

complaint

Mr C complains that a used car that he acquired through a conditional sale agreement financed by Moneybarn No1 Limited (Moneybarn) was not of satisfactory quality.

background

Mr C purchased a used car in February 2013. In July 2013, the radiator failed and this was replaced under warranty. In October 2013, the gearbox failed and in May 2014, the exhaust failed. Both were repaired by the parts being replaced and at Mr C's cost. In December 2014, the car suffered terminal engine failure. He has not been able to use the car since.

Mr C complained to the dealership. He wanted to reject the car and claim a refund. He also wanted to receive compensation for the costs that he had incurred.

He also complained to Moneybarn. They rejected his complaint. In summary, they said there was inconclusive evidence that the faults were inherent or developing when he acquired the car. They said that the first three issues had been repaired. They also said that there will always be general maintenance costs involved with owning a car. In relation to the engine failure, they noted that this occurred after the car had been driven some 12,000 miles by Mr C. They further pointed to the fact that the garage where the car was towed to said that dirty engine oil may have been a contributing factor to the engine failure.

Mr C complained to us. Our adjudicator did not uphold his complaint. He felt that on balance the goods were of satisfactory quality.

Mr C did not agree. He believed that the engine failure was caused by "diesel runaway". He says, in simple terms, that this is something that occurs in heavily worn engines which release gases. It causes an excess of fuel which in turn makes the engine run faster until it is destroyed. Whilst he did not provide evidence that this is what had actually occurred, he did provide a report from a garage who had stripped the engine and concluded that the engine damage was unusual for the low mileage reading on the odometer.

In the course of his complaint, Mr C conducted his own investigations and as a result believes that the car was a rental car. As a rental car, he felt that the mileage was low and so believed that it may have been 'clocked'. He also stated that he would not have acquired the car had he been aware that it was previously a rental car. Mr C was advised by our adjudicator that this amounted to a separate complaint of misrepresentation, which would need to be formally raised with Moneybarn, who had requested time to allow them to investigate and respond.

Mr C wanted to proceed to a final decision *solely* in respect of the satisfactory quality of the goods and for the misrepresentation complaint to be considered at a later date. I therefore consider only whether the car was of unsatisfactory quality and I do so without considering the merits of any alleged misrepresentation.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The issue is whether the car was of satisfactory quality at the point of sale. Legislation says that goods should be of satisfactory quality and free from defects. I have to decide whether the faults amounted to inherent defects present at the point of sale or if instead, they were as a result of wear and tear. When considering whether goods are of a satisfactory quality I take into account all of the circumstances including, for example, the age of the car, price paid and the mileage it has covered.

In this case, the car was acquired for a cash price of almost £8,000. It was approximately five years old and had driven approximately 65,000 miles. I think it is reasonable to expect there to be some mechanical wear and tear on a car of this age and mileage.

When acquiring a used car there is a risk that issues of wear and tear may arise even shortly after the car is purchased. I accept that the first issue arose shortly after he acquired the car with the radiator needing to be replaced. This was carried out under warranty. I have not seen the MOT certificate that was with the car when it was acquired, but I can see that it took place in January 2013 and I have not been told anything to suggest it did not pass.

Thereafter, the gearbox failed within eight months and the exhaust system within 15 months of acquiring the car. In the intervening period, the car successfully passed an MOT inspection in January 2014. It had also travelled approximately a further 6,300 miles. I have not seen any evidence to suggest that these issues were present at the point of sale and I have to consider whether they may have been caused by wear and tear. The balance is a fine one, but I do not think that they could fairly be considered to be inherent defects present at the point of sale, particularly in light of the age and mileage of the car.

In December 2014, the engine suffered a catastrophic failure. By this point the car had travelled approximately 12,000 miles from the point of sale. I note that there were no previous reports of problems with the engine. This, combined with the fact that the car passed its MOT inspection in 2014, leads me to think that on balance there was nothing inherently defective with the engine at the point of sale.

Whilst Mr C did not provide evidence that the engine failure was caused by "diesel runaway", he did provide a brief although credible report from a garage that had stripped the engine down. They concluded that injectors 2 and 3 had failed causing catastrophic engine damage which is beyond economical repair. They go on to state that this is unusual given the odometer reading, which it says is low.

This supports the view of the garage that the car was initial taken to. They concluded (with the caveat that they had not had access to the car's full history) that they would not reasonably expect an engine such as this to suffer such catastrophic failure after approximately 77,000 miles. When asked by our adjudicator, they said they would not be able to diagnosis the problem or provide evidence on how long the fault was likely to have been present without stripping down the engine. Mr C went on to arrange this at the other garage.

Moneybarn rely on further comments of the garage that the car was towed to and suggest that a failure to change the oil may have been a factor contributing to the engine failure. I reject that suggestion. As Mr C rightly points out the car was serviced in June 2014 at approximately 74,000 miles and had the engine oil changed.

Whilst both garages suggest that engine failure is unusual for a car with this mileage, neither provide an indication as to when it is that this fault occurred or state that it is likely to have

been present at the point that Mr C acquired the car. I have to keep in mind that this was 22 months on from the point of sale and the car had travelled over 12,000 miles since acquired and approximately 77,000 miles in total.

On balance, I do not think that the engine failure could fairly be considered to be an inherent defect. That is, I do not consider that the issue was present at the point of sale and I think in relation to the engine, the car therefore was of satisfactory quality. Without evidence that the fault was present at the time Mr C acquired the car I cannot fairly hold Moneybarn to liable. I therefore do not find that Mr C should be allowed to reject the car or to be compensated for his losses in respect of his complaint that the car was not of satisfactory quality.

I appreciate that this outcome will be a frustrating one for Mr C. Not upholding his complaint as to the unsatisfactory quality of the car should in no way be seen as an indication of any subsequent view that may be taken on his complaint regarding misrepresentation.

my final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 8 July 2015.

Siobhan Kelly
ombudsman