

SHERIFFDOM OF NORTH STRATHCLYDE AT DUMBARTON

[2025] SC DUM 6

DBN-A58-23

JUDGMENT OF SHERIFF F McCARTNEY

in the cause

DAVID ADAM

Pursuer

against

MONEYBARN NO. 1 LIMITED, a company incorporated under the Companies Act (Company number 04496573) and having its registered office at Athena House, Bedford Road, Petersfield, Hampshire GU 32 3LJ

Defender

Pursuer: Deans, Advocate

Defender: McClymont

Dumbarton, 7 February 2025

The sheriff, having resumed consideration of the cause, finds the following facts admitted or proved:

1. The pursuer and defender entered into a conditional sale agreement under agreement number 722577 ("CSA") on 28 February 2022 for the purchase of a car.
2. The defender supplied to the pursuer a Citroen DS3 car, registration VX14 JOJ ("the car").
3. The CSA was signed by the pursuer on 28 February 2022. The pursuer collected the car on 28 February 2022 from Philip Gribben Car Sales, in Northern Ireland. He flew to Northern Ireland, returning home by ferry with the car.

4. As at 28 February 2022, the car was around 8 years old, having been first registered on 1 March 2014. As at 28 February 2022, the car had a mileage of 45,624 miles. When new, the car would have been worth around £18,735.

5. The total amount payable by the pursuer to the defender under the CSA was £9,290.14. That amount comprised the cash price of the vehicle of £6,290.00 and interest charges of £3,000.14. That amount was payable in 59 equal consecutive monthly instalments of £157.46, starting one month after the date of the CSA.

6. The car passed MOT tests on 21 July 2022, 10 February 2020, 22 February 2019 and 28 February 2018. The MOT test on 21 July 2022 recommended that the pursuer monitor and repair, if required, three matters: two relating to the wear on the tyres, and one relating to the exhaust mounting.

7. The pursuer started experiencing problems with the car's power and acceleration at some point in late 2022. He sought advice from a mechanic in January 2023. The car needed a new battery. He had a new battery fitted. He still considered there was an issue with the acceleration and power of the car. On 9 January 2023 he took the car to a garage to see a different mechanic. He was advised to have new coil packs fitted. A coil pack is part of the car's ignition system. If a coil pack is faulty, it can cause problems with the power and acceleration, and a car may misfire (that is have a lack of acceleration). After the coil packs were fitted, the pursuer still considered there was an issue with the car's power and acceleration. On 1 February 2023 he took the vehicle to the Tuga Garage Ltd in Glasgow who ran a diagnostic test. Tuga Garage considered the engine timing was out, and the car needed a replacement timing chain set. The pursuer has not replaced the timing chain set.

8. The pursuer incurred costs of £240 for replacement coil packs and the diagnostic checks at Tuga Garage.

9. The pursuer's agent, Reject My Car, wrote to the defender on 3 February 2023 asking for the car to be repaired. Reject My Car advised the car had a defective engine, a defective timing chain, that the engine management light was lit, and the car had acceleration issues on being driven at higher speeds, causing the car to enter limp mode. Limp mode is when there is a fault with the power of a car, but it can be driven a slower speed for a distance to return home or pull into a safe place.

10. On 10 February 2023, the defender wrote to the pursuer seeking further information on the complaint. On 1 March 2023, the pursuer sought to exercise his right to reject the car, relying on a report by Mr Muir Smith trading as Scottish Independent Vehicle Inspection Services. Mr Smith inspected the car on 10 February 2023. On 11 April 2023, the defender rejected the pursuer's complaint but credited the pursuer's account with the sum of £50.00, said to be a gesture of goodwill.

11. Mr Smith's inspection of the car on 10 February 2023 used a diagnostic fault code reader, commonly used to diagnose problems with cars. The reader showed the car displaying fault codes P1336, P1035 and P1340. Those fault codes relate to the crankshaft position sensor (P1336) the oxygen sensor (P0135) and the camshaft position sensor (P1340).

12. The pursuer was told that if he was not satisfied with the outcome of his complaint, he had a right to refer it to the Financial Ombudsman Service free of charge within six months. The pursuer did not make any such referral.

