

The complaint

Mr M complains that the vehicle he acquired through a fixed sum loan agreement with Honda Finance Europe plc wasn't of satisfactory quality.

What happened

Mr M entered a fixed sum loan agreement (point of sale loan) in August 2019 to acquire a used vehicle. He paid £13,960 for the vehicle. He paid a cash deposit of £8,000 and agreed to repay the balance including any charges and interest over a four-year term.

He says the vehicle cut out repeatedly in March 2020 and the engine failed. He took the vehicle back to the supplier to have it checked and it told him the cylinder was broken and the piston rings were missing. It said the piston rings had been found in the bottom of the cylinder. He sent a letter of complaint to the dealer, dated 18 March 2020, and asked it to repair or replace the vehicle, free of charge. It declined.

Mr M arranged for the vehicle to be inspected by a third party. He also sent copies of GoPro Footage which had been recorded on the vehicle's SD card to the third party. The GoPro footage had recorded incidents on 4 November 2019 where the vehicle had cut out and had to be jump started. Further incidents had been recorded on 7 February 2020 when the vehicle had been unable to hold idle and on 12 March 2020 when the vehicle had cut out repeatedly and lost power.

The third party carried out diagnostic tests and inspected the vehicle using a borescope camera. It also reviewed the GoPro footage. It prepared a report for Mr M. The report said the engine failure showed all signs of being caused by the failure of an exhaust valve in one of the cylinders. A cylinder valve had broken and fallen into the cylinder causing catastrophic damage to many of the engine components and casings. The report said that the engine failure was not caused by wear and tear, misuse of the vehicle damage. It estimated that the cost of the repairs would be almost £19,000.

Mr M provided a copy of this report to the supplier and he complained to Honda Finance. It investigated his complaint. It said there was no evidence to demonstrate that the vehicle was faulty at the time it was supplied. It pointed out that Mr M had used a different dealership to service the vehicle in February 2020 and the oil used in that service hadn't been in line with the manufacturer's guidelines. Semi synthetic oil had been used instead of synthetic oil. It didn't uphold his complaint.

Mr M didn't agree. He referred his complaint to our service.

Our investigator looked into the complaint. He said that under the terms of the loan agreement, Honda Finance was jointly liable for a breach of contract. He then considered the Consumer Rights Act (CRA). He said that under the CRA there was an implied term that the quality of the goods would be satisfactory.

When Mr M acquired the vehicle, it was three years old and had travelled 4457 miles. The original price of the vehicle had been £15,000, and Mr M had paid £13,960 when he

acquired it. In these circumstances our investigator thought that a reasonable person would expect parts of the vehicle to have suffered some wear and tear but that overall expectations would be high, given the price that had been paid, the age of the vehicle and the low mileage.

He then considered the technical report and the GoPro footage which Mr M had provided. Honda Finance hadn't provided anything to support what it had said about the fault not being present at the point of supply. Our investigator said, on balance, he was persuaded the goods were not of satisfactory quality at the point of supply. He noted the faults that he'd seen on the GoPro footage dated November 2019. He thought this was consistent with the faults that'd been identified when the vehicle was inspected by the third party. So, on balance, he said he wasn't persuaded that the fault had been caused by the type of oil used during the service in February 2020.

Our investigator thought the cost of repairing the vehicle was likely to be disproportionate.

Our investigator also considered what Mr M had said about not being told the vehicle had been modified prior to it being acquired by him. He noted the invoice which Mr M had been able to provide which showed that the vehicle had been modified in August 2018. He hadn't been told about this and he'd told us that he wouldn't have acquired the vehicle if he'd known about this. Our investigator said this was a misrepresentation by the supplier for which Honda Finance was also jointly liable. In these circumstances, he thought Mr M should be able to reject the vehicle.

Our investigator said that Honda Finance needed to take the following action to put things right:

- end the agreement with nothing further to pay;
- collect the vehicle (if this had not been done already) at no further cost to the customer;
- refund Mr M all rentals for the period from 18 March 2020 to the date of settlement as the customer reasonably stopped using the vehicle at this point;
- refund Mr M for the cost of diagnostics completed by the third party including the physical inspection and video footage review. This cost had been incurred as a result of the inherent quality issues with the vehicle;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay a further amount of £200 for trouble and upset that'd been caused due to the faulty goods; and
- remove any adverse information from Mr M's credit file in relation to the agreement.

