

## **The complaint**

Mr T complains about the quality of a car he acquired through a hire purchase agreement financed by Conister Bank Limited (Conister). A third party has handled Mr T's complaint on behalf of Conister, I'll refer to them as M.

## **What happened**

In December 2018 Mr T acquired a used car through a hire purchase agreement.

At the end of December 2018 Mr T's car broke down and was recovered to his home address. Recovery agents noted that they believed a blown water pump seal to be the problem.

In January 2019 the dealership that Mr T acquired the car from recovered it and completed repairs. Mr T collected the vehicle in mid-January 2019, and he said the dealership told him the coolant warning light may be on, but this should go away in a few weeks.

Mr T's car wouldn't start a few days later, and the dealership recovered it again. Mr T said he contacted M to reject the vehicle, but they told him there was nothing they could do.

Mr T got the vehicle back in early March 2019 once repairs were completed to the gearbox after around eight weeks. He said the coolant warning light was still on, but his relationship with the dealership had broken down, so he didn't contact them about this again. Mr T said he contacted the recovery agents that had recovered his car in December 2018, but this caused queries about the repair completed to the water pump. Mr T said the dealership told him they hadn't replaced the water pump, but the recovery agents said a new water pump had been ordered, fitted and the cost covered by his warranty.

In May 2020 Mr T's car broke down and he took it to a third-party garage for review, who I'll call P. In June 2020 P completed repairs to a failed water housing, and Mr T contacted M to complain, saying the fault was linked to the repairs completed in December 2018 and he wanted to reject the car.

M arranged for an inspection of the vehicle in September 2020. They sent Mr T their final response to his complaint in October 2020. They said considering the report and the comments from P, they couldn't safely conclude that the fault was linked to the previous repairs. They said as Mr T had driven the car for around 5,000 miles and it had been around 18 months since he acquired it, the fault didn't make the car of unsatisfactory quality at the time it was supplied. They said Mr T's car had now travelled around 100,000 miles so it would be reasonable for it to have some issues. They didn't uphold Mr T's complaint, but they agreed to review any further evidence he wanted to supply if the car was stripped down and investigated further.

Unhappy with this, Mr T brought his complaint to this service for investigation. Our investigator gave his opinion that the failed water pump and gearbox in early 2019 made the car of unsatisfactory quality. He said Mr T should've been given information by M about his rights under the Consumer Rights Act 2015 when he contacted them in February 2019,

rather than being directed back to the dealership, and, if this had happened, he thought Mr T would've exercised his final right to reject the vehicle at that time, so he should be able to do so now.

Our investigator said it would be fair for Mr T to pay for the use he'd had of the vehicle between March 2019 and May 2020, but Conister should collect the vehicle at no cost to Mr T, end the agreement with nothing further to pay, refund Mr T's deposit plus 8% simple interest, refund 30% of Mr T's payments whilst the gearbox repair was completed, as he was given a courtesy car below the specification of his car, remove all negative information from Mr T's credit file and pay Mr T £250 compensation.

Our investigator also considered the fault that occurred in May 2020. He said that the report that M arranged was conducted under limited circumstances, and he thought it would've been fair for them to arrange another inspection rather than rely on its findings. He said there is no conclusive evidence that the fault is linked to the previous repair, but the findings from P are persuasive in that they could be linked.

M didn't agree. They said they didn't receive a request from Mr T to reject the vehicle within the first 30 days of the agreement, and they only knew about the problems with the water pump and gearbox when Mr T had accepted repairs, so they didn't think he would've been able to reject the car in early 2019.

M said there's no evidence the coolant warning light on Mr T's car remained on, and he didn't raise any concerns with them about the car until May 2020, even though he spoke to them about a separate matter in March 2020.

