

CA on appeal from Bristol County Court (HHJ Rutherford DL) before Ward LJ; Arden LJ; Smith LJ. 18th October 2007.

Lady Justice Smith :

Introduction

1. This is the appeal of Darren Egan, brought with the permission of the Rt. Hon. Sir Henry Brooke, against the order made by His Honour Judge Rutherford DL dated 2 January 2007, in which he dismissed the appellant's claim against the respondent, Motor Services (Bath) Ltd.
2. The appellant took delivery of a brand new Audi motor car from the respondent in March 2004. The following month, he tried to reject it on the ground that it was unsatisfactory. The respondent refused to accept the rejection and, in due course, the appellant sued for the return of the purchase price and damages. His claim failed because the judge held that there had been nothing wrong with the Audi and the appellant had not been entitled to reject it.

The History

3. In July 2003, the appellant agreed to purchase an Audi TT 3.2 litre V6 motor car from the respondent for £32,300. The car was supplied on 5 March 2004. He soon formed the view that the steering was unsatisfactory, that the vehicle veered to the left when being driven at speed and was therefore unsafe. He complained about this to the respondent. During March and April, two of the respondent's employees test drove the vehicle. Mr Simon Woollard, a technician, drove it on 2nd April and Mr Peter Nicholls, the Operations Director, drove it on or about 12 April. They formed the view that the car handled normally. However the respondent made various adjustments to the tracking of the front wheels and supplied a new set of tyres. At the trial there was a dispute as to whether the respondent had ever accepted that the steering was unsatisfactory. The appellant claimed that Mr Woollard had agreed that there was a problem. The respondent said that it had not; it had merely made adjustments in an attempt to satisfy its customer.
4. The appellant remained dissatisfied. He returned the vehicle to the respondent on 24 April. On the following day, after test driving two similar vehicles and finding them satisfactory, he wrote to the respondent rejecting the vehicle and requesting a replacement car of the same description. The respondent did not reply and on 1 May, the appellant asked for return of the purchase price. On 6 May, Mr Steve Grigg, the respondent's Brand Manager, replied. He said that the respondent did not accept that there was anything wrong with the steering or suspension of the vehicle. The respondent had undertaken three full 'geometry/alignment checks', all of which had demonstrated that the settings were 'well within the manufacturer's tolerances and specifications'. These tests had been carried out on Audi approved equipment which was fully calibrated. Moreover, a full geometry check had been carried out at an Audi centre independent of the respondent. (I interpose to say that, at the trial, the respondent accepted that the rear wheel alignment readings were not within the manufacturer's specification, although the front wheels were. It contended that the equipment on which the tests had been carried out was unsuitable for testing the particular model concerned, which was new, and that the results were unreliable.)
5. Mr Grigg went on to say that, in view of the ongoing dispute, he proposed to arrange a full AA inspection of the car's steering and suspension system, which would be viewed as completely independent and 'arbitrary' (sic). As I understand this expression, Mr Grigg was saying that this test would settle the dispute. Mr Grigg also said that he had arranged a test drive by an Audi UK representative on 12 May. In the event, the respondent did not arrange for an inspection by the AA or by any other independent person. The test drive took place on 12 May and the driver, Mr Kevin Parry, found that the vehicle handled normally. He noted that when he took his hands off the wheel completely, the car drifted slightly to the left. This he considered was normal on most vehicles.
6. Disappointed with the respondent's failure to arrange an AA inspection, the appellant arranged one himself. On 18 May, the vehicle was inspected at the respondent's premises by Mr A Sanders MSc of Automobile Association Car Inspections. Mr Grigg was present. The appellant and Mr Sanders then took the car out for a test drive but it appears that Mr Grigg did not accompany them. Mr Sanders' hand written report stated that the vehicle handled satisfactorily, except that a drift to the left was exhibited. This was more apparent at higher speeds. The report stated that the test had been conducted on roads with different cambers. Where the camber was to the left, the car drifted to the left but where the camber was to the right, the car went straight ahead. The report said that the cause of 'this' was not investigated but it was advised that an independent full alignment check should be carried out and 'further investigation as highlighted by these findings'. A copy of this report was left with Mr Grigg that day.
7. The parties remained in dispute. The car remained at the respondent's premises. On 25th October 2004, Mr Sanders provided an addendum to his report. He stated that, in his opinion: *"the vehicle exhibited what I believe was an uncharacteristic drift to the left. The handling characteristic exhibited by this vehicle, in my opinion, was considered to be uncharacteristic and unacceptable for this particular vehicle considering its age and recorded mileage."*

