I say this as Miss A has shown she was in contact with the dealer by text and phone about this issue when it occurred. But, I haven't seen evidence she continued to complain to the dealer or try to resolve the issue if it remained. The next evidence I've seen of Miss A complaining about the car was several months after this happened.

The CRA explains one of the remedies available to Miss A was to have the car repaired. Given this happened, I don't think Moneybarn needs to take any action on this point. I've then considered the later issue Miss A describes, where she said the car broke down with smoke coming from the bonnet. Miss A says two garages told her this was due to a 'clutch release bearing'. Again, I'm satisfied there was a fault with the car here. I say this as I've seen a copy of the independent report from early December 2023. This stated:

"The technician was unable to road test the vehicle due to a constant screeching noise from the clutch/transmission area"

"An abnormal loud screeching noise was experienced on initial engine start-up from the clutch/transmission area"

I've also seen a list of fault codes from the same date, which records:

"P0901 Clutch "A" Actuator Control Circuit Range/Performance (Intermittent)"

The report also noted the car couldn't be road tested due to this issue.

I now need to consider if this fault meant the car wasn't of satisfactory quality when supplied. I've first thought about whether this fault was present or developing at the point of supply. But I don't think it's likely it was. I say this as the report recorded the mileage of the car as 74,249, meaning the car had covered around 6,150 miles since Miss A got it. I've also considered that Miss A had the car for around six months at the point it broke down. And the report doesn't make any findings on when this fault likely occurred.

I've then gone on to consider whether the earlier fault that led to the red EML could be linked to the later issues with the clutch.

There is limited information here. But I've explained above that I think that a battery replacement likely took place that resolved the earlier issue. And I've again considered the time and mileage covered between these events. Thinking about all of this in the round, I've not seen enough to persuade me the later issues with the clutch are linked to the earlier EML.

The CRA explains durability can be considered as part of satisfactory quality in relevant cases. So I've thought about whether the fault with the clutch meant that the car was durable or not. I've noted when considering durability that the report said:

"There was no documented evidence seen to support the vehicle having been checked or serviced in line with the manufacturer's recommended maintenance intervals"

Given this, along with the timescales and mileage involved, I'm satisfied a reasonable person would consider the car to have been durable. I'd like to reassure Miss A that I've also considered what she's said about the car being an automatic rather than a manual. But this doesn't change my opinion.

I've have also reviewed what Miss A said was a report from a garage that was supplied to our service by her in response to the investigator's view. This listed off some fault codes found and said:

"In my conclusion the automatic gearbox and the centralised maintenance device voltage faults are long term issues. In my professional opinion the gearbox could not of (sic) been in good working condition in May when she bought the vehicle this kind of 'wear and tear' would only be an issue after several years and would of (sic) been known defect on the vehicle that would need to be changed before selling the vehicle."

I've thought carefully about this. But, I'm not putting much weight on this evidence. I say this because it appears this conclusion is drawn from the fault codes, not from a detailed inspection of the car. I say this as there isn't any reasoning given about *why* the author believes these are long term issues and were present at the point of supply. And I've also considered that this 'report' isn't dated, doesn't contain basic information such as the mileage of the car, doesn't contain the author's name nor details, doesn't contain a phone number and it was supplied in the form of a word processing document.

Considering all of this, my opinion has not been changed by this document.

I've also considered the other issues recorded in the independent report and those noted by Miss A. These included various issues with the body work and paint, exhaust, tyres and stored fault codes. Here, I need to consider that Miss A's car was not brand new. And as I explained above, a reasonable person would expect parts to have suffered from wear and tear. In relation to the bodywork, the report noted:

“There was no evidence of any previous major structural repairs having been required/carried out”

Thinking about all of this, I'm satisfied the other issues are likely due to wear and tear and were either not present or developing at the point of supply or do not make the car of unsatisfactory quality given its age and mileage.

In summary, I find that the car wasn't of satisfactory quality due to the EML that appeared. But I think it's most likely this was repaired, broadly meeting Miss A's rights under the CRA. I think the other issues raised do not make the car of unsatisfactory quality. So, Moneybarn do not need to take any action.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 19 December 2024.

John Bower
Ombudsman