

## **The complaint**

Mr D complains that a car he acquired via a conditional sale agreement with Moneybarn No. 1 Limited wasn't of satisfactory quality.

## **What happened**

In August 2018 Mr D entered into a four-year conditional sale agreement for a used car. The car was around eight years old and had a mileage of 76,300.

Mr D says that the car's reversing lights didn't work, and its front lights flickered so he complained to the supplying dealer. The car was taken in and repaired. Mr D says that in December 2018 the car had an issue with its diesel particulate filter ("DPF") and went into limp mode. The car was again returned to the supplying dealer for repairs.

While the car was being repaired, Mr D complained to Moneybarn about its condition. Moneybarn contacted the supplying dealer, who said that the car had been returned to Mr D shortly after he had made his complaint. However, one month later Mr D advised Moneybarn that the car had re-entered limp mode and had again displayed an issue with the DPF. He also told it that the car had broken down on a public highway and that it wasn't covered by a valid insurance policy. Moneybarn agreed to recover the car. Moneybarn then arranged for the car to be inspected by an independent engineer.

The independent engineer examined the car in January 2019 and found that it couldn't be started due to a flat battery. They advised that the battery should either be charged or replaced and that once this had been done the car could then be inspected. Moneybarn arranged for the battery to be replaced and re-organised the car's inspection.

The independent engineer next inspected the car in March 2019. They noted that the car had now been standing for a prolonged period of time without use. The independent engineer said that due to how the car had been stored with other cars they could only carry out a limited investigation and weren't able to take it out for test drive. The engineer said they were able to start the car, but they found that although the engine started it ran poorly with misfires and smoke emissions. Codes were also present in relation to the glow plug circuit and battery charging system.

The independent engineer concluded in their report that the faults they found present with the car wouldn't have been present at the point of sale due to the amount of time that had passed since inception of the agreement together with the number of additional miles driven by Mr D which amounted to around 4,800. The engineer said the car couldn't have remained in service use in its present condition.

Moneybarn didn't uphold Mr D's complaint about the car. It said that the issue with the DPF was not a fault but due to the way the car had been used meaning the DPF hadn't regenerated and had required a manual regeneration. It also said that issues with the car's electrics could arise at any time and that repairs of this nature were part of the expected maintenance costs of running a second-hand car. Moneybarn said the car had been of satisfactory quality at the point of supply.

Mr D disagreed with Moneybarn's decision and complained to this service. He said the car had been faulty from the point of sale and he asked that he be able to reject the car and for the agreement to be cancelled.

Our investigator didn't recommend that Mr D's complaint should be upheld. He said that under the Consumer Rights Act 2015 ("CRA") the quality of the car took into account things like its age and mileage and that as this was a used car a reasonable person would not expect it to have been fault free due to wear and tear. He said that looking at the independent engineer's report he was not persuaded that the faults complained of by Mr D were present at the point of supply.

Mr D disagreed with our investigator's view. He said he didn't think the way he had used the car had caused the issue with the DPF and that it had been faulty when he'd acquired it.

As the parties were unable to reach an agreement 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.

I've seen copies of the independent engineer's reports from January and March 2019 but unfortunately, I haven't seen copies of the job cards regarding the repairs carried out by the supplying dealer as these can't be supplied. However, I think the issues with the car aren't disputed save that Mr D disagrees the DPF didn't regenerate itself due to the way the car was used by him.

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 hire purchase agreement entered into by Mr D is a regulated consumer credit agreement this service is able to consider complaints relating to it. Moneybarn also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

Under the CRA 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 eight years old and had a mileage of 76,300, so I think a reasonable person would have expected there to be issues after a reasonable period of time regarding maintenance and repair due to wear and tear.

I've seen that around the time Mr D acquired the car there were issues with its reversing and front lights. I've also seen these were repaired by the supplying dealer and it appears these repairs were at no cost to Mr D. I therefore accept that there were faults with the car at the

point of supply but that doesn't mean that Mr D is now entitled to reject the car. This is because it appears from the evidence I've seen that those repairs were successful and accepted by Mr D. I haven't seen that the issues with the lights were raised again by Mr D with Moneybarn or the supplying dealer. So, on the evidence that I've seen I'm satisfied the car was repaired satisfactorily.

The issue with the DPF arose around three months after Mr D had acquired the car and he says that he was told by the supplying dealer this was due to the way he had used the car. I appreciate Mr D disputes that the car wasn't used for long distances but if the car is used mainly on short journeys or ones that are at a slow speed then this issue may occur even if there are occasional longer journeys. I can't reasonably say that issues with the DPF are necessarily due to the part being faulty and I haven't seen any evidence that the part wasn't operating as it should due to any other reason than the way the car was being used. This would therefore be an issue with wear and tear and one which could be reasonably expected to arise from time to time.

I've seen that the DPF was regenerated in December 2018 by the supplying dealer and that it would appear a similar issue arose around one month later. By the time the car had gone into limp mode a second time Mr D had had the car for around five months and had been able to drive around 4,8000 miles in it.

When the car was inspected by the independent engineer in March 2019 it had been unused and standing for around three months which will have had an impact on its condition. The battery had also been changed. I've seen the view of the independent engineer was that the car couldn't have been in the condition it was now in as Mr D wouldn't have been able to use it for the amount of time and number of miles that he had. I think Moneybarn acted reasonably in accepting the independent engineer's opinion.

So, while I appreciate the car has had two issues with the DPF which caused it to go into limp mode I don't have enough evidence to say the DPF was actually faulty as opposed to this being an issue with wear and tear which would be reasonably expected in a car of this age and mileage. I also think that had the DPF been faulty from the point of supply then Mr D wouldn't have been able to use it as much as he has.

I appreciate this will be of disappointment to Mr D but I'm not upholding his complaint. I think that it's more likely than not that the issue with the DPF arose due to wear and tear and that the car would be considered durable in light of its age and mileage by a reasonable person.

### **My final decision**

As set out above I'm not upholding Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 December 2021.

Jocelyn Griffith  
**Ombudsman**