

The complaint

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

What happened

In June 2023, Mrs H was supplied with a new car through a conditional sale agreement with Moneybarn. The agreement was for £59,969 over 60 months, with monthly payments of £404.90. At the time of supply the car had delivery mileage of 50 miles.

Shortly after being supplied with the car, Mrs H noticed a noise when changing gear. She took it back to the supplying dealership, who said this was a characteristic of the car and the car was performing as expected. Unhappy with this, Mrs H complained to Moneybarn. However, after speaking to the dealership, Moneybarn said *“the vehicle is fully operational and there is no fault.”* So, they didn’t uphold her complaint.

Mrs H brought her complaint to the Financial Ombudsman Service for investigation. As part of the investigation, the car was inspected by an independent engineer. This inspection took place on 31 May 2024, and the engineer said *“when selecting reverse and reversing, there was a slight groaning-type noise emanating from the transmission. We can also confirm that on drive take-up, there is a slight clutch judder.”*

The engineer’s opinion was that this *“is as a result of a clutch pressure plate and potential release bearing issue which ... would have been developing at [the point of supply].”* Finally, the engineer said that, although this may be a characteristic of the car, it should be repaired by a manufacturer’s dealership under warranty.

Based on this report, our investigator said the issue with the car made it of an unsatisfactory quality at the point of supply. So, they recommended that Moneybarn arrange for the car to be repaired, and that they should also pay Mrs H £250 compensation for the distress and inconvenience she’d been caused.

Mrs H agreed with the investigator’s opinion but said that she had been refused by a manufacturer’s dealership when she asked for the car to be repaired under warranty.

However, Moneybarn said that the car should be repaired under warranty so *“we won’t be completing repairs on [this] basis.”* They agreed with the independent engineer that there was a fault with the car but said Mrs H should take a copy of this report to a main dealership so as to get them to repair the car for her. They thought this would also allow Mrs H to get a courtesy car while the repairs were being carried out, as well as having a *“guarantee of the quality of any repairs being undertaken.”* They also said that *“we do not have the ability to facilitate repairs”* and asked for an ombudsman 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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. Mrs H was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

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 things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Moneybarn can show otherwise. So, if I thought the car was faulty when Mrs H 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've seen a copy of the independent engineer's report, dated 6 June 2024, for the inspection that took place on 31 May 2024. The key findings of this report have been quoted above, so I won't repeat them here. The engineer's conclusions are clear in that, while the fault may have arisen from a characteristic with the car, there is still an issue that was developing when the car was supplied to Mrs H and *"the matter will need referring back to the selling agents"* for repair.

The engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

Based on the comments from both parties, I'm satisfied that the conclusions of the independent engineer's report aren't in dispute. As such, I'm also satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think Moneybarn should do to put things right.

Putting things right

As confirmed by the independent engineer, there is a fault with the car that needs to be resolved. As stated above, under the CRA, Moneybarn (as the supplier of the goods) are responsible for this. As such, I don't accept Moneybarn's argument that Mrs H should raise this directly under the warranty herself, and that they have no responsibility to facilitate the repairs.

If Moneybarn consider the car should be repaired under the warranty, then they (as the legal owner of the car under the hire purchase agreement) should approach a manufacturer's dealership to arrange for a warranty repair themselves. And, if they can't get a manufacturer's dealership to repair the car under warranty, then Moneybarn should arrange for the car to be repaired themselves, either by the supplying dealership or by instructing an appropriate manufacturer approved garage to undertake the work.

I've noted Moneybarn's comments about the courtesy car, and the guaranteeing of the work that has been done. I would remind them that our standard approach is that, where repairs are being undertaken but the customer is not kept mobile while the repairs are happening, we would usually direct a refund of the payments for the time the customer was without use of the car they were paying for.

I would also remind Moneybarn that section 24(5) of the CRA says they have a single chance of repair and, if after these repairs the car does not conform to contract, Mrs H will then have the right to reject. What's more, section 23(2)(a) of the CRA requires Moneybarn to have the car repaired within a reasonable time and without significant inconvenience to Mrs H. Failure to comply with this would usually result in Mrs H also having the right to reject the car.

Mrs H has been able to use the car while it's been in her possession. However, given the issues with the car, I'm also satisfied that Mrs H's usage and enjoyment of the car has been impaired. Because of this, I need to consider whether it's fair to ask Moneybarn to refund some of the payments Mrs H has paid.

The investigator hasn't recommended this, but has instead recommended Moneybarn pay Mrs H £250 for the distress and inconvenience she's been caused by being supplied with a car that wasn't of a satisfactory quality. Taking everything into consideration, I'm satisfied this adequately compensates Mrs H for what has happened, so I don't think an additional impaired usage payment is needed.

Therefore, Moneybarn should:

- arrange for the car to be repaired, without undue delay or significant inconvenience to Mrs H, ensuring that she is provided with a courtesy car for the duration of the repairs, or is adequately compensated if this is not possible;
- remove any adverse entries relating to this agreement from Mrs H's credit file; and
- pay Mrs H an additional £250 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

My final decision

For the reasons explained, I uphold Mrs H's complaint about Moneybarn No.1 Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 11 September 2024.

Andrew Burford
Ombudsman