13. On 27 October 2023 Mr Micheal Campopiano inspected the car on behalf of the defender. He also used a diagnostic fault code reader. His inspection revealed ten fault codes, some relating to the faulty battery. The codes not relating to the battery were codes P1336, P1340, P1338 and U1218. Two fault codes were therefore the same as those displayed in Mr Muir Smith's inspection. The additional fault code P1338 relates to a

misfire on the cylinder. Fault code U1218 relates emissions from a car. There was no misfire present in the car on 27 October 2023.

14. The crankshaft position sensor monitors the rate that the crankshaft spins at.

The camshaft position sensor records the rate at which the camshaft is spinning. The crankshaft and the camshaft are parts of an engine connecting the pistons to other parts.

15. As at the date of 28 February 2023, the car had a mileage of 55,687 miles. Between 28 February 2022 (the pursuer purchased the car) and 3 February 2023 (when the pursuer first reported problems with the car to the defender), the car had been driven around 10,063 miles.

16. Prior to 3 February 2023, the pursuer had paid 12 instalments of £157.47 totalling £1,889.52 to the defender. Since 3 February 2023, the Pursuer has paid 20 instalments of £157.46 totalling £3149.36. The pursuer has paid a total of £5038.72.

17. On 1 March 2023, the pursuer sought to exercise his final right to reject in terms of section 24 of the Consumer Rights Act 2015.

18. The defender has not accepted the pursuer's rejection.

Finds in fact and law

1. That the car was of satisfactory quality under the Consumer Rights Act 2015 as at date of sale.

Finds in law

Repels the pursuer's pleas in law, the fifth, sixth and seventh pleas in law no longer being insisted upon; upholds the defender's fourth and fifth pleas in law (insofar as those pleas

relate to the declarator sought by the pursuer); dismisses the action and grants decree of absolvitor in favour of the defender.

NOTE

Introduction

[1] This is a dispute about a car. The pursuer argues the Citroen DS3 car supplied to him under a contract of conditional sale in February 2022 was not of satisfactory quality. He says he has the right to reject the car. He seeks certain sums to be paid to him arising from that rejection. The defender disputes the quality of the car. I heard evidence over 2 days from the pursuer, his witness Mr Muir Smith, the defender's expert Mr Micheal Campopiano and from Ms Alysa Marshall. At the hearing on submissions, I gave a short *ex tempore* decision and now provide more detailed reasons.

[2] The pursuer has five craves and a crave for expenses. Crave 1 seeks declarator under six headings relating to the quality of the car, the pursuer's rejection of it and regarding whether further payments are due by the pursuer. The pursuer's second and third craves relate to payment; crave 2 seeks a refund of payments made by the pursuer (amended during the proof to reflect the correct sums paid) with crave 3 seeks a sum for loss of enjoyment of the car. At the hearing on submissions, the pursuer ultimately did not insist on craves 4 or 5 seeking interim interdicts.

[3] It is agreed the contract is a conditional sale agreement, that the car was supplied in terms of that agreement and the pursuer is a consumer with the terms of the Consumer Rights Act 2015 ("the Act"). The dispute is solely as to whether the pursuer was entitled to reject the vehicle in terms of section 24 of the Act on 1 March 2023.

[4] It is not in dispute the pursuer drove the car for around 11 months before contacting the defender to make a complaint. The material averments for the pursuer on the condition of the car are that faults arose in September 2022 when the car would “shake” when driven and go into “limp mode” (where a car can be driven slowly, designed to allow a short period of driving to execute repairs). It is averred warning lights displayed relative to the camshaft and oxygen sensors, and the car was misfiring two cylinders. It is averred that no reasonable person would regard the car as durable. The pursuer’s case is that these faults were such that it could be concluded the car had latent defects at the time of purchase, which manifested themselves some 11 months later.

[5] In response, the defender avers that the car was of a satisfactory quality commensurate with its age, price and mileage as at the date of sale. The defender relies on MOT certificates issued at various dates, that it was driven by the pursuer for around 11 months before the complaint was made, the mileage when purchased and the mileage it was driven by the pursuer without complaint.

[6] Accordingly, the issues before the court are (1) was the car of satisfactory quality to meet the test as set out in section 9 of the Act; (2) if not, to what remedies is the pursuer entitled?

The witnesses

[7] I briefly narrate the evidence that I heard from each witness.

