

complaint

Mr B complains that the car he acquired through a conditional sale agreement with Moneybarn No. 1 Limited (the business) was not of satisfactory quality. He wants to reject the car.

background

Mr B acquired a car through a conditional sale agreement dated July 2017. He says he contacted the business shortly after acquisition about issues he was experiencing with the car. He was told to contact the dealer which he did and was told the issues would be fixed and a service carried out. Mr B says he was given £50 compensation because the mirror could not be fixed.

In November 2017, Mr B contacted the business saying there were still issues with his car. He says that he had to have the oil and filters changed and that when this was happening he noticed an oil leak. He also noted issues with the stop / start function, steering pulling to one side and the tyre pressure light not resetting. He also says he replaced the battery and had the brake pads and brake fluid changed.

An independent inspection was carried out in January 2018 following which another garage inspection took place. Mr B says he was advised not to drive the car.

The business says Mr B contacted it on 9 August about issues with the car. It says he noted the engine was juddering, electric mirrors were faulty and that seal on the back door was coming off. It says the car was returned to the dealer for repairs.

On 9 November, Mr B contacted the business about further issues, namely the oil filters, oil leak, battery, brakes, stop / start function, steering pulling and tyre pressure light. It says that these issues would be considered wear and tear and that the stop / start function only works under specific conditions and could be affected by a faulty battery. The business contacted the broker and it was suggested an independent inspection be carried out. It says this did not conclude that the vehicle was of unsatisfactory quality at the point of supply.

Our investigator thought that some of the issues Mr B had experienced with the car were present or developing from the point of supply. She said that although the independent report did not agree that the faults were developing at the point of supply it also noted that this comment was based on no evidence of Mr B complaining about the issues at an earlier date. Our investigator said that Mr B had been in touch with the business about issues with the car.

Our investigator said that issues were raised with it the first six months and so it was the business' responsibility to show the issues were not present from the point of supply. She said the business had the opportunity to complete repairs but these were unsuccessful so she recommended that Mr B be allowed to reject the car.

The business did not accept our investigator's view. It said that Mr B's initial complaint did not mention the oil leak, stop / start function or steering issue and that Mr B did not say that he wanted to cancel his agreement before the complaint was raised. It said that although an oil leak was reported in November 2017, given the age and mileage of the car certain maintenance issues would be required sooner than would be the case on a new car. It said that a leak would be considered wear and tear as would the battery and brakes. It noted that

the stop / start function was an electrical item that could fail at any time and that the steering could be a tracking issue which could be affected by a bump or knock of some kind.

The business did not accept there was sufficient evidence to suggest the car was not of satisfactory quality at the point of supply.

my findings

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

Mr B entered into a conditional sale agreement to acquire a car. Under the regulations, the business is liable if the car was not of satisfactory quality at the point of supply. At the time of acquisition the car was around six years old and had been driven over 75,000 miles. This needs out be taken into account when assessing satisfactory quality.

Mr B raised concerns with the car shortly of acquisition. At that time he noted the car juddering and an issue with the mirrors and the seal on the window. Repairs were undertaken and a service carried out. Mr B has not mentioned the car juddering after this date and I understand compensation was offered for the issue with the mirror. However he says that a few weeks later the service light came on and the oil and filters needed changing. At this stage Mr B noticed an oil leak.

After this further issues arose. Mr B reported these in early November 2017, around three months after acquisition.

In order to uphold this complaint I need to be satisfied that the issues with the car were due to faults and not the result of wear and tear. In the event that I accept there were faults I then need to be satisfied that these were present or developing at the point of supply.

Mr B says that the current issues with the car are the oil leak, the stop / start function not working, steering pulling to one side, seal on the back door and the tyre pressure lights. I note that there have been other issues in regard to the battery and brakes and that Mr B has paid for the necessary repairs. I also accept the issue with the mirror is outstanding but Mr B accepted compensation for this.

