

The complaint

Mr M complains that a car he acquired via a conditional sale agreement with Moneybarn No.1 Limited had been misrepresented to him as the car had been modified.

What happened

In January 2019 Mr M acquired a used car via a five-year conditional sale agreement with Moneybarn. The car was around seven and half years old and had a mileage of around 43,000.

The advert for the car stated that its BHP was 103 and Mr M says he believed it was a factory standard model. When Mr M collected the car, he was given various documentation for it.

Mr M says he thought the car was wearing out quicker than he would expect. He says that it required two fuel injectors to be replaced, one in August 2019 at around 48,000 miles and a second when the car had a mileage of around 52,000. He decided to approach a dealership and arrange a part-exchange.

Mr M says that the dealership informed the value of the car was less than he had expected because the engine control unit (ECU) had been modified to increase the BHP to around 148. He says that on informing his insurance company of the modification his policy was cancelled and he had to arrange more expensive cover.

Mr M complained to Moneybarn that the car had been misrepresented to him. Moneybarn asked for evidence of the modification. Mr M sent in a quote for the work included in a document explaining the effect of the modification dated January 2015 and a hand-written invoice for the work having been undertaken dated April 2015. Moneybarn requested that the car be tested to see if the modification was still present.

Mr M took the car to a garage for testing, this showed that the car's BHP was around 131 and that its engine had been tuned. Mr M supplied this evidence to Moneybarn.

Moneybarn sent Mr M a final response letter to his complaint setting out that it wasn't upholding it. It said further evidence was needed that the modification had been present at the point of supply.

Mr M was unhappy at Moneybarn's response and complained to this service. Our investigator didn't recommend Mr M's complaint should be upheld. He said although he accepted the car had been modified before Mr M had acquired it, he didn't think there had been a misrepresentation. All the paperwork relating to the modification had been supplied to Mr M with the car.

Our investigator also said he didn't think there was evidence that the car hadn't been of satisfactory condition at the point of supply. Although the car had required some repairs, our investigator said he thought it was reasonable to consider these were due to wear and tear.

Mr M disagreed with the view of our investigator. He said he'd relied on the car's advert and that there had been no reference at the dealership that the car had been modified. He said he wouldn't have purchased it if he'd been aware and he'd been driving around with invalid insurance for a long time before he'd discovered the modification.

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.

Mr M has raised both that the car was misrepresented to him due to the modification of the ECU and also that this modification meant the car wasn't of satisfactory quality as it wasn't as durable as would be reasonably be expected.

For me to be satisfied there had been a misrepresentation I would need evidence that there had been an untrue statement of fact that had induced Mr M to enter into the contract. Here, I don't know what was said by the salesperson when Mr M acquired the car though Mr M says he wasn't told about any modification having been being undertaken. I've seen that there was an advert for the car which set out it came with the factory specifications for BHP, engine size etc. However, I've also seen that Mr M was provided with all the documentation about the car having been modified.

Although Mr M had seen the advert, I think it would be reasonable to have expected him to check the paperwork he had been provided with. I can't reasonably say from the evidence I've seen that Mr M was told the car hadn't been modified. I think that as he was provided with the information then he should have been aware about the modification. I don't think the car was misrepresented to Mr M.

As I don't think the car was misrepresented then I can't hold Moneybarn responsible for the car potentially not being properly insured.

Mr M has raised that the car was wearing out faster than he'd expected. He said this could have been due to the modification of the ECU. As the conditional sale agreement entered into by Mr M 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.

As the car was over seven years old and had a mileage of around 43,000 then I think

a reasonable person would expect issues with maintenance and repair to arise over time. Unlike a new car there wouldn't be an expectation it would be fault free.

Mr M has provided an invoice for a fuel injector being replaced in August 2019. This was around seven months after Mr M had acquired the car and he'd driven around 5,000 miles in it. Looking at the time that had passed since the inception of the credit agreement and the mileage driven before this repair, I don't think I can reasonably say this fault had been present or developing at the point of supply.

Although I accept a fuel injector's life span is generally longer than around 48,000 miles there can be a number reasons for this part to fail. It wouldn't necessarily be due to an inherent fault. I haven't seen any job card regarding the second fuel injector Mr M says was repaired at around 52,000 miles so I don't know why that was replaced.

As I haven't seen any evidence that the fuel injectors needing replacing was solely linked to the modification of the ECU then I can't fairly say that the modification has caused premature wearing of the car. So, I think on the evidence I've seen that it's fair to say that the repair was more likely than not due to wear and tear and the car was as durable as a reasonable person would reasonably expect.

I appreciate this will be of disappointment to Mr M but for the reasons given above I'm not upholding Mr M's complaint.

My final decision

For the reasons set out above I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 May 2022.

Jocelyn Griffith
Ombudsman