The pursuer

[8] The pursuer found the car on-line in a garage in Northern Ireland. He contacted the garage to say he wished to buy it. He purchased road tax and flew to Belfast. He drove it

for a road test, completed the paperwork and then returned home with the car by ferry. On the road test there was a rattle from the car when going over bumps, but no warning lights displayed. Once home, he drove it for general social use. Around the start of September 2022, he noticed something wrong. Warning lights came on. If he drove it over a certain speed, it went into limp mode. Driving it over 30mph seemed to cause it to shudder, as if driven by a learner who did not have a smooth control of the vehicle, shuddering backwards and forwards with the engine rocking. The car would then go into "limp" mode, with a lack of power. This was at the beginning of September 2022; he was due to go on holiday and concerned about the cost of repairs. He became scared to use it.

[9] The first mechanic he consulted was someone who was close to his home, with no formal trading name. He did not have a receipt or invoice. He was told the battery was flat. A new battery was fitted, but despite that, the warning light came back on almost immediately.

[10] The second garage was GM Auto Repairs. They fitted a new coil pack. On his route home he drove on a dual carriageway. The warning lights again came when driving faster on the dual carriageway and the car went into limp mode. At the beginning of February 2023, he phoned Tuga Garage in Glasgow, a Citroen specialist. They told him what he was describing was a common fault. They would do their own assessment of the vehicle. They charged him for a diagnostic test concluded the engine timing was out, and the car needed a replacement timing chain set. The pursuer has not arranged those repairs as recommended by Tuga Garage.

[11] The pursuer then got in touch with Reject My Car Ltd, a claims company. Reject My Car Ltd agreed to act and contacted the defender on 3 February 2023. The defender responded on 10 February 2023 (production 6/2/4/1), accurately listing the problems with the

car. The pursuer now used his partner's vehicle. Using his partner's vehicle caused tensions between them. They lived separately, albeit 5 or 10 minutes apart. He had incurred costs from the various repairs and inspections.

[12] Various matters were put to him in cross, including the date of registration, the mileage, dates the car had passed MOTs, including in July 2022. He maintained there had been issues with the car since September 2022 although the complaint was not raised until February 2023. There was some evidence about what Reject My Car had done, and whether action had been wrongly taken for payments due under the contract.

Mr Muir Smith

[13] By agreement of the parties, Mr Smith's evidence was heard under reservation. Whilst there was no written motion, the defender anticipated the pursuer would seek to have Mr Smith certified as an expert witness. Mr Smith's CV was lodged on the first day of proof (5/3/1).

[14] Mr Smith's evidence adopted his report (5/1/1) and spoke to his qualifications and experience, his factual account of what he found when examining and his opinion on whether the car had latent defects. He has been employed in the car industry most of his working life. He commenced work as a technician with Arnold Clark, progressing to service manager and then operations manager. He subsequently worked in management roles in other car sales companies, in a company dealing with car parts and in Linde MH, managing a team of service engineers. He has a HNC in car mechanics and accreditation from Land Rover in Professional Management.

[15] He inspected the car on 10 February 2023. The engine management light came on immediately. The warning message read "engine fault: repair needed". He used a

diagnostic reader, plugged into the car, to investigate. Three diagnostic fault codes showed: P1336, P0135 and P1340. Fault codes were a snapshot; historical faults would not show if deleted.

[16] Fault code P1336 relates to the crankshaft. The crankshaft rotates in the engine, moving cylinders which compress to fire the fuel. There were several potential causes to this fault code. It could be a faulty crankshaft position sensor, a fault in the crankshaft sensor wiring, a faulty signal plate or a battery fault. He could not say which of those applied; the engine might need to be stripped. Further information was required.

[17] P1340 was a different fault, relating to the camshaft position sensor. The camshaft position sensor measured the rate of spinning of the camshaft. There were several possible causes of code P1340: a faulty camshaft position sensor, a fault in the camshaft position sensor wiring, a starter motor fault or a battery fault.

[18] In relation to P0135, that related to a malfunction in the oxygen sensor heater circuit. This fault code meant the power train control module had detected a problem with the oxygen sensor on one side of the engine. Possible causes included a faulty oxygen sensor, a fault in the wiring, an engine control unit fault or a power control module fault.

[19] He considered the engine had a bad misfire (section E of his report). A misfire was connected to the car's power. He knew it was a misfire because the whole car was shaking and rocking badly. He had been told the coils were replaced and the engine did not perform any differently. He could not take the car out on the road as he considered the engine could not be left running for long but could run the engine in the pursuer's driveway.