The independent inspection report carried out in January 2018 confirmed the steering drifted to the nearside and that this was considered abnormal. It further noted that there was no evidence of damage that might account for the steering pull. The inspection also confirmed the stop / start function was not working and that the tyre pressure warning was on and did not reset. The report said that *"An under bonnet inspection did not reveal any engine oil leaks but because the underside of the engine is fitted with a shield it could not accessed and as such an oil leak from the engine sump could not be confirmed or eliminated."*

As issues were confirmed by the inspection and theses issues were all raised within the first few months of Mr B acquiring the car, it is reasonable that the business was required to show that the issues were not due to faults that were present or developing from the point of supply.

The business said that the inspection report did not conclude that the issues were present from the point of supply or that the car was unsatisfactory at the point of supply. I note the comments made in the report about possible causes of the issues with the stop / start

function and the comments about the tyre pressure not resetting. However, Mr B raised these issues and they were confirmed as issues in the report. I also note Mr B replaced the battery in October 2017.

Mr B also raised the issue of an oil leak which was identified when the oil filters were changed. The inspection report said it was not able to access the area to confirm whether there was a leak. Given the difficulty in assessing the leak due to the underside of the engine being fitted with a shield, I accept that a leak present from the point of supply might only have been noticed at the point of repair. The business has suggested that the leak could be due to wear and tear but given when this issue was raised I find it more likely that not that this issue was present or developing at the point of supply. The presence of an oil leak at the point of supply would suggest the car was not of satisfactory quality.

The report said that *“Unless there is firm evidence that the noted faults were reported within a few weeks of sale the elapsed time and mileage do not make it possible to conclude that the noted faults, or circumstances leading to the faults, existed at the point of sale.”*

Mr B raised the issues recorded in the report on 9 November. This was around three months after acquiring the car. Given the nature of the issues raised, I find it reasonable to accept that they would have been occurring for a period of time before Mr B raised them. Because of this I find, on balance, it more likely than not that the issues were present within the first few weeks and were raised in November.

Based on what I have seen, I find it more likely than not that there were issues present or developing at the point of supply. I accept that certain items such as the battery and brakes could be considered wear and tear but I find that problems such as the oil leak, stop / start function and the tyre pressure are more likely than not due to faults.

Because of this I uphold this complaint.

My role is to consider what is fair and reasonable in each case. I take relevant regulations into consideration but I decide what I think is fair based on the individual merits of the case.

In this situation, the business has had the opportunity to carry out repairs but issues remain with the car. Therefore, I find the reasonable resolution at this stage is for Mr B to be allowed to reject car. It is possible to consider in these situations whether the deposit paid under the agreement should be refunded but as Mr B did not pay a deposit this is not relevant in this case.

Mr B paid for repairs that he would not have had carried out had known he was returning the car and which should be of benefit to the returned car so I find it reasonable that he has these refunded (subject to the invoices being provided). Mr B was able to use the car but I accept that his enjoyment has been reduced and that he was told following an inspection to no longer drive the car.

Based on when Mr B raised the issues, I agree with our investigator's recommendation that Mr B should be responsible for the first four monthly payments' and that subsequent payments he has made should be refunded. I also agree that because of the inconvenience the issue with the car have caused Mr B he should be paid compensation of £200.

my final decision

My final decision is that I uphold this complaint. Moneybarn No. 1 Limited should:

1. cancel the conditional sale agreement and remove any outstanding liability;
2. collect the car at no cost to Mr B;
3. refund Mr B any payments he has made beyond the first four monthly payments;
4. reimburse Mr B for repairs he has paid for himself upon receipt of the relevant invoices;
5. remove any adverse information that has been reported to credit reference agencies (if applicable); and
6. pay Mr B £200 compensation for the trouble and upset the issues have caused.

Items 3 and 4 are subject to 8% simple interest from the date of payment to the date of settlement.

If Moneybarn considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 May 2018.

Jane Archer
ombudsman