

## **The complaint**

Mr E complains that Moneybarn No. 1 Limited refused to let him reject a faulty car.

## **What happened**

In November 2018 Mr E acquired a second-hand car costing £11,408 funded by a deposit of £300 and the balance with a conditional sale agreement. He says there were issues with the paintwork and the door trim as well as an issue with the panoramic sunroof. He says the car was repaired by the dealer and over a period of three weeks during which time he was provided with a courtesy car. However, he didn't believe any work had been carried out and the car was taken back.

When the car was returned to him a second time, he remained unhappy with the repairs and he says the sunroof came off the rails again. In October 2019 Mr E took his concerns to Moneybarn. It said that the issues had been raised with it after six months had elapsed since the point of sale and it was up to Mr E to demonstrate that the car was faulty when he acquired it. It also said that the issues appeared to be cosmetic. It also suggested that the faults may be due to wear and tear.

Mr E didn't agree and brought his complaint to this service where it was considered by one of our investigators who recommended it be upheld. He noted the lack of evidence and relied on the testimony of both parties. He said that the fact the dealer carried out a repair to the car indicated there was a fault and as it reoccurred the repair could not have been successful. He also felt the sunroof should have lasted longer than it did.

Moneybarn didn't agree and said the fact the dealer offered to help Mr E as a gesture of goodwill didn't mean it had accepted the car was faulty at the point of sale. It said it had not accepted that the issue had arisen early into the agreement. It added that the MOT records showed that as of August 2020 Mr E had covered 20,000 miles in less than two years. Finally, it pointed out that Mr E had missed many payments and had arrears of £7,446.

I issued a provisional decision as follows:

I explained that in considering what is fair and reasonable, I needed to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the conditional sale agreement, in this case is a regulated consumer credit agreement. As such 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.

The relevant law says that under a contract to supply goods, there is an implied term that *"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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law 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.

I said I was presented with a lack of evidence in this complaint which made it difficult for me to uphold it. I didn't have details of the actual faults, when they arose, what work was done by the dealer or what effect the faults had on the car. Normally I would expect to see job sheets, invoices and possibly an independent report. None of these were provided.

I appreciated the testimony put forward by Mr E, but I didn't consider that sufficient to allow me to uphold his complaint.

Normally I would presume the paintwork and door trim to be wear and tear issues and not matters that would allow rejection. I would also expect Mr E to have inspected the car before acquisition and to have been satisfied with the quality of the paintwork. The car was some six years old and some wear and tear is to be expected. As such I could not say that there was an inherent fault which was present at the point of sale.

As for the sunroof all I had been told was that it had come off its rails. I gathered it was repaired, but Mr E says this wasn't successful, although I have no details of exactly what happened. For example, I couldn't say if this was a security issue or merely something which is troublesome. Nor could I say what caused the issue or if it was faulty at the point of sale. It appeared to me that it wasn't such an issue so as to prevent Mr E making use of the car.

As things stood, I could see no grounds for upholding this complaint, but I said that if either party could supply more evidence such as job cards, invoices etc. I would review my decision. However, if rejection were to be the right outcome, I would expect Mr E to pay for his use of the car which would mean he would in all probability have to clear his debt.

### **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.

Neither party has responded to my provisional decision and the deadline has now passed and so I have been no reason to change the conclusion I have reached previously.

### **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 Mr E to accept or reject my decision before 27 July 2021.

Ivor Graham  
**Ombudsman**