[20] The misfire was a known fault within Citroen cars manufactured between 2009 and 2015. He had seen one other similar Citroen car with the same fault. That known fault could register several fault codes, including P0135. The fault codes relating to the crankshaft

sensor and the camshaft sensor were separate faults, which would need further investigation. He considered the car had latent faults. The parts of the engine to which the fault codes related to should last; it was extremely premature for such parts to fail given the age of the car and its mileage.

[21] He was challenged on his training, work experience and qualifications. He maintained he had considered all possibilities as to why the fault codes displayed. He would expect the engine parts relating to the fault codes to last between 10 to 15 years. The vehicle shaking was a clear sign of a misfire. If there was more than one cylinder misfiring, then it would be noticeable immediately. If a car developed an intermittent misfire, then the problem generally got worse. He had not mentioned the MOT history in his report as he thought it irrelevant. An MOT was a visual inspection which did not look underneath covers or parts of the engine. Passing a MOT did not mean a car was free from latent defects; a car could pass an MOT even if an engine light was on. If a car started to misfire during an MOT, then it would be down to the tester's opinion, although he conceded it was unlikely to pass if misfiring. He was 80 per cent certain that the issue was a misfire, but until further investigations were carried out, he could not be 100 per cent sure. He accepted he had not commented on the mileage, the age of the car, the mileage by the pursuer, the purchase price, and had not incorporated his letter of instruction into the report.

[22] During cross a third inventory was lodged. That contained various Facebook pages where he had "liked" certain posts or made comments. It was put to Mr Smith to suggest such comments precluded him from acting as a skilled witness. That is analysed below.

The defender's witnesses*Mr Campopiano*

[23] There was no dispute that Mr Campopiano could act as a skilled or expert witness.

[24] He spoke to his CV (6/2/10) and his report (6/2/8). His experience is as a mechanic, mainly for cars and small vans. He is certified both in MOT tests and as a quality control approved MOT tester. He was the first Citroen technician in Scotland, having completed a relevant course. He has a HNC in Automotive Management with Technology and holds membership of bodies such as the Institute of the Motor Industry, having achieved the status of Fellow.

[25] His report set out the documents he was provided with, the scope of his instructions and detailed his examination of the car and whether it was fit for purpose when sold. He inspected the car on 27 October 2023 at the pursuer's home.

[26] He used a diagnostic reader which displayed ten fault codes. By the time of his inspection, the car had a flat battery. Those relating to the flat battery were ignored. From the two that remained (P1336 and P1340) he considered it likely there was a camshaft and crankshaft fault. He could not drive the car on the road as it did not have a current MOT or road tax but ran the car engine whilst stationary in the pursuer's driveway. There were no obvious signs of a misfire, such as jolting from a lack of consistent power. There was no warning light on the dashboard relating to the underlying cause of a misfire. A misfire could be caused various faults: from issues with spark plugs or the exhaust causing a lack of fuel or air, or a cylinder not functioning. A car would not pass an MOT if misfiring. It would be obvious to the MOT inspector when driven but would also have a warning light on the dashboard. Cars were generally not passed if a warning light was displayed. A car

that was misfiring would not pass the emissions test which was part of an MOT. He did not think the coil packs were recently replaced given the soil contamination he saw on them.

[27] He was unaware of any recall notices to this type of car by Citroen. He was unaware of any known issues of manufacturing faults in the make and model of this car. He maintained his position in cross-examination.

Alysa Marshall

[28] Ms Marshall gave evidence via Webex. Her evidence was limited to adopting the terms of her affidavit. She was not cross-examined. I return to that point later.

[29] Her evidence spoke to the investigation by the defender on receipt of the pursuer's complaint.

Submissions

[30] Written submissions were lodged. At the hearing on those submissions, the pursuer indicated that the craves for suspension and interdict were no longer insisted upon. Those craves had not been addressed in the written submissions. In advance, the court requested agents to consider authorities following *Kennedy v Cordia (Services) LLP* [2016] UKSC 6 considering the application of the test of impartiality in a skilled or expert witness (including *McCulloch v Forth Valley Health Board* [2021] CSIH 21, *AF v AF* 2019 Fam LR 74, *C v T* 2022 Fam LR 39, *MK v TDD* [2019] SCLER 66 and *Somerville v McGuire* [2020] CSOH 70).