Our investigator subsequently confirmed that he also required Honda Finance to refund the deposit of £8,000 which Mr M had paid.

Honda Finance disagreed. It said Mr M hadn't contacted the dealership or Honda Finance until twelve months after the date of the agreement. It hadn't seen the report Mr M had obtained from the third-party. It also said that the performance related issues which Mr M had experienced in November 2019 were not related to the subsequent fault that had occurred. It noted that the dealer had carried out Pre-Delivery Checks before the vehicle had been acquired by Mr M and nothing had shown up at that time. It reiterated that the service carried out in February 2020 hadn't noted any issues with the engine. It said the investigator's view was harsh.

Because Honda Finance didn't agree with what our investigator said, the complaint was passed to me to decide. I issued a provisional decision in which I said:

What I've provisionally decided – and why

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

Mr M's complaint is about the vehicle not being of satisfactory quality at the point of supply. He's also subsequently raised an issue about not being told the vehicle had been modified before he acquired it. I have considered both issues below:

Quality of the vehicle

When considering if Honda Finance acted fairly and reasonably in how it's dealt with Mr M's complaint, I take into account relevant law. In this case, section 75 of the Consumer Credit Act applies. Under section 75, Honda Finance would be jointly and severally liable for a breach of contract or misrepresentation by the supplier.

First, I'm satisfied that the necessary debtor-creditor-supplier link was in place for Mr M to make a claim under section 75. I say this because Mr M acquired the vehicle through a fixed sum loan agreement. The agreement clearly states the details of the vehicle that Mr M acquired. The agreement also makes clear that if the goods are unsatisfactory Mr M may have a claim against the supplier, the finance provider (Honda Finance) or both the supplier and the finance provider.

Secondly, I've looked at the CRA. Under this legislation every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory. The CRA says that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking account of the description of the goods, the price and all other relevant circumstances.

So, when considering whether the vehicle Mr M acquired was of satisfactory quality I can take into account a number of factors such as the price he paid, the age of the vehicle and the mileage when the vehicle was acquired.

When Mr M acquired this vehicle, it was three years old and the mileage was relatively low. So, although it was reasonable to have expected some wear and tear to have occurred, I think a reasonable person would've had relatively high expectations of the vehicle. But, under the relevant law, I can only hold Honda Finance liable if the fault Mr M experienced was present or developing at the point of supply.

Having considered all of the evidence, I'm persuaded on balance, that the fault with the engine was present or developing at the point of supply. I'll explain why:

The diagnostic report from the third party

The third party carried out a detailed inspection of the vehicle in May 2020 and provided a report of its findings including photographic evidence to

support what it said. It concluded that the fault with the vehicle was engine failure caused by the failure of an exhaust valve in one of the cylinders. The valve had broken and fallen into the cylinder causing catastrophic damage to many of the engine internals, components and casings.

The third party also viewed the GoPro footage. It said that the footage was consistent with the faults which it had noted in its report. It noted that a stretched or defective valve could cause fuelling and compression issues resulting in the engine cutting out and the vehicle being unable to idle. The third party said it found no evidence to indicate that the damage had been caused by wear and tear, misuse or accidental damage.

Honda Finance hasn't disputed the findings of the third-party report. Mr M had sent a copy of this report to the dealership. Its legal representatives commented on the report. It said the report failed to say what had caused the engine failure. Honda Finance said it hadn't received a copy of the report. Our investigator sent it a copy and I've given it further time to consider it and provide any comments. It hasn't made any subsequent comment on the report or disputed its findings.

The third-party report notes that the problems which occurred on 4 November 2019 are consistent with a stretched or defective valve.