The recorded mileage at the time was about 1300 miles.
8. In November 2004, the respondent obtained some new equipment for the testing of wheel alignment. It carried out more tests on the car and concluded that the wheel alignment was within the manufacturer's specification. The results of these tests were not communicated to the appellant. They were disclosed in the course of the subsequent proceedings.

9. On 19 January 2005, Mr Andrew Clarke, a Technical Support Engineer for Audi UK Ltd, test drove the car. He drove the car at 40 mph on a road with varying camber. He reported that, when he took his hands off the steering wheel, the car drifted in the direction of the camber. This effect could be corrected by keeping one finger on the steering wheel. He expressed the opinion that the car was operating correctly and as the manufacturer intended.

The Proceedings

10. The parties' positions had become entrenched and proceedings were begun in the Bristol County Court in April 2005. The particulars of claim alleged a breach of the implied condition (pursuant to section 14 of the Sale of Goods Act 1979, as amended) that the car should be of satisfactory quality. The claim was for the return of the purchase price plus various incidental expenses which together came to about £35,000. Since the proceedings, the car has been returned to the appellant, who has sold it. The amount now in issue in this appeal is very modest, being limited to the difference between the purchase price and the second hand sale price, together with the incidental expenses. We were told that only about £6,000 is at stake.
11. The defence denied that the car was of unsatisfactory quality or was in any way defective. The car had been tested and had been found to be set up within the appropriate engineering tolerances. The buyer was not entitled to reject it.
12. At a case management conference in October 2005, the action was allocated to the multitrack and the parties were given permission to rely on the evidence of experts whose reports had already been obtained. Disclosure was ordered. The appellant's expert was to be Dr Graham and the respondent's was Mr Timbrell of HJ Wiltshire & Son. Later, in February 2006, the respondent obtained permission to rely on a different expert, Mr PJ Childs. As part of his consideration of the case, Mr Childs drove the car in early 2006. He expressed the view that the car handled in a normal way and drifted slightly to one side or the other, following the camber, only if the driver took his hands off the steering wheel. Dr Graham did not drive the car at all. His evidence related mainly to the data derived from the wheel alignment tests and the question of whether the settings were within the manufacturer's specification.
13. The hearing began on 26 April 2006. The claimant and Mr Sanders gave evidence; so did Mr Parry and Mr Nicholls on behalf of the respondent. The witness statement of Mr Clarke was unchallenged and was received in writing. Thus, the appellant had accepted that the car was handling normally at the time of his test drive in January 2005. This acceptance was, in turn, based upon Dr Graham's acceptance that the data from the tests carried out in November 2004, on the new testing equipment, showed that, at that time, the settings were within specification. He was therefore content to accept that the car would at that time and thereafter handle in a normal way. Thus, the appellant also accepted Mr Childs' opinion that the car had handled normally when he drove it in early 2006. It was the appellant's contention that the alignments had been secretly adjusted between April (when the tests were 'out of specification') and November (when they were 'in specification').
14. Dr Graham and Mr Childs gave evidence. The appellant put in the expert report of Mr Timbrell which the respondent had not relied on. At the end of the second day, the evidence was complete but the hearing was adjourned for submissions. It resumed on 8th September. During the intervening period some further tests were carried out on the wheel alignment of the car. Further evidence was received before submissions and the hearing was completed that day.
15. The judge reserved judgment. He sent a draft to the parties in early November. He proposed to find for the defendant, the respondent before this court. Counsel for Mr Egan, Mr Gerard McMeel, wrote to the judge raising a large number of points on which he disagreed with the judge's conclusions and invited him to reconsider them. In December, the judge handed down a judgment in which some passages were highlighted by bold italics. These were the changes he had made since the first draft. The changes did not affect the result. The claim had failed.