[31] The pursuer relied on the obligation in terms of section 9(2) of the Act to supply a car fit for purpose and durability, and the objective nature of that test by a "reasonable person". The hire purchase agreement was to be a contract over 5 years. A reasonable person would expect the vehicle to be sufficiently durable to last for all, or at least a significant portion

of that contract. In the event of a breach of section 9, the pursuer is entitled to remedies including the right to repair in terms of section 19(3)(b) and the final right to reject in terms of section 19(3)(c). He was entitled to reject the vehicle following the defender's rejection of his complaint. If the pursuer succeeds on rejection, section 24(8) allows the court to reduce payments to take account of use of the car whilst working and figures were suggested. The pursuer sought inconvenience for the loss of use of the vehicle (*Mack v Glasgow City Council* [2006] SC 543).

[32] The authorities relied upon by the defender did not assist. Pre-2015 cases pre-dated the Consumer Rights Act 2015, and as that was a "sea-change" in the rights of consumers, they were of little assistance. Neither *Douglas v Glenvarigill* 2010 SLT 634 nor *Lamar v Capital Bank* 2007 SC 95 were not in point. The defender's reliance on *Richard v Parks of Hamilton* was misplaced as that case pre-dates the Act (although I noted that the defender did not rely on this authority in written or oral submissions). The unreported decisions of *Young v Moneybarn No 1* DUM-A53-22 and *Swan v Startline Motor Finance Ltd* HAM-A301-22 were fact specific (although the pursuer drew attention to the decision by each sheriff's decision that Mr Smith's evidence was admissible as an expert). Even without Mr Smith's evidence, the fault caused the engine management light to illuminate with error codes relating to the engine cylinders, causing a misfire. It was not disputed that such parts were installed at manufacture, intending to last the lifespan of the vehicle. On the balance of probabilities, the fault was present at the point of sale.

[33] In relation to Mr Smith being certified as an expert, the authorities referred to by the court and relied upon by the defender were fact specific. However, using those authorities as a comparison, the accusations against the experts in those cases were much more blatant than those levelled against Mr Smith.

[34] It was accepted the evidence on the diagnostics tests by Tuga Garage was unsatisfactory in that there had been no further evidence or investigations on the issue of the car's engine timing.

[35] The defender focussed their submissions on the absence of evidence pointing to fault with the car at the date of delivery. An 11-month delay in making a complaint was telling. The evidence suggested the car was of satisfactory quality at the date of delivery, and for at least 11 months thereafter. It was a second-hand car. Reliance was placed on the agreed valuations. There was an increased risk of repairs being required if a car was purchased second hand (*Thain v Anniesland Trade Centre* 1997 SLT (Sh Ct) 102 at 106). That logic had been followed in two recent unreported Sheriff Court decisions (*Swan v Startline Motor Finance Ltd* and *Young v Moneybarn No 1*). Even if the pursuer did validly reject the car, the pursuer is not entitled to the declarator sought in crave 1 (vi) given the absence of evidence as to whether the defender's authority to take payments had lapsed. If the pursuer was entitled to a refund, any payments post rejection should not simply be refunded as the correct course was for pursuer to seek damages (*King v Black Horse Ltd* 2024 SC 296). If the pursuer was entitled to a refund, there should be a deduction for the use the pursuer had of the vehicle (*Van Gordon v Volkswagen Financial Services (UK) Ltd*, unreported, Nottingham County Court, 30 April 2019 at paragraphs 50 to 53).

The legal test

[36] The pursuer's case is that the car, as of 28 February 2022 when sold to him, was in breach of the statutory test in terms of section 9 of the Act.

[37] Sections 9(2) and (3) of the Act read:

- “(2) The quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of—
- (a) any description of the goods,
 - (b) the price or other consideration for the goods (if relevant), and
 - (c) all the other relevant circumstances (see subsection (5)).
- (3) The quality of goods includes their state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of goods—
- (a) fitness for all the purposes for which goods of that kind are usually supplied;
 - (b) appearance and finish;
 - (c) freedom from minor defects;
 - (d) safety;
 - (e) durability.”

[38] I return to the application of this test later.

Decision

[39] There are three questions to determine. Should Mr Smith be certified as an expert or skilled witness? Secondly, whatever the answer to that first question (as the pursuer argues he can succeed even if unsuccessful on the first point) was the car sold to the pursuer in breach of the Act? Thirdly, if the pursuer succeeds in proving the defender has breached his rights under the Act, what remedies is he entitled to?

