

## **complaint**

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

## **background**

In November 2017 Mr C entered into a four year conditional sale agreement for a used car. The car was seven years old with a mileage of around 57,000. It had passed its MOT with no advisories in October 2017.

Mr C said that on the day he collected the car he noticed a noise from the engine which he raised with the dealership. He says he was told to bring the car back if there were any issues.

Shortly after collecting the car Mr C raised a number of issues about the car with the dealership. Some of these were cosmetic but the dealership said it would look at the steering, the vibration, the car's heater, the seat not locking and the mirror. Work was carried out on the car which the dealership covered.

In December 2017 the car went into limp mode and the engine management light illuminated. Mr C called out roadside assistance. The engineer who inspected the car said there was a problem with the car's crankshaft. Mr C complained to Moneybarn about the problems he'd had with the car's heater, crankshaft, cam shaft and throttle valve.

Moneybarn said it closed Mr C's complaint as the dealership carried out the necessary repairs to the car. It also paid Mr C £100 compensation for loss of the use of the car while it was repaired. However, the day after the complaint had been closed Moneybarn re-opened it as Mr C said he was still having issues with the car. He said there was a problem with the idling of the car.

Moneybarn arranged for the car to be independently inspected in February 2018. The independent engineer confirmed that there was an erratic idle speed but went on to conclude that, taking into account the car's condition and that it had passed an MOT at a similar mileage to that at the point of sale, the car would have been roadworthy when Mr C acquired it.

In May 2018 the dealership replaced the housing and cleared the fault codes. No issues were found when the car was test driven.

A few days later Mr C complained to Moneybarn that the passenger seat didn't recline. Mr C was concerned this was a safety hazard. Moneybarn didn't uphold Mr C's complaint. It said as the car had passed its MOT in October 2017 and said this wasn't an inherent fault with the car.

Mr C says he chose to voluntarily terminate the agreement in June 2018 and return the car due to the number of times it had needed repair. He said he wasn't able to make proper use of it.

Mr C complained to this service about the condition of the car. He said he thought it would be fair for Moneybarn to write off the outstanding balance still owing on the agreement. Our adjudicator didn't recommend that Mr C's complaint should be upheld. She said that while it

was accepted there had been issues with the car these had been fixed by the dealership. She also said that looking at the age of the car it wasn't unreasonable to expect repair issues like the seat not reclining to arise over time.

Mr C disagreed with our adjudicator's view and the complaint was passed to me.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Under the Consumer Rights Act 2015 car must be of "satisfactory quality" at the point of sale. And satisfactory quality is what a reasonable person would expect taking into account all the relevant circumstances such as age, condition and mileage of the car. Durability is also part of satisfactory quality as, although no one would expect all the components of the car to last forever, they also wouldn't reasonably expect issues to arise with the car for a period of time.

However, if the car wasn't of satisfactory quality at the point of sale then this doesn't mean the consumer can necessarily reject the car. The retailer would have an opportunity to repair it and if that wasn't successful then the consumer may be able to reject the car.

I've seen that Mr C raised a number of issues with the car shortly after he acquired it. Some of these were considered to be cosmetic and had arisen due to wear and tear but the dealership agreed to fix the car's heater, the steering, vibration, the seat not locking and the mirror. The car was then returned to Mr C.

The car went into limp mode a few weeks later due to an issue with the camshaft, crankshaft and throttle and was taken back to the dealership for further repairs. Mr C says the repairs to the throttle weren't correct and that's why there was a continued issue with the car's idling. He complained to Moneybarn who arranged for the car to be independently inspected. Mr C told Moneybarn he wanted to reject the car.

The independent engineer reported that there was an erratic idle speed evident but that "*after a short time the idling settles down and appeared normal*". The engineer reported that there were no leaks, overheating, unusual noises or excessive smoke from the exhaust. The engineer said there was no definitive proof that the idling had been present at the point of sale and that taking into account the car had passed its four previous MOTs the car could be considered as being in good condition overall.

The engineer also said the issue with the throttle was minor and could easily be rectified and did "*not impinge on the vehicle being of a satisfactory quality for a vehicle with over 50,000 miles*". The independent engineer concluded that the car would have been fit for purpose and of satisfactory quality at the point of sale.

I've seen that despite the findings of the independent engineer the dealership agreed to repair the car as a gesture of goodwill and new throttle housing was fitted and the fault codes cleared. I understand that following a test drive no further issues were found.

Mr C then raised a complaint about a passenger seat which did not recline and was a safety issue. I've seen that the required part was on back order by the dealership.

I appreciate that the car had several repairs since Mr C acquired it. And I've seen that these repairs were all undertaken at no cost to Mr C. Looking at the nature of the fault with the idling, even if the dealership hadn't repaired this correctly the first time I think that rejecting the car due to this issue would be disproportionate and unfair. I accept the opinion of the independent engineer that the car was of satisfactory condition at the time Mr C acquired it. The independent engineer said that the idling problem didn't affect the car's roadworthiness. I don't think a reasonable person would expect a used car of that age, mileage and price to be entirely fault free so long as it was roadworthy.

Mr C says the car spent a lot of time in the garage and so he decided to voluntarily terminate the agreement. Looking at the recorded mileages available I've seen that between November 2017 and the inspection in February 2018 Mr C had driven the car for just over 2,500 miles. This is a little less than average but does show he was able to use the car. Mr C also said he was provided with a courtesy car when his was being repaired.

There is now an issue with the passenger seat not reclining, but I don't have enough evidence to say that was either developing or present at the point of sale. The car was around eight years old so I think a reasonable person would expect repair issues to arise from time to time.

So, although the car hasn't been fault free, it has been repaired and Mr C was able to use it. For the reasons given above I'm not upholding Mr C's complaint and I'm not asking Moneybarn to do more.

### **my final decision**

For the reasons given above I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 December 2019.

Jocelyn Griffith  
**ombudsman**