The Judgment

16. The judge correctly identified the issues he had to decide. These were whether or not the vehicle had a tendency to deviate to the left and, if so, whether or not that amounted to a breach of the terms implied by the Sale of Goods Act.
17. I have already summarised the factual evidence as to the handling characteristics of the car. The appellant and Mr Sanders had both claimed that the handling was abnormal. All the witnesses called for the respondent said that it was not. The judge did not describe the appellant's evidence about the handling characteristics of the car; nor did he discuss the quality of his evidence. When summarising Mr Sanders' account, he noted, at paragraph 9, that Mr Sanders had said that when driving on a negative camber (viz to the right), the car went straight ahead. In his original draft, the judge had made no comment upon this evidence but in an italicised amendment, he said that this evidence was in conflict with the other witnesses, such as Mr Clarke, who had said that the car drifted with the camber. The judge said that 'on balance' he could not accept Mr Sanders. He did not say why he rejected Mr Sanders' factual evidence, although he held that the opinion expressed in Mr Sanders' addendum of 25th October 2004 (that the steering defect was unacceptable) was inadmissible because Mr Sanders was not put forward by the appellant as an expert witness.
18. The judge's finding, in its amended form, appeared to be a finding that the car drifted only with the camber and, if he accepted the respondent's witnesses' evidence, he must have been of the view that the car handled normally.

It is surprising therefore to find, at paragraph 22, under a subheading 'Summary so far' to find the judge recording:

"22. The factual evidence establishes that there is no dispute that this motor car does have a tendency to drift when driven at speeds of 50-60 mph."

23. It is the claimant's case that this is a defect rendering the vehicle unsatisfactory and not fit for its purpose. It is the defendant's case that this drift is only because the motor car is 'camber sensitive' as is any car of this quality and price; that there is nothing unusual or dangerous in this; and that therefore there is no question but that it is satisfactory and fit for purpose."