Expert evidence

[40] On the first question, the starting point is *Kennedy v Cordia*. That case raised four broad issues before the UKSC: (1) the admissibility of evidence of skilled or expert witnesses; (2) the responsibility of a party’s legal team to police the role of expert; (3) the court’s policing of an expert; and (4) economy in litigation.

[41] As a preliminary issue, the pursuer has tended to use the term “expert”, and the defender has used “skilled witness”. I do not think anything rests on that point, given that both terms appear in *Kennedy v Cordia*. In any event, the test for admissibility of a skilled witness is found at paragraph 44:

- (1) whether the proposed skilled evidence will assist the court in its task;
- (2) whether the witness has the necessary knowledge and experience;
- (3) whether the witness is impartial in his or her presentation and assessment of the evidence; and
- (4) whether there is a reliable body of knowledge or experience to underpin the expert’s evidence.

[42] There is no dispute on parts 1 and 4 of the test. That leaves parts 2 and 4 of the test. On 2, the defender argues Mr Smith has insufficient knowledge or experience as a mechanic. It is accepted that he was a trainee mechanic and then worked as a mechanic, but argued his experience thereafter was in management roles.

[43] Does Mr Smith have the necessary knowledge and experience? He qualified as a mechanic via a training scheme between 2002 and 2005. He then worked full-time as a mechanic until 2009 when promoted, in the same company, to service manager, where his role included overseeing the work of other mechanics. He remained in that role for just over 2 years. He was then promoted, again with the same company, to area operations manager. He held that role for 5 years until 2016. Part of his role was to supervise the work of the mechanics. He then left that company and work for a different car company for 3 years, again supervising mechanics. He left that position in March 2019 to work in Euro Car Parts, where he was general manager with no supervisory role of mechanics. In January 2020 he set up Scottish Independent Vehicle Inspection Service, leaving Euro Car

Parts and so was self-employed for a period. In January 2021 he returned to employment as a regional service manager, supervising engineers carrying out repairs of equipment.

[44] I am satisfied that Mr Smith has both relevant knowledge and experience of mechanical faults of cars to be able to give evidence as a skilled witness. He is a qualified mechanic. He has been involved with the car industry almost all his working life. I accept as his career progressed, he moved into management roles, but note he retained some hands-on work in some of those roles. I do not think the management roles were so remote given that until 2016 he directly supervised teams of mechanics.

[45] Accordingly, I reject the defender's objection to evidence given as a skilled witness on the basis he does not have the necessary knowledge or expertise.

[46] Turning to the impartiality question, this arises from the defender's third inventory. Those productions attacked Mr Smith's impartiality generally and specifically based on his relationship with the director of Reject My Car Ltd.

[47] Mr Smith had a personal (but public) Facebook page, a page called "Dealer Group Complaints & Results" and a third page in his capacity as a sole trader as "Scottish Independent Inspection Service". He was the administrator of all three pages. He was a "friend" on Facebook of Mr Ian Ferguson, the director of Reject My Car Ltd both on his own Facebook page (5/3/4) and his business Facebook page (5/3/13). He shared Facebook posts from Reject My Car Ltd's page (5/3/5 to 5/3/8 and 5/3/10). He shared an interview of Ian Ferguson on his business Facebook page with a flippant comment on Mr Ferguson's photograph (5/3/17). He had "liked" posts on Facebook from the Reject My Car Facebook page, including a post that claimed car dealers may be committing a criminal offence if they did not tell customers of certain issues with cars in advance (5/3/18), about settlements of cases (5/3/19 and 5/3/25), on court papers being sent out (5/3/22) and on Reject My Car Ltd's

partnership with a law firm and the preference for legal action over negotiation (5/3/23).

Other posts “liked” by Mr Smith by Reject My Car Ltd included on settlement of multiple claims (5/3/27), on success stories (5/3/28), on the No Win No Fee arrangement of Reject My Car Ltd (5/3/30), on a positive comment from a Reject My Car Ltd customer (5/3/33) and other general advertising posts (such as 5/3/32 and 5/3/33). Mr Smith liked and commented on a post from Reject My Car Ltd inviting their existing followers to share the post with their own followers to encourage a wider following on Reject My Car’s Facebook (5/3/29).

Mr Smith comments he has “... just invited my full friends list.”

[48] In another (5/3/9), Mr Smith posts a photograph of a van that Reject My Car Ltd had parked outside a car dealership. The van has a prominent Reject My Car Ltd logo. He asks people to share the post, commenting “specialising in vehicle rejection/dispute resolutions, could this be the end to being treated with contempt by large, franchised dealerships?”