The GoPro footage

Mr M provided GoPro footage. The third party reviewed this footage and provided a report on what it contained. I've no reason to doubt the authenticity of what the third-party report says. The report says that the footage showed there'd been a problem with the vehicle on 4 November 2019. The vehicle had cut out and wasn't idling. It had to be jump started and was unable to hold a steady idle. The fault was intermittent on 4 November and doesn't appear to have presented again until 7 February 2020 when it became more severe with extra throttle having to be applied to steady the rpm.

Mr M didn't report these issues to the dealership or to Honda Finance. I can understand why he may not have done that, given the fact that the problem appears to have been intermittent. He had his vehicle serviced on 12 February which was shortly after the incident which occurred on 7 February. He used a different dealership to carry out this service – I'll comment about that further below.

A further incident happened on 12 March when the vehicle cut out repeatedly and started to lose power. It was at this point that Mr M appears to have contacted the dealership. I've looked at the document provided by the dealership dated 13 March 2020. It shows that the vehicle was recovered to the dealership on 13 March and inspected by it. It found that the cylinder was broken, and the piston rings were found in the bottom of the cylinder. This is consistent with what the third-party report also found.

In its response to what our investigator said, Honda Finance queried why Mr M hadn't reported the problem to either the dealership or it until 12 months after the date of the agreement. But, that's not correct. Mr M did report the problem to the dealership on 13 March 2020. And as mentioned above, I can understand why he hadn't contacted it before that date since the problem had been intermittent.

The service in February 2020

Honda Finance says that when Mr M got his vehicle serviced in February 2020, he used a different dealership. And the oil it used to service the vehicle was not in line with the manufacturer's instructions. It says that this may have caused the problem with the engine.

Honda Finance also says that there is nothing in the service report completed at the time to indicate there was a fault with the vehicle. And it has suggested that something may have been done during the service which caused the subsequent engine failure.

Although I agree that the service report didn't mention the fault with the vehicle, I wouldn't have expected it to. Mr M hadn't requested a full diagnostic report at this time.

I've also thought about what Honda Finance has said about the work carried out when the service took place. But, the problem with the vehicle cutting out and not idling happened on 4 November 2019 – just two months after Mr M acquired the vehicle. It happened again – more severely – in February 2020. The third-party report states that the incidents in November and February are consistent with a stretched or defective valve. Both of these incidents happened before the service date. So, on balance, I'm not persuaded that the oil used in February, or anything that was done during the service of the vehicle, caused the fault that occurred.

Pre-Delivery Inspection

Honda Finance has provided a copy of the Pre-Delivery inspection checklist which was completed by the dealer before the vehicle was delivered to Mr M. It says that no faults were found at that time.

I've looked at the Pre-Delivery Checklist and I can see that each item on that list was ticked. But the checklist also indicates that the check was based on a visual inspection only. As our investigator said, the problem with the cylinder wouldn't have been spotted during a visual check.

Conclusion

Having considered the report from the third party and its comments on the GoPro footage, I'm currently persuaded, on balance, there was a problem present or developing at the point of supply with the exhaust valve

Overall, I'm currently of the view that there's enough evidence to persuade me that the vehicle Mr M acquired was not of satisfactory quality at the point of supply.

The usual remedies in these circumstances would be to require Honda Finance to either repair or replace the vehicle. I agree with what our investigator said about the cost of repair. The third party has estimated the cost of repair as being almost £19,000 which is considerably more than Mr M paid for the vehicle. So, I'm satisfied that the cost of repair would be disproportionate. Mr M isn't seeking a replacement.

I'll comment further on what I think Honda Finance needs to do to put things right, below.

Misrepresentation

Mr M has raised a further complaint with our service. He says that he wasn't told the vehicle had been modified before he acquired it. He's provided an invoice dated 8 August 2018 which appears to be addressed to a previous owner. This indicates that certain modifications were carried out at that time. Mr M hasn't told us how he acquired this invoice, but I have no reason to doubt its authenticity.

I've noted what Mr M has said here but he hasn't raised this issue with Honda Finance and it hasn't issued its final response to this part of his complaint. So, although I haven't made any finding about this part of his complaint, I've decided that I can still resolve this complaint without needing to investigate what he's said about misrepresentation.