19. I find this passage of the judgment puzzling because, at least in the amended version, the judge appeared to have already resolved the conflict between the parties as to whether the steering was defective. He had preferred the evidence of the respondent and had implicitly held that there was no defect. I think that this confusion has arisen because, in the original draft judgment, by paragraph 22, the judge had not accepted or rejected the evidence of Mr Sanders or indeed the appellant; he had simply summarised it. He dealt with his findings of fact at a later stage. The early interpolation, in the amended judgment, of his rejection of Mr Sanders's evidence created confusion.
20. The judge then considered the evidence of the experts. Dr Graham's evidence was confined to discussing the implications of the wheel alignment test data. He pointed out (and this was accepted by the respondent) that the test data of April 2004 showed that the rear offside wheel was out of specification. Dr Graham's view was that the extent of the deviation from specification was not such that it would necessarily cause adverse handling. Conversely, if it were to be accepted that the car had handled abnormally at that time, the fact that the rear wheel alignment was out of specification would provide a plausible explanation.
21. The judge noted Dr Graham's acceptance that, by November 2004, the rear wheels were within specification and that the vehicle would therefore be expected to handle normally from that time. Dr Graham's conclusion was that the alignment had been corrected by the respondent between April and November. The appellant's position was that this had been done secretly and had not been disclosed to him. The respondent was contending that no change had been made to the vehicle between the two sets of tests. Mr Nicholls had given evidence to that effect. The respondent's case on this point was that the April 2004 test results were unreliable and probably wrong because the equipment then in use was not appropriate for this new model of Audi. It seems to me, although the judge did not mention this, that this was a rather unattractive point for the respondent to take, bearing mind the content of its letter of 6 May 2004, when it had contended first that the April tests showed that the results were within specification (when they were not) and second that the equipment had been properly calibrated. Still, the point was taken and, as I will explain, to good effect.
22. The judge resolved this point by examining the results of the new set of tests which had been taken after the hearing had been adjourned. On 12 May 2006 the vehicle was tested on the new equipment (that obtained in November 2004) and the old (that used in April 2004). On the new equipment, both the nearside and offside rear 'toe' readings were found to be within specification. On the old equipment, three readings were taken which differed very slightly. All the nearside wheel readings were within specification but they were between 3 and 5 minutes different from the reading taken on the new equipment. A minute is one sixtieth of a degree. The offside rear readings were all out of specification (albeit by a narrow margin) but, as with the nearside, all were different from the result given on the new equipment. The difference between new and old on this wheel was either 4 or 5 minutes.
23. The judge concluded that significantly different (lower) results were obtained on the new equipment than on the old equipment. This, he said, meant that the fact that different results were obtained in April and November 2004 did not necessarily mean that the alignments had been adjusted. The difference may well be explained simply by the use of different equipment. He relied too on the evidence of Dr Graham to the effect that the test equipment was very sensitive (possibly too sensitive) and results could vary if the test was conducted in a strong breeze or if someone banged a door. Different operators could obtain different results even on the same day and equipment. He also accepted that the differences between the results obtained in April and November could be a consequence of the using different equipment.
24. The judge held that mere variability of results could explain why the offside rear wheel had appeared to be out of specification in April 2004 but was within specification in November. The difference did not mean that the alignments had been secretly adjusted. The judge did not note, as was the case, that the margin of difference between the results on the new and old equipment on 12 May 2006 was of the order of 3 to 5 minutes, whereas in April 2004, the rear offside toe reading had been out of specification by between 1 and 11 minutes – in other words that the difference in the results on the two pieces of equipment in May 2006 was rather less than the margin of failure in some of the tests in April 2004. However, it seems to me that the judge was entitled not to be concerned about that, because Dr Graham had said that the differences could be accounted for by equipment variability.
25. In reliance on his conclusion that the test results of April 2004 were unreliable and on accepting the evidence of Mr Nicholls that the alignment had not been secretly adjusted between April and November 2004, the judge held that there had been no adjustment of the wheel alignment in that interval. Therefore the car was in the same condition at all times after the purported rejection at the end of April 2004. He rejected, as insignificant,

evidence in Mr Timbrell's report (put in by the appellant) that, on inspection of the underside of the car, it appeared that the rear right suspension arm had been adjusted.

26. The consequence of the finding that there had been no secret adjustment was that it was then open to the judge to consider the opinions of Mr Clarke and Mr Childs as to the handling characteristics of the car when they drove it in 2005 and 2006 respectively. Neither witness's account had been challenged. The judge accepted from both of them that the car had handled normally. It was merely sensitive to camber when the steering wheel was released.
27. The judge then considered section 14 of the Sale of Goods Act 1979 as amended. So far as relevant this provides:

14(2) *"Where the seller sells goods in the course of a business, there is an implied term that the goods supplied under the contract are of satisfactory quality."*

14(2A) *For the purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking into account of any description of the goods, the price (if relevant) and all other relevant circumstances."*

14(2B) *For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods –*

 - (a) *fitness for all the purposes for which goods of the kind in question are commonly supplied,*
 - (b) *appearance and finish*
 - (c) *freedom from minor defects*
 - (d) *safety, and*
 - (e) *durability.*