[49] Some of the posts by Mr Smith suggest he understands the role of an expert witness, such as that found at 5/3/11. In that post, Mr Smith explains he (in his capacity as a sole trader) will not add things to a report on request and has no bias towards any party in a dispute. Other posts advertise his business, including details of pre-purchase inspections of cars (5/3/13 and 5/3/16). Those posts emphasis a more nuanced understanding of the role of a skilled person.

[50] Mr Smith’s evidence on this chapter gives cause for concern. It was clear from his evidence that he has an affinity with Reject My Car Ltd and its business model. There was no dispute that Reject My Car Ltd had an integral part in the pursuer taking this action by intimating the pursuer’s complaint, by referring him to his current solicitors and, despite what was said in Mr Smith’s report, instructing Mr Smith directly to prepare the report. He could not explain why he had written some of the posts he had. For example, a post

on “Dealer Group Complaints & Results” page (5/3/3) suggests a bias against the motor industry. Whilst he denied that accusation, he could not give an alternative convincing explanation for the post. He liked a post claiming car dealers may be committing a criminal offence if they did not tell customers of certain issues with cars in advance (5/3/18) but, again, could not say why. He took part in marketing for Reject My Car Ltd by sharing their page asking for more followers. Again, he could not explain why.

[51] I note the posts are over a period and predate his inspection of the car involved in this action. Some posts, taken individually, might not give rise to a legitimate attack on Mr Smith’s impartiality. However, I am concerned not just to some of the more blatant individual posts but also the cumulative effect. It leads to the impression that Mr Smith has a certain view as to the car industry, and sympathy for the cases that Reject My Car Ltd take on.

[52] Accordingly, I consider that the productions and Mr Smith’s evidence as to those productions raise legitimate issues as to his impartiality. As set out above, the test in *Kennedy v Cordia* is whether the witness is impartial in their presentation and assessment of the evidence. My conclusion is that Mr Smith has not been impartial in his assessment of the evidence as to the fitness and durability of the car. I consider his conclusions in his report, compounded by his evidence, were given without the normal rigour expected from a skilled witness. He had a blasé and somewhat casual approach to analysing the issues. It was as if Mr Smith knew his conclusion in advance, and the evidence was used fit that conclusion. When properly analysed his evidence that the car had latent defects was based on the flimsy evidential basis of having seen one similar Citroen car with similar faults. He could not point to literature or information circulating in the motor industry reporting such a known fault. His evidence was vague. There was something of a leap in logical analysis.

Having seen one car with a similar fault is a flimsy foundation to conclude there was a wider manufacturing defect with such model of cars. I do not think he can be said to be objective in his investigations and evidence.

[53] My decision on Mr Smith's position as an expert does not exclude all his evidence. The pursuer is entitled to led evidence from him as a witness to fact (paragraph 40 of *Kennedy v Cordia*). I deal with that below.

Is the defender in breach of section 9 of the Consumer Rights Act 2015?

[54] I find against the pursuer on this point.

[55] I consider the some of the pursuer's evidence to be exaggerated. The faults arose, by his account, in September 2022 after which he tended not to use the car. That evidence is not backed up by the mileage on the car. The mileage increased by 5,357 miles between the date of delivery of car and the MOT in July 2022 (50,981 at the MOT on 22 July 2022 and 45,624 at the date of delivery on 28 February 2022). At the date of the inspection by Mr Smith on 10 February 2023 the mileage was 55,687. The mileage therefore increased by 4,706 miles from the MOT in July 2022 to 10 February 2023. Whilst that is a lower rate of usage as compared with February to July 2023, it is still a significant mileage. I am therefore not convinced the pursuer used the car as infrequently as he said in evidence. Either the faults arose later around the turn of the year, or the faults were minor or intermittent that did not affect his use of the car.

[56] Understandably, the pursuer's evidence could not answer the question as to what is wrong with the car. All the pursuer can say is that something was wrong with the car by January 2023. His evidence does not help to explain the assertion that the car was not of satisfactory quality with reference to the various factors in section 9 of the Act.

