

The complaint

Mrs B complains that the car she acquired, via a conditional sale agreement with Moneybarn No.1 Limited, wasn't of satisfactory quality.

What happened

In March 2020, Mrs B acquired a used car via a five-year conditional sale agreement with Moneybarn. The car was seven years old and had a mileage of 119,000. Mrs B ordered the car via a website and so, although she had seen photos of the car, she didn't actually see it until it was delivered.

Mrs B says that, when the car arrived, she noticed it had damage to its rear bumper that she hadn't been aware of before, and that the car juddered when the brakes were applied. She says she tried to make contact with the dealership, but it didn't respond, and so she took the car to a local garage and says it confirmed there were issues with the brakes.

Mrs B then reviewed the MOT history of the car. It had passed an MOT, with advisories in respect of the windscreen and a tyre, in February 2020. However, she saw that a previous MOT, undertaken in February 2019, had been a fail due to a malfunction with the engine management light, and that on that occasion there had been advisories in respect of damage to the windscreen, front and rear brake pads, a defective tyre and play being found in the steering rack. Mrs B said she was concerned that the 2020 MOT was fraudulent.

In June 2020, she complained to Moneybarn about the quality of the car. It said that, in general terms, the Consumer Rights Act 2015 requires a vehicle to be free from defects, but not including issues of wear and tear such as brakes and tyres, taking into account the vehicle's age and mileage. If faults were raised within the first six months of acquiring the car it would usually expect the dealership to investigate and, if appropriate, repair any faults unless they were cosmetic or had arisen from normal wear and tear.

Moneybarn said it had seen the MOTs for the car, and that any advisories meant these were issues that would require repair in the near future but were not a cause of failure at that time. All the issues that had been raised were due to wear and tear, including the brakes, which deteriorate over time with use. It also said that a vehicle's MOT is freely available on the internet, and that Mrs B could have checked this if that information had been important to her before taking the car.

Moneybarn said there was no evidence that the 2020 MOT had been fake and, if she had concerns as to its veracity, she should report this to the appropriate authority.

Moneybarn said the damage to the bumper was a purely cosmetic issue that did not impact on the satisfactory quality of the car. It concluded that the issues raised by Mrs B were all wear and tear, and so were things that should be factored into the general maintenance costs of owning a used car. It didn't uphold Mrs B's complaint.

Mrs B was unhappy at the response from Moneybarn and complained to this service. Moneybarn agreed to have the car inspected by an independent engineer, who then prepared a report as to its condition.

Our investigator didn't recommend that Mrs B's complaint should be upheld. He said he thought Moneybarn had dealt with her complaint fairly.

Looking first at the bumper, the investigator said that, although the advert had been provided by the dealership, this hadn't included any photos. He'd asked Mrs B for evidence of the contact she had attempted to make with the dealership, and she provided screenshots of texts sent in June 2020. The investigator noted there was no evidence that the car had been delivered in that condition and, given that contact appeared to have been some weeks later, he said it was possible the bumper could have been damaged while in Mrs B's possession. He also didn't think the dent would impact on the satisfactory quality of the car.

Our investigator said Mrs B hadn't supplied any information as to the findings from the local garage Mrs B had taken the car to, so he'd relied on the evidence that had been provided. Looking at the independent report Mrs B had used the car for an additional 10,800 miles by this point. The engineer had confirmed the car juddered when braking and said this was likely due to warped or unbalanced brake discs. But had concluded that due to the amount of time that had passed since inception, and the distance travelled by Mrs B, this fault wouldn't have been present at the point of sale. Our investigator said there wasn't enough evidence the car hadn't been of satisfactory quality when supplied.

When considering the MOTs our investigator said there wasn't evidence the MOT in 2020 had been fraudulent.

Mrs B was unhappy at our investigator's view and arranged for the car to have a full health check at a manufacturer's approved garage. This check revealed that the car had play in the near side rear drive shaft, and advised the car was unsafe to drive. Mrs B says she was advised the repairs would be around £2,000.

Our investigator reviewed the health check report but said this didn't change his view. He said Mrs B had been able to use the car for 10,000 miles since she'd acquired it and, as it was seven years old with a mileage over 119,000, it would be reasonable to expect issues of wear and tear to arise over time. He didn't think there were faults with the car at the point of sale.

Mrs B disagreed with our investigator, saying that she didn't accept she had driven the car for an additional 10,000 miles as she'd not used the car much due to lockdown. Mrs B said that the independent engineer had spent very little time looking at the car and hadn't taken it for a test drive. If the brakes had been replaced, as they should have been due to the MOT advisory, then they shouldn't be in their current state.

As the parties were unable to agree the complaint has been passed to me.

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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the conditional sale agreement entered into by Mrs B is a regulated consumer credit agreement this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied "*the quality of the goods is satisfactory*". The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here, the car wasn't new being around seven years old and with a mileage of 119,000. I think that, taking into account these things, it's fair to say that a "*reasonable person*" (being the test under the Consumer Rights Act) would expect that over time there would be issues with maintenance and repair, since components of the car would have been subject to fairly significant wear and tear due to use. A car of this age and mileage wouldn't be expected to be fault free as a new one should be.