14(3) *there is an implied term that the goods supplied under the contract are reasonably fit for that purpose."*
28. The judge held that, if the vehicle had a tendency to veer to the left, a reasonable person would regard it as unsatisfactory. There would be a breach of section 14(2) even though the defect was minor and was capable of being put right. If the seller did not put the defect right within a reasonable time, the buyer would be entitled to reject the car.
29. The judge then made his findings of fact. He began by saying at paragraph 59(a): *"This vehicle did at all material times have a tendency to 'veer', deviate' or drift' to the nearside."*
30. Having said that, he went on to repeat his earlier finding that the vehicle had not been adjusted after it had been rejected in April 2004. He then accepted Mr Childs' unchallenged opinion that, in early 2006, the vehicle had handled normally. Without any further discussion of the appellant's evidence (or indeed Mr Sanders') he concluded that, although the appellant **perceived** that the vehicle was pulling to the left, in fact, it was only 'camber sensitive'. It handled normally for this kind of vehicle and a reasonable person would not have regarded the vehicle as unsatisfactory. Therefore the vehicle was of satisfactory quality and there was no breach of section 14(2). The claim failed.

The Appeal

The First and Fourth Grounds

31. Four grounds of appeal were advanced. As to the first, Mr McMeel contended that the judge's first finding of fact, as set out in paragraph 59(a), namely that the vehicle had a tendency to veer, deviate or drift to the near side, was inconsistent with his conclusion that the vehicle was of satisfactory quality. Mr McMeel was also able to point to what appeared to be a finding of fact at paragraph 22 of the judgment (see paragraph 18 above) where the judge summarised the evidence so far by saying that there was no dispute that the car had a tendency to drift when driven at speeds of 50 to 60 mph.
32. I would accept that, on the face of it, the judge's two statements about the car veering, deviating and drifting, when taken alone, do seem to suggest that he was finding that the steering was defective. If he had so found, he would have had to hold that there was a breach of the implied condition in section 14(2). However, it seems to me that, when the judgment is read as a whole, the judge's essential finding of fact was that the steering was not defective; the car was merely 'camber sensitive'. It seems to me that the judge's way of setting out his findings of fact was not as clear as it might have been. But, when the findings are read as a whole, it is clear that the judge accepted the evidence of those witnesses who said that the car was camber sensitive (which was normal) and rejected Mr Sanders who said that the car was not merely sensitive to camber but was abnormal.
33. The judge's rejection of Mr Sanders' evidence was the subject of the fourth ground of appeal and it is convenient to deal with it at this stage. Mr McMeel submitted that the judge had been wrong to reject Mr Sanders' opinion. He was the only witness who could be described as independent and he had driven the car before there was any question of a secret adjustment. Mr Sanders was an experienced vehicle inspector. The judge should have accepted his evidence. Instead, the judge had rejected it without giving reasons.
34. It must be accepted that the judge did not give any reasons for rejecting Mr Sanders' factual evidence and that, in my view, is unfortunate. This was a crucial aspect of the decision. In my view, the appellant was entitled to know why the judge decided that he could not accept Mr Sanders' evidence that it was not merely camber sensitive; it veered to the left and, when driven on a reverse camber, it did not veer to the right but proceeded in a straight line. However, Mr McMeel's primary submission was not that the case should be sent back for a rehearing due to

the inadequacy of reasons; rather it was that the judge's rejection of Mr Sanders was perverse; the only rational conclusion was for the judge to accept and act upon his evidence.