[57] I have already excluded the parts of Mr Smith's evidence given as a skilled or expert witness. However, if I am wrong as to exclude the parts of Mr Smith's evidence as a skilled witness, I would not have accepted his evidence in part for the reasons as set out at paragraph 51, but also on the basis that not all of it was reliable or credible. There were discrepancies between his report and oral evidence, including that the car parts would be expected to have a lifespan of 10 to 15 years based on a certain average mileage, whereas his report asserted a lifetime expectancy (5/1/1 at paragraph-F). He accepted that for two of the diagnostic fault codes further investigation was required, but still asserted that despite not having carried out those investigations, he was entitled to conclude the car had latent defects. The concerns as to the casual nature of the evidence remains, whether that is to determine if he is a skilled witness, or whether it is analysing that evidence of itself.

[58] There is still other evidence before the court from Mr Smith. At paragraph 40 of *Kennedy v Cordia*, the court considered the admissibility of factual evidence from a skilled witness:

“Experts can and often do give evidence of fact as well as opinion evidence. A skilled witness, like any non-expert witness, can give evidence of what he or she has observed if it is relevant to a fact in issue . . . There are no special rules governing the admissibility of such factual evidence from a skilled witness”.

The pursuer argues he can still succeed, even if Mr Smith's skilled evidence is excluded.

[59] Mr Smith's evidence on factual matters includes seeing the car shaking and rocking badly. I consider his evidence on the reading diagnostic codes is a question of fact. Interpreting what such codes mean, in terms of working out what requires to be fixed in a car displaying those codes, is then a matter for a skilled witness.

[60] I preferred the evidence from Mr Campopiano. I found his evidence well explained and articulated. I accept his evidence that an excessive misfire could be a spark plug failure,

an issue with the exhaust, or something else. Accordingly, even if Mr Smith did see the car having a misfire, that of itself does not lead to the conclusion the defender is in breach of section 9 if the cause of the misfire could be something as simple as a spark plug failure.

Mr Campopiano did not find a misfire when he tested the car. He thought the fault codes he did observe might be because of a faulty crankshaft sensor or camshaft sensor, due to faulty wiring, corroded or faulty electrical connectors. To ascertain whether there was a fault, the car would need to be inspected in a workshop and subject to further testing. Even if I accept Mr Smith's factual evidence as to the shaking and rocking of the car and accept that such a factual observation can lead to an inference the car was misfiring in February 2023, that does not mean the car had a defect at the point of sale or otherwise not of satisfactory quality.

There was no misfire as at October 2023 when the car was run. That gives some doubt as Mr Smith's evidence on that point. Mr Smith's observations took place in a similar way to Mr Campopiano's - on both occasions the car engine was run whilst stationary. Where there is a conflict, I prefer Mr Campopiano's evidence. But fundamentally, as Mr Campopiano points out, the cause of a misfire could be straightforward. A misfire does not necessary lead to the conclusion the car had a defect at the point of sale. Accordingly, the factual evidence from Mr Smith does not take the pursuer any further. There is no dispute that there was some sort of fault with the car by February 2023, but the question is whether it can be said that any faults present at that time leads to the conclusion the car had latent defects at the time of sale.

[61] Whilst Mr Campopiano was criticised in cross-examination for not having carried out the further testing he suggested, I am satisfied he carried out a throughout investigation on the information before him. He had Mr Smith's report before his inspection. That focussed on the issue of a misfire being observed. Mr Campopiano did not find a misfire

but noted some similar fault codes to Mr Smith. The criticism has no weight in the absence of Mr Campopiano finding a misfire.

[62] The pursuer needs to present evidence as to why the car is not of satisfactory quality.

The pursuer has failed to prove his case. I consider the quality of the car is satisfactory, having regard to the objective nature of the test, the price that the pursuer paid for the car, the mileage of the car at purchase, the mileage between purchase and the MOT and then purchase and the inspection. There is a lack of clear evidence as to what is wrong with the car allowing the court to infer that the car had latent defects at the point of sale.

[63] As noted, Ms Marshall was required to attend court but was not cross-examined.

That was unfortunate given the court had continued a procedural hearing specifically to be addressed on whether her evidence could be agreed. It is of regret that the pursuer changed his position on that matter between the procedural hearing and the continued day of proof.

[64] Given the pursuer has not succeeded in his claim as to a breach of section 9 of the Act, it is unnecessary for me to consider the question of remedies. Accordingly, I dismiss the pursuer's craves and grant decree of absolvitor in favour of the defender. I granted the defender's unopposed motion for expenses as taxed insofar as not otherwise already dealt with.