

complaint

Mr D acquired a used car by means of a conditional sale agreement, made with Moneybarn No. 1 Limited in late November 2017. He complains that the car was not of satisfactory quality at the point of supply in early December 2017. He wants to reject the car.

background

Mr D's car was 99 months old, and had travelled a little under 106,000 miles, at the point of supply. This means that it had travelled above average car annual mileages over a quite long period.

Mr D provided to us evidence to show that he reported faults to the supplying dealership nine days after taking delivery, and again 35 days after taking delivery. He and the dealer were unable to agree a settlement of his complaint, which he then referred on to Moneybarn in late February 2018.

Moneybarn and the supplying dealership agreed that Mr D's car should be independently inspected by a suitably accredited organisation. This took place in mid April 2018, when the car had travelled about 2,500 further miles.

The independent inspector reported that the car was exhibiting a number of problems – most of which, in his opinion, would also have been present at the point of supply. But the inspector added:

- These problems were not sufficient to prevent the car being road legal and fit for purpose, in his opinion, at the date of inspection and at the point of supply
- Mr D's car had passed an MOT test immediately before he acquired it, which supported his view that it was road legal and fit for purpose at that time
- The problems he had identified did require attention, but were the result of normal wear and tear, consistent with the car's age and mileage

Moneybarn concluded that the inspection report showed Mr D's car was of satisfactory quality at the point of sale. And so it was unable to uphold his complaint, which he then referred to us in early October 2018.

Mr D drew our attention to a pre-delivery inspection undertaken by the supplying dealership. This followed a standard checklist, approved by a well-known motoring organisation. A copy of the completed checklist was also provided to us, which indicated that Mr D's car had met its requirements.

Mr D provided evidence to us indicating that Mr D's car had been marketed as meeting the requirements of this inspection. But he was unable to provide to us any other evidence about how the car was advertised.

Our investigator thought the complaint should be upheld in part. She accepted the independent inspector's view that the problems he had identified in Mr D's car were the direct result of age-related in-service deterioration – except for the problem relating to the car's security system.

Our investigator said the functioning of this system would not have been checked in the car's December 2017 MOT test. And the problem with this system was reported shortly after delivery by Mr D to the supplying dealership. In these circumstances, she felt it was more likely than not that the problem had been present or developing at the point of supply.

In our investigator's view, this system should be very durable, and should not be exhibiting a fault in a vehicle with the age and mileage of Mr D's car. In that respect, this problem was different from the other problems exhibited by Mr D's car, which all related to parts of a vehicle where periodic servicing would be expected. Our investigator recommended that Moneybarn should pay for the repair of this system.

Mr B disagreed with our investigator. He said:

- Even when acquiring an older car, a certain standard is to be expected
- The product he received was not what he signed up for
- The car should not have been supplied until its many faults (identified by the independent inspector) had been repaired

Moneybarn also disagreed with investigator. It said the independent inspector's view should be respected in full – the security system problem did not cause the car to be unfit for purpose, and so it should not be held responsible for any repair costs.

And so this complaint was referred for review by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

Moneybarn has a responsibility to ensure that goods of satisfactory quality, and corresponding to their description, have been supplied. This means that a reasonable person would have regarded the goods as satisfactory, taking into account all relevant circumstances, which for cars include age and mileage travelled. But there are limits to Moneybarn's responsibilities. In particular, faults must be present or developing at the point of supply.

Although Mr D's car was more than eight years old when he acquired it, I think a reasonable person would expect it to be:

- Not only road legal
- But also as advertised, and with all functions not subject to periodic servicing in full working order

Mr D reported a number of faults to the supplying dealership shortly after taking delivery. An independent inspection of his car was subsequently undertaken, the results of which were:

- The car was confirmed as exhibiting problems, which it was more likely than not (in the inspector's view) would have been present or developing at the point of supply
- These problems were not sufficient (in the inspector's view) to prevent the car being road legal and fit for purpose, both at the date of inspection and at the point of supply

In addition:

- The car passed an MOT test, with no advisory notices, shortly before delivery
- It met the requirements of a pre-delivery inspection checklist, and was marketed as having done so

There are possible inconsistencies between these pieces of evidence. The independent inspector identified problems with the car's:

- Engine and power transmission system
- External bodywork
- Interior safety and security systems
- Wheels/tyres and braking system
- Exhaust system

It is apparently inconsistent that none of these problems, all of which should have been picked up in the pre-delivery inspection, and some of which might have caused MOT advisory notices, were identified at or before the point of supply. Although it can be argued in response that faults exhibited later could have been developing, but not yet present, earlier.

Bearing in mind the above possibly inconsistent evidence, I think the most reliable information is likely to come from the independent inspection. But, on balance, I am unable to find that problems identified by this inspection were present (as opposed to developing) at the point of supply. (This is even though Mr D provided evidence to us of his reporting to the dealer soon afterwards that these problems were present.)

The independent inspector said the problems identified in Mr D's car were the direct result of age-related in-service deterioration. And there is no evidence that his car was advertised as being in above average condition. In these circumstances, I think a reasonable person would not regard the car as being of unsatisfactory quality.

In our investigator's view, all except one of the car's problems are age and mileage related. The exception is the car's security system, which should be much more durable, and so the problem identified with this system should not be considered normal wear and tear.

I agree with our investigator's view – I think that a reasonable person would regard satisfactory quality, in these circumstances, as including a security system in full working order. And, on balance, I find that the problem with this system was developing at the point of supply.

All of which means that I have come to the same conclusion as our investigator, for similar reasons:

- Repairing the security system problem (a central locking fault) falls within Moneybarn's responsibilities
- But work on the other problems identified does not fall within these responsibilities

my final decision

For the reasons explained above, my final decision is that I uphold this complaint in part. In full and final settlement of it, I order Moneybarn No. 1 Limited to meet the repair cost of Mr D's car's central locking system. And Mr D should be invited to choose whether this repair is undertaken either by the supplying dealership, or by a manufacturer approved main dealer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 May 2019.

Roy Mawford
ombudsman