35. Mr Louis Weston submitted that, although the judge had not given full reasons for rejecting Mr Sanders, his decision was entirely rational and, on examining the evidence, it was clear why the judge had so concluded. First, Mr Sanders' evidence had been unclear and unconvincing. He did not appear to have a clear recollection of the test drive. He had not been able to give a clear description of the extent of the drift to the left. He had not attempted to quantify the degree of deviation which he claimed to have experienced. When it was suggested to him that the car had veered only when he had taken his hands off the steering wheel, he said that he had not taken his hands off the wheel; he had held it 'loosely'. However, submitted Mr Weston, it was not at all clear what he had meant by this.
36. I, for my part, can see the force of Mr Weston's submission. Mr Sanders did not give a clear description of what he experienced when driving this car. Nor was it clear to me what he meant by holding the steering wheel loosely. When one compares the accounts given by Mr Nicholls, Mr Clarke and Mr Childs of their test drives, I can understand why the judge found their accounts more convincing than Mr Sanders'.
37. Mr Weston also submitted that the judge was entitled to consider that Mr Sanders was not truly independent. He had sided with the appellant when he wrote the addendum to his report and had expressed himself much more strongly on that second occasion than he had on the first. The judge was entitled to be sceptical of a witness who enhances his evidence in this way.
38. I do not accept that part of Mr Weston's submission. It seems to me that, in his first report, Mr Sanders did only that which he was asked to do, to report on whether the car deviated to the left. He said that it did and he suggested that the tracking should be looked at. Later, he was asked to express a view about the acceptability of the deviation he had noted and he said that in his view it was not acceptable. I myself do not detect any enhancement of his evidence. It may be that the judge was rather hard on the appellant in rejecting Mr Sanders' opinion on acceptability because he had not been put forward as an expert witness. Mr Sanders was, as it seems to me, just as capable of giving an expert opinion on whether the deviation was abnormal or uncharacteristic as was Mr Childs. I would say that neither of them should have given an opinion on acceptability, which was essentially a matter for the judge.
39. However, it does not seem to me that the exclusion of Mr Sanders' opinion on acceptability was important. What mattered was the judge's rejection of his factual evidence of what he experienced when he drove the car. In my judgment, on the basis of the evidence before him, the judge was quite entitled to prefer the factual evidence of the respondent's witnesses to that of Mr Sanders. It is a pity that he did not explain why he had done so. But in my view, his rejection of Mr Sanders was far from perverse. If this case had been worth a very large amount of money, I might have considered sending it back for a rehearing on the basis that the judge had not given adequate reasons. However, in my view, it would be quite disproportionate to do so. I am satisfied that the judge's preference for the respondent's evidence is well founded in the evidence. It follows that both the first and fourth grounds of appeal fail.

The Second and Third Grounds of Appeal

40. As his second ground of appeal, Mr McMeel submitted that the judge should have held that, at the time of rejection in April 2004, the vehicle did not conform to the manufacturer's specification. The test data showed that it did not and he should have accepted that at face value. At the time, the respondent had relied on the equipment used; it was a late change of tack on their part to suggest that the equipment then used had been unreliable. If the judge had accepted that data, Mr McMeel submitted, as his fourth ground of appeal, the appellant's claim should have succeeded because the judge should have held that, if the vehicle was out of specification, it could be rejected. The judge had held (wrongly it was submitted) that, even if the wheel alignment was out of specification in April 2004, that would not mean that the car was unsatisfactory and could be rejected. Thus, the second ground raises a question of fact and the third an issue of law.
41. Mr McMeel submitted that the reasoning by which the judge declined to accept that the offside rear wheel alignment had in fact been out of specification was flawed. The results of the tests taken in April, showed that the rear offside wheel was out of specification. The results of the tests taken in November, on the new equipment, showed that all wheels were in specification. The natural conclusion to draw was that the car had been adjusted in the meantime. Instead of drawing this natural conclusion, the judge had gone along with the respondent's claim that the results from the old equipment were unreliable. The respondent's claim was most unattractive, as they had claimed in their letter of 6 May 2004 that the equipment they had used was properly calibrated. I see the force of that, as a good jury point.
42. Mr McMeel submitted that the judge should have found, on the balance of probabilities, that the rear wheel had been secretly adjusted between May and November. The change in the readings pointed towards that. Second, the judge's acceptance of Mr Nicholls' denial that there had ever been any adjustment of the rear wheels was far from conclusive, as logically, all Mr Nicholls could say was that, to the best of his knowledge, there had been no such adjustment. He could not possibly know everything that went on. Third, Mr Timbrell, who had inspected the underside of the car had noted that the rear right suspension arm appeared to have been adjusted. This suggested that Mr Nicholls' claim was wrong. Fourth, Mr McMeel submitted that there was evidence to suggest that the car had been driven on the road to a greater extent than the respondent was admitting. Between the

end of Mr Sanders' test drive in May 2004 and early 2006 when Mr Childs had driven it, the car had covered nearly 100 miles. This could not be accounted for by the various test drives and gave rise to real suspicion that the car had been out on the road at other times and adjustments had been made. Drawing these threads together, Mr McMeel submitted that the probable explanation for the difference between the test results in April and November was that the vehicle had been adjusted. It had probably been out of specification in the April.