What I've provisionally decided needs to be done to put things right

Having considered everything here, I'm minded to decide, for the reasons set out above, that it would be disproportionate to require Honda Finance to repair the vehicle. Mr M hasn't sought a replacement for the vehicle. In these circumstances, my provisional decision is that it would be fair and reasonable to require Honda Finance to allow Mr M to reject the vehicle.

I think Honda Finance should end the agreement entered into between it and Mr M - with nothing further for Mr M to pay. It should collect the vehicle (if this hasn't been done already) at no further cost to Mr M. I also think Honda Finance should refund the deposit of £8,000 which Mr M paid and refund all payments Mr M made under the agreement for the period from 18 March 2020 to the date of settlement. I say this because up until that date, Mr M had been able to use the vehicle, despite the intermittent issues he experienced. If Honda Finance has reported any adverse information about Mr M's agreement, I think it should remove that information.

It is the case that Mr M has incurred costs when progressing his complaint. He's had to engage a third party to inspect the vehicle, review the video footage and prepare reports. In these circumstances, I think it's fair and reasonable to require Honda Finance to refund Mr M for the cost of diagnostics completed by the third party including the physical inspection. This cost had been incurred as a result of the inherent quality issues with the vehicle. Mr M has provided a copy of the invoice from the third party. The cost incurred was £1,550. So, I've decided that Honda Finance should reimburse this amount to Mr M.

I asked Mr M to provide a copy of the invoice for the cost incurred by him for the report provided by the third party in relation to the GoPro footage. He hasn't provided that to me. So, in the absence of evidence about the cost of this report, I haven't currently been able to conclude he should be reimbursed for that cost.

Mr M has experienced trouble and upset because of what happened. Our investigator thought Honda Finance should pay him £200 because of this. Having thought about the matter, I think £200 is fair and reasonable compensation for the trouble and upset Mr M has experienced.

My provisional decision

For the reasons given above, my provisional decision is that I intend to uphold this complaint about Honda Finance Europe plc.

Based on what I've seen so far, I intend to require Honda Finance Europe plc to:

- end the agreement entered into between it and Mr M - with nothing further for Mr M to pay;*
- collect the vehicle (if this hasn't been done already) at no further cost to Mr M;*
- refund the deposit of £8,000 which Mr M paid;*
- refund Mr M all payments he's made under the agreement for the period from 18 March 2020 to the date of settlement;*
- refund Mr M £1,550 being the cost of diagnostics completed by the third party including the physical inspection. This cost had been incurred as a result of the inherent quality issues with the vehicle;*
- pay 8%* simple yearly interest on all refunded amounts from the date of payment until the date of settlement;*
- remove any adverse information from Mr M's credit file in relation to the agreement; and*
- pay Mr M £200 for the trouble and upset he experienced because of what happened.*

* If Honda Finance Europe plc considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr M, it should tell him how much it's taken off. It should also give Mr M a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Honda Finance said it had no further comments to make.

Mr M also made no further comments in response to my provisional decision.

So, I now have to make a final decision.

What I've decided – and why

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

Having considered the responses to my provisional decision, I have not changed my view about how this complaint should be resolved. For the reasons set out in my provisional decision, I uphold this complaint and require Honda Finance to take the action I've set out below.

My final decision

For the reasons given above, I uphold this complaint about Honda Finance Europe plc.

I now require Honda Finance Europe plc to take the following action:

- end the agreement entered into between it and Mr M - with nothing further for Mr M to pay;*
- collect the vehicle (if this hasn't been done already) at no further cost to Mr M;*
- refund the deposit of £8,000 which Mr M paid;*

- refund Mr M all payments he's made under the agreement for the period from 18 March 2020 to the date of settlement;
- refund Mr M £1,550 being the cost of diagnostics completed by the third party including the physical inspection. This cost had been incurred as a result of the inherent quality issues with the vehicle;
- pay 8%* simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- remove any adverse information from Mr M's credit file in relation to the agreement; and
- pay Mr M £200 for the trouble and upset he experienced because of what happened.

* If Honda Finance Europe plc considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr M, it should tell him how much it's taken off. It should also give Mr M a certificate showing this 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 M to accept or reject my decision before 10 January 2022.

Irene Martin
Ombudsman