M said Mr T travelled around 5,000 miles in the car after the initial repairs, and if they'd failed it would've been apparent much sooner than this. They also said that the report provided by P is based on suspicions rather than a clear link between the faults. M said Mr T's car passed an MOT in December 2019, and if it'd had problems with the coolant system there would've been symptoms noted, but none were.

M said that P had now provided a quote for repairs to the EGR coolers, and they had previously said if the EGR coolers were the cause of the fault, this wouldn't be linked to the previous repair. M say this supports their case that the fault isn't linked to the previous repairs, and it doesn't make the vehicle of unsatisfactory quality.

Our investigator asked for further information from P, that information, in summary, gave P's opinion that the faults were linked, and the previous repair didn't return the vehicle to a satisfactory condition.

Our investigator gave a further view recommending that M increase the compensation to £350 and setting out the comments from P and why he was persuaded by these. His other recommendations remained the same.

M didn't response to our investigator. Mr T said he'd like all of the money he paid toward the agreement returned due to the distress and inconvenience.

As an agreement can't be reached, the case has been passed to me for a 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.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Conister as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the “quality of the goods is satisfactory”

To be considered “satisfactory” the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £20,000. It was seven years old and had travelled around 95,000 miles at the time of supply. When a person acquires a used car, it's reasonable to say that the expectation of quality is lower than that of a new or younger/lower mileage second-hand car. The price for the vehicle is lower, and this is reflective of the fact that the car is more road worn. The chance of encountering a serious issue sooner, is higher.

Mr T first experienced a fault when his car broke down shortly after he acquired it, at the end of December 2018. The car was repaired by the dealership, with the water pump being considered at fault and this was replaced.

Mr T has said he doesn't believe the water pump was replaced as the dealership told him the repair consisted of replacing a pipe. I've seen evidence of the replacement part being ordered, and one of the technicians to have inspected Mr T's car at a later date commented that there was evidence of the water pump being replaced in the recent past. Based on the evidence available, I'm persuaded that the water pump was replaced by the dealership during the first repair.

Mr T collected the vehicle in mid-January 2019, and the first time he tried to use it, it wouldn't start. The dealership recovered the vehicle to investigate a problem with the gearbox. Mr T says he told M at this point that he wanted to reject it. There's no record of this phone call between M and Mr T.

The dealership ordered parts to repair the gearbox, and Mr T spoke to M to say he wasn't happy with the timescale, as it could take a number of weeks for the parts to be available. M told Mr T during one of these calls that there wasn't anything they could do as the finance company, and it would be up to the dealership to complete repairs.

Our investigator said these faults made the vehicle of unsatisfactory quality and, as M had a chance to return the vehicle to satisfactory condition following the first repair, they should've given Mr T accurate information about his rights prior to or during the repair of the gearbox. He felt if they'd done this, Mr T would've likely exercised his right to reject the car.

M say Mr T had already accepted the repairs before he contacted them, and so he no longer had a right to reject the vehicle.

It's not in dispute that the issues with the water pump and the gearbox made the vehicle of unsatisfactory quality. M upheld Mr T's complaint about this in March 2019, and so I haven't considered this further.

When Mr T made contact with M in February 2019 the repairs to the gearbox were ongoing. I've listened to the call between Mr T and M, and M told him that there wasn't really anything they could do about the car, because they just provided the finance. They said it was up to the dealership to fix the car and they'd call them to chase this up.

Mr T had already allowed the dealership an opportunity to repair the car, and whilst the repair to the gearbox was ongoing, the parts were on order and there was no indication of when the repair might be completed.

The CRA sets out that M has an opportunity to return the goods to a satisfactory condition. They took this opportunity when the water pump work was completed. So, when Mr T experienced the fault with the gearbox, he was, at that stage, entitled to exercise his final right to reject the vehicle as it hadn't been returned to a satisfactory condition following a repair.

Mr T agreed to the repair of the gearbox, and the CRA sets out that where a repair has been agreed, the right to reject would only apply if this repair cannot be done in a reasonable time and without significant inconvenience to Mr T.