43. Mr Weston readily dispatched these submissions to the boundary. First, Mr Nicholls' evidence was that it was almost inconceivable that an adjustment should have been made to this car without him knowing of it. He believed that there had been no such adjustment and the judge accepted him as a witness of truth. Second, Mr Timbrell's observation, of some adjustment to the suspension arm, could not be anything to do with a change to the wheel alignment such as was alleged here. The evidence was that that would have entailed adjustment of the bolts and there was no evidence that that had been done. Indeed Mr Childs had said that there was no sign of such adjustment. Third, the point about mileage was misconceived because examination of the records showed that, in the crucial period, between May and November 2004, only 12 miles were put on the clock and this was easily explained by the test drives which were acknowledged to have taken place.
44. In short, submitted Mr Weston, the judge was entitled to hold that the difference between the April and November readings was probably attributable to equipment variability and did not necessarily point to the conclusion that the car had been adjusted in the interim. The judge had been entitled to rely on Dr Graham's admission, following the tests conducted on 12 May 2006, that the differences between the April and November results could well be the effect of equipment variability.
45. I found Mr Weston's response wholly convincing. I am quite satisfied that the judge was entitled to find, as he did, that the appellant had not shown that the rear wheel alignment was probably out of specification at the time of rejection in April 2004. The third ground of appeal fails.
46. That, in effect, means that, even if the argument raised in the fourth ground of appeal were correct, it would not avail the appellant. The necessary factual basis for the appellant's submission has not been established. Although what follows is obiter, I will deal briefly with the point raised in the fourth ground.
47. Mr McMeel submitted that a finding that the rear wheel was set out of specification should be sufficient to entitle the appellant to reject the car, regardless of whether that resulted in any abnormality of handling. He argued that a buyer should be entitled to reject the car because, under section 14(2B)(c), goods may be of unsatisfactory quality by reason of minor defects. That I accept is so, but the overall test of whether goods are of satisfactory quality is to be found in section 14(2A). Goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all other relevant circumstances. This is an objective test and is a matter of judgment for the judge on the individual facts of each case. However, it seems to me unlikely that a buyer will be entitled to reject goods simply because he can point to a minor defect. He must also persuade the judge that a reasonable person would think that the minor defect was of sufficient consequence to make the goods unsatisfactory. Of course, if a car is not handling correctly, one would expect any reasonable person to say that it is not of satisfactory quality. That the judge recognised. But, the mere fact that a setting is outside the manufacturer's specification will not necessarily render the vehicle objectively unsatisfactory. The reasonable person may think that the minor defect is of no consequence. It may be, I do not know, that the fact that a wheel setting is outside specification might lead to uneven tyre wear in the long term. If there were evidence of that, it may be that a reasonable person would regard the vehicle as unsatisfactory. But there was no evidence of that in this case. This case was about abnormal handling. The judge held that the handling was not abnormal and that was fatal to the appellant's case.