Dealing firstly with the issue of the rear bumper. I have read the advertisement, but I haven't seen any photos that went with it. The independent engineer says this was "*a slight cosmetic crack*" and, as I haven't seen a photo of the damage, I think it's reasonable to think this was a minor fault. Taking into account the age and mileage of the car I think it would be reasonable to expect some signs of wear and tear on the bodywork. However, I also have no independent evidence as to the car being delivered with this crack to the bumper, and it's possible it occurred after Mrs B took possession. Weighing up the available evidence I can't reasonably say the crack in the bumper was present before the Mrs B took possession.

Mrs B strongly disputes the mileage she is said to have undertaken in the car since she took possession. I've seen that the advert, conditional sale agreement and the invoice all set out the car's mileage as 119,000. When the car was independently inspected in November 2020, the mileage was recorded as close to 130,000 meaning, from March to November 2020, Mrs B had driven around 10,000 miles.

Looking at the MOT undertaken in February 2020, the mileage was recorded as 119,000 and, as this was four weeks before the car was acquired by Mrs B, it would corroborate the mileage reported in the other paperwork. The health check arranged by Mrs B for the car in December 2020, shows a mileage a little over 130,000 and corroborates the independent inspection.

So, although I appreciate Mrs B feels it wasn't possible for her to achieve this additional mileage in the car given the current lockdown situation, I'm afraid I can't agree. The evidence supports that Mrs B has been able to make use of the car. I don't have any evidence that points to the mileage at the point of sale being considerably more than the figure that was recorded. I also think that if there had been an error it would be reasonable to have expected Mrs B to have noticed that and raised it with the dealership.

Mrs B also says that the independent's engineer's report is unreliable as they didn't

take the car out for a test drive. But, although the report doesn't set out the length of time the engineer was with the car, it does say that the engineer inspected the car, checked its fluid levels and visually assessed the brakes' friction components. The car was then started from cold and taken "*for a short test drive*", during which the judder was noted when the brakes were applied. I'm satisfied, that as the engineer wouldn't have been able to confirm the car juddering when the brakes were applied unless they had driven the car, that they had taken the car for a test drive and spent a sufficient length of time investigating the issues. So, I think it's fair and reasonable for me to take account of the contents of this report.

I appreciate Mrs B is concerned about the state of the car's brakes and the drive shaft which she's been told will be expensive to replace but the issue for me to decide is whether the car was of satisfactory quality at the point of sale.

Looking at the MOT in 2019, I can see that there were advisories for the front and rear brake pads and for some play in the steering rack. These were not fail items and the car subsequently passed its MOT. "Advisories" means that they will require maintenance and repair over time. When the MOT was undertaken in February 2020, there were no advisories for the brakes or steering. I don't have any evidence that the 2020 MOT was fraudulent, and so I am accepting its contents. I think it's more likely than not that some repair work was undertaken to the car before its last MOT. But that doesn't necessarily mean new parts were added, and the car wasn't advertised as having new brakes.

When the independent engineer inspected the car, they found the car juddered when the brakes were applied. They said this was likely due to potentially warped or unbalanced brake discs. The health check, subsequently carried out, confirmed that the brake discs had become corroded and lipped. However, the independent engineer said, in their opinion, this wouldn't have been present at the point of sale due to the amount of time passed and distance driven. The health check report doesn't give an opinion on whether this would have been present or not when Mrs B acquired the car.

Brakes and their components are serviceable parts, which means they require maintenance replacement over time due to wear. I think it's reasonable to expect a car that was 7 years old, with a mileage of 119,000, to require maintenance and repair after a reasonable period of time, as its serviceable parts will deteriorate. Here, Mrs B had the car for over six months before it was inspected and, in that time, had been able to drive 10,000 miles in it, so I think she has had reasonable usage and, because of this maintenance and repair costs are to be expected.

Looking at the evidence that has been provided I can't reasonably say that the issues with the brake discs were present at the point of sale and, were more likely than not, to have arisen over time through use. And, looking at the length of time and the mileage driven, I think a reasonable person would think the car had been appropriately durable before this repair was required.

The health check has identified a fault with the drive shaft and advises Mrs B not to use the car. However, this report doesn't say whether this would have been present or developing at the point of sale. While I accept the 2019 MOT raises an advisory related to the steering rack, this was not present in the 2020 MOT. I also have to take into account the length of time Mrs B has had the car, and the number of miles driven in that time. I don't think I can reasonably say that this issue had been present at the point of sale of the car to Mrs B. I think it's more likely than not, if there had been a fault, it would have been diagnosed much earlier.

So, although I appreciate this will be of disappointment to Mrs B, for the reasons given above, I'm not upholding her complaint. I don't think have enough evidence to find the car wasn't of satisfactory quality at the point of sale.

My final decision

For the reasons set out above I'm not upholding Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 9 March 2021.

Jocelyn Griffith
Ombudsman