I'm satisfied that when Mr T contacted M in February 2019 they should've been clearer in the information they gave Mr T, particularly in relation to their responsibility for the satisfactory quality of the vehicle, and his rights under the CRA.

As the repair had been accepted, I'm not persuaded that Mr T would've been able to reject the vehicle, unless that repair couldn't be done in a reasonable time and without significant inconvenience. It's impossible to say how the situation would've progressed had Mr T been provided with the correct information by M. The repair was completed around four weeks after the phone call in February 2019. It's possible that Mr T would've waited for this repair to take place. It's also possible that M could have accepted that this was an unreasonable time, or causing significant inconvenience, and accepted rejection of the vehicle.

As I can't say with certainty what would have happened in early 2019, and the repair was completed with Mr T continuing to use the vehicle, I've gone on to consider the events beginning with the fault that happened in May 2020.

M have said there's no evidence that the faults are linked, and Mr T was able to drive the car for around 5,000 miles and 15 months prior to the fault, so they don't think it made the car of unsatisfactory quality. Our investigator said he was persuaded by the evidence provided by P that the faults were linked, and so Mr T was able to reject the car on the basis that the repairs in early 2019 had failed.

I've seen evidence of the inspection carried out by agents appointed by M. That inspection is severely limited, in that the engineer was unable to access the driver's side of the vehicle or see many of the engine components. They commented that there was no suggestion that the vehicle had suffered from a failed water pump repair, but the inspection was ultimately aborted.

I've seen evidence of commentary provided by P, Mr T's garage, and this says that the vehicle components showed signs of a long-standing leak in the coolant system, and the repairs they completed prior to the inspection by M's agents were why they couldn't immediately see any evidence of this leak. They say the issues are likely linked to the

previous repairs either having failed or the fault being misdiagnosed at the outset. P say the fault occurring in May 2020 to the EGR coolers or the head gasket can be linked to the previous repair.

It's not clear exactly what caused the fault to Mr T's car in May 2020. But I'm persuaded by the evidence provided by P. They are the only experts that have inspected the car in detail in respect of the current fault

Mr T has driven the car for around 4,000 miles for 15 months between the repair and the fault. This is lower than average mileage and may account for the current fault taking some time to materialise.

On the balance of probabilities, I'm persuaded that the repairs in early 2019 failed. I say that because P have shown that there was a substantial leak on the system showing signs of age, that the current faults can be linked back to the previous repair, and that Mr T's use of the vehicle is likely to have slowed down the materialisation of the failed repair. So, I'm satisfied that the car was not of satisfactory quality at the time it was supplied to Mr T, and that the repairs in early 2019 didn't return it to a satisfactory condition. So, Mr T should now be allowed his final right to reject the car.

This means that the car is collected, the finance agreement is brought to an end, and Mr T has his £2,500 deposit refunded (plus interest). The agreement and any adverse information should be removed from Mr T's credit file.

Mr T has said he'd like all of his payments refunded as the car broke down shortly after he got it, and he's had to deal with the impact since. Mr T was kept mobile in a courtesy car during the early repairs and continued to use the car until the fault materialised in May 2020. I think it's fair that Mr T pay for this use of the vehicle, and I think the monthly payments he made during this time reflect a fair payment for this use. So, I'm not asking Conister to refund all of the payments.

Mr T was provided with a courtesy car during the repairs in early 2019 for a period of around eight weeks. Whilst he was kept mobile, the car he was provided with was not like for like with the one he'd acquired under the agreement. So, I think it's fair that Conister refund Mr T 30% of his monthly payments for this eight-week period in February and March 2019 to reflect this. Mr T paid £401.21 as his monthly payment, so Conister should refund a total of £240.73, plus 8% simple interest from the date of payment to the date of settlement.

Mr T said he didn't make any payments following being unable to use the car in May 2020, and so Conister should waive any arrears