Conclusion

48. For the reasons I have given, I would dismiss this appeal.

Addendum

49. I wish to add a few words to deprecate the practice which was adopted in this case of counsel writing to the judge, after a draft judgment has been provided, to ask him to reconsider his conclusions. It is a growing practice and in my view it should happen only in exceptional circumstances.
50. The purpose of the judge providing a draft of the judgment before hand down is to enable the parties to spot typographical, spelling and minor factual errors which have escaped the judge's eye. It is also to give the parties the opportunity to attempt to reach agreement on costs and to consider whether they wish to appeal. Consideration of such matters before hand down can save costs. Circulation of the draft is not intended to provide counsel with an opportunity to re-argue the issues in the case.
51. Only in the most exceptional circumstances is it appropriate to ask the judge to reconsider a point of substance. Those circumstances might be, for example, where counsel feels that the judge had not given adequate reasons for some aspect of his/her decision. Then it may be appropriate to send a courteous note to the judge asking him/her to explain the reasons more fully. By way of further example, if the judge has decided the case on a point which was not properly argued or has relied on an authority which was not considered, the appropriate course will be to ask him/her either to reconvene for further argument or to receive written submissions from both sides. Letters such as the one sent in this case, which sought to reopen the argument on a wide variety of points, should not be sent.

Lady Justice Arden : I agree.

Lord Justice Ward :

52. I have read a draft of the judgment of Smith LJ and I agree with it. I have some sympathy for the appellant because he bought a very expensive motor car with high expectations of the pleasure he would have in driving it and he found that it had a tendency to veer, deviate or drift to the left. That was not what he expected. His concern is wholly understandable. On the judge's findings which have been subjected to close analysis by Smith LJ, that tendency was a feature of the vehicle and the fact that it was camber sensitive. That the vehicle was unsatisfactory to the purchaser is not enough: it is only unsatisfactory for the purposes of section 14(2A) of the Sale of Goods Act 1979 if it does not meet the standard that a reasonable person would regard as satisfactory. That is an objective test and the judge held, and was entitled to hold, that this car did meet that standard. So the claimant loses his claim.
53. What I have found profoundly unsatisfactory, and made my views clear in the course of argument, is the fact that the parties have between them spent in the region of £100,000 arguing over a claim which is worth about £6,000. In the florid language of the argument, I regarded them, one or other, if not both, of them, as "completely cuckoo" to have engaged in such expensive litigation with so little at stake. At the time of writing this judgment I rightly do not know whether any, or if so what, attempts have been made to settle this case and the remarks that follow are of general application. I raise that matter again in this judgment to make the point, as firmly as I can, that this is a paradigm case which, if it could not have been settled by the parties themselves, customer and dealer, then it behoved both solicitors to take the firmest grip on the case from the first moment of instruction. That, I appreciate, may not always be easy, but perhaps a copy of this judgment can, at the first meeting, be handed to the client, bristling with righteous indignation, in this case the customer who has paid a small fortune for a motor car which does not meet his satisfaction, and the dealer anxious to preserve the reputation of his prestige product. "This case cries out for mediation", should be the advice given to both the claimant and the defendant. Why? Because it is perfectly obvious what can happen. Feelings are running high, early positions are taken, positions become entrenched, the litigation bandwagon will roll on, experts are inevitably involved, and, before one knows it, there will be two/three day trial and even, heaven help them, an appeal. It is on the cards a wholly disproportionate sum, £100,000, will be to fight over a tiny claim, £6,000. And what benefit can mediation bring? It brings an air of reality to negotiations that, I accept, may well have taken place in this case, though, for obvious reasons, we have not sought to enquire further into that at this stage. Mediation can do more for the parties than negotiation. In this case the sheer commercial folly could have been amply demonstrated to both parties sitting at the same table but hearing it come from somebody who is independent. At the time this dispute crystallised, the car was practically brand new. It would not have been vastly different from any demonstration car. The commercial possibilities are endless for finding an acceptable solution which would enable the parties to emerge, one with some satisfaction, perhaps a replacement vehicle and the other with its and Audi's good name intact and probably enhanced, but perhaps with each of them just a little less wealthy. The cost of such a mediation would be paltry by comparison with the costs that would mount from the moment of the issue of the claim. In so many cases, and this is just another example of one, the best time to mediate is before the litigation begins. It is not a sign of weakness to suggest it. It is the hallmark of commonsense. Mediation is a perfectly proper adjunct to litigation. The skills are now well developed. The results are astonishingly good. Try it more often.

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