

The complaint

Mr A complains that a car that was supplied to him under a hire purchase agreement with AutoMoney Limited wasn't of satisfactory quality and that the car's engine had been replaced before it was supplied to him.

What happened

A used car was supplied to Mr A under a hire purchase agreement with AutoMoney that he signed in January 2020. The car's engine failed in July 2021 and the car was recovered to a garage. It said that the engine wasn't the car's original engine and Mr A says that that invalidated the extended warranty that he'd bought for the car. He complained to AutoMoney the following month and it said that he was 20 months into his agreement and there was no evidence to confirm that the dealer was aware of the engine change so it didn't uphold his complaint. Mr A wasn't satisfied with its response so complained to this service and he then arranged for the car to be inspected by an independent expert.

Our investigator recommended that his complaint should be upheld. He said that the inspection report confirmed that the engine replacement had happened and he didn't believe that the quality of the car was satisfactory given that the engine wasn't the correct one so he thought that Mr A should be able to reject the car. He recommended that AutoMoney should: end the agreement and collect the car; refund Mr A's deposit of £2,795, all rentals for the period since the engine failure, and £216 for the cost of the inspection report (all with interest); and pay him £400 for any distress or inconvenience that's been caused.

AutoMoney has asked for this complaint to be considered by an ombudsman. It says, in summary, that the car's logbook and receipt from the dealer state that the engine type was unknown so it wasn't advertised as having a specific engine, Mr A hadn't raised any issues about the car with it before the engine failure so it's reasonable to expect that the car had been fit for purpose during that time; although an engine replacement has occurred, Mr A hasn't provided evidence to confirm that it was replaced before the car was supplied to Mr A and the engine replacement could have taken place during Mr A's ownership of the car.

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 done so, I agree with the outcome recommended by our investigator for these reasons:

- AutoMoney, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr A - whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it;
- the car that was supplied to Mr A was nearly twelve years old, had been driven for 68,847 miles and had a price of £9,795;

- satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on a number of factors;
- the car was supplied to Mr A in January 2020 and the sales invoice and registration document show that the engine number was unknown;
- Mr A was able to use the car from January 2020 until July 2021 with only minor issues and its mileage was 98,600 when the engine failed so the car had been driven for nearly 30,000 miles in that time;
- after the engine had failed, a garage identified that the car's engine had been replaced which Mr A says invalidated the extended warranty that he'd bought for the car;
- Mr A paid £216 for the car to be inspected by an independent expert in February 2022 and the inspection report concluded: *"We would conclude based on the evidence found at the time of our inspection that we do consider that the vehicle has had an engine replacement, the current engine appears to be a Euro 3 type whereas it should from manufacturer be fitted with a Euro 4 engine. Whilst we are unable to confirm the age of the engine, the evidence of the plugs for the NOx sensors which are fitted to both cylinder heads would support the engine fitted is incorrect for the vehicle when manufactured. If this has been a replacement engine as we suspect, we would recommend the engine number on the engine block to be checked by the manufacturer to further confirm the type of engine fitted is in fact incorrect for the vehicle in question"*;
- I've seen no evidence to show that Mr A had replaced the car's engine and I don't consider it to be likely that he'd have paid for the car to be inspected after the engine had failed if he'd had the engine replaced;
- even if the dealer didn't know that the engine had been replaced, I consider it to be more likely than not that the engine was replaced before the car was supplied to Mr A and that the engine failure has occurred because the replacement engine is incorrect for the car; and
- I consider that the car wasn't of satisfactory quality when it was supplied to Mr A for that reason and I find that it would be fair and reasonable in these circumstances for Mr A to be able to reject the car.

Putting things right

I find that it would be fair and reasonable for AutoMoney to end the hire purchase agreement and arrange for the car to be collected from Mr A – both at no cost to him. The invoice and hire purchase agreement show that Mr A paid a deposit of £2,795 for the car. I find that it would also be fair and reasonable for AutoMoney to refund that deposit to Mr A, with interest. I also find that it should remove any information about the hire purchase agreement that it's recorded on Mr A's credit file.

Mr A was able to use the car between January 2020, when it was supplied to him, and July 2021, when the engine failed, and in that time he was able to drive nearly 30,000 miles in the car. I find that it's fair and reasonable for him to pay for the use that he's had from the car so I consider that AutoMoney should keep the monthly payments that he's made under the hire purchase agreement for the period before the engine failure but I find that it should refund any monthly payments that he's made since then to Mr A, with interest.

Mr A paid £216 for the car to be inspected by the independent expert. I find that AutoMoney should reimburse Mr A for that cost, with interest. These events have clearly caused distress

and inconvenience for Mr A. I find that it would also be fair and reasonable for AutoMoney to pay him £400 to compensate him for that distress and inconvenience.

My final decision

My decision is that I uphold Mr A's complaint and I order AutoMoney Limited to:

1. End the hire purchase agreement and arrange for the car to be collected from Mr A – both at no cost to him.
2. Refund to Mr A the deposit of £2,795 that he paid for the car.
3. Refund to Mr A the monthly payments that he's made under the hire purchase agreement for the period since the car's engine failed in July 2021.
4. Pay £216 to Mr A to reimburse him for the cost of the inspection by the independent expert.
5. Pay interest on the amounts at 2, 3 and 4 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
6. Remove any information about the hire purchase agreement that it's recorded on Mr A's credit file.
7. Pay £400 to Mr A to compensate him for the distress and inconvenience that he's been caused.

HM Revenue & Customs requires AutoMoney to deduct tax from the interest payment referred to at 5 above. AutoMoney must give Mr A a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 June 2022.

Jarrold Hastings
Ombudsman