

## 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. He is asking that Moneybarn cover the costs of the repairs that were required.

## What happened

In July 2021 Mr D entered into a five-year conditional sale agreement for a used car. The car was around seven years old and had a mileage of 111,555.

Mr D says that around eight weeks after he had acquired the car it developed a fault with its idrive, which would be constantly rebooting itself to settings mode. This meant he was unable to use the sat nav system, access the car's service history or see if any warning lights were illuminating.

Mr D complained to Moneybarn who arranged for the car to be inspected by an independent engineer. The engineer inspected the car in October 2021 at which point the car's mileage was 114,418. The independent engineer confirmed there was a fault with the head up unit and reported that this fault had developed at 113,577 miles. They also said that in their opinion this wouldn't have been a fault that had been developing or present at the point of sale due to the number of miles driven by Mr D before the issue arose. They said had the fault been present or developing when acquired by Mr D then they would have expected this issue to have arisen within the first 500 miles that he'd driven the car.

The independent engineer also said *"Electrical faults often develop instantaneously and often give no warning of the fault developing, they can be serviceable one moment and defective the next and this is the insidious nature of such defects. They often develop in the last 500 miles of use but are often deterioration related and an ageing defect. At 114,000 miles we would consider the fault commensurate"*.

Moneybarn didn't uphold Mr D's complaint. It said that there wasn't any evidence there was an inherent fault with the car. Mr D was unhappy at Moneybarn's decision and complained to this service.

In February 2022 Mr D took the car to a manufacturer approved garage who investigated the fault with the idrive. It carried out a diagnostic check which recorded a fault with the control unit at 113,575 miles. The garage then undertook a software update and programming of the head unit. The repair cost £217.99. Mr D says that this repair has fixed the issue.

This garage also said that although the fault had occurred at 113,575 miles and again at 116,809 miles it was possible it had been re-occurring prior to this mileage.

Our investigator didn't recommend that Mr D's complaint should be upheld. He said that the car was used and so it was reasonable to expect that it would require maintenance and repair sooner than a car that wasn't as road-worn. And although our investigator accepted there had been a fault with the car, he said he didn't think this meant the car wasn't of satisfactory quality at the point of its supply.

Our investigator said that the evidence didn't support that the fault had been present or developing at the point of supply. He also said that looking at the issue of durability, as the fault arose with an electrical item that was seven years old, it was reasonable to think this could have suddenly failed after this amount of time.

Mr D disagreed with the view of our investigator. He said it was unfair he had to cover a repair bill for a fault that had arisen shortly after he'd acquired the car. He said he was also unhappy at how Moneybarn had dealt with his complaint.

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.

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 Mr D 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 is 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 was around seven years old and had a mileage of 111,555. So, unlike a new car that would be expected to be fault-free it would be reasonable to expect issues with maintenance and repair to arise over time. Here, Mr D says the issue arose between six and eight weeks after he'd acquired the car.

It isn't disputed that there was a fault with the car. The issue is whether that fault was developing or present at the point of supply or, if it wasn't, whether the car was as durable as would be reasonably expected by a reasonable person.

There is a presumption that if a fault with a car arises within the first six months from the point of supply then it would have been present at the point of supply unless there is evidence to the contrary. Looking at the independent engineer's report, they say the fault arose when the car had travelled for 113,577 miles (an additional 2,022 miles since the point of supply). The independent engineer also says that due to the nature of this fault, it being electrical, that it would have occurred more or less instantaneously and normally within 500 miles. They say due to the number of miles driven by Mr D it wasn't present when he first acquired the car.

The garage which carried out the repair on the car has also recorded the same mileage

as the independent engineer as to when the fault occurred although it has said it's possible that the fault had occurred earlier. Mr D appears to have reported to Moneybarn that the fault arose around a mileage of 113,000.

I accept the independent engineer's opinion as to the nature of electrical faults so I think it's more likely than not that the fault had occurred after Mr D had driven the car for around 2,000 miles and around two months after he'd acquired it. This means that the car didn't have this fault nor was it developing it when Mr D acquired it.

The next issue is whether the car could be considered to be as durable as reasonably expected. Here I need to take into account the age and mileage of the car. As set out above, the older the car and the higher the mileage the more wear and tear to the car's components will have occurred. And a reasonable person would expect issues about repairs being required to arise after a reasonable period of time.

Although I appreciate Mr D is frustrated that the issue with the car arose after he'd had it for around a two months and driven around 2,000 miles in it, I think the car was as durable as would have been reasonably expected. An electrical fault developing in a part that was seven years old and with a mileage of around 113,000 is, I think, something that wouldn't be unexpected. So, although the fault arose relatively shortly after the agreement started, looking at the number of miles Mr D had driven together with the car's age, I think a reasonable person would say that a reasonable period of time had passed before a repair of this type had been required.

I appreciate this will be of disappointment to Mr D but for the reasons given above I'm satisfied on the evidence I have seen that the car was of satisfactory quality when it was supplied to him. I'm not upholding Mr D's complaint.

### **My final decision**

For the reasons 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 13 June 2022.

Jocelyn Griffith  
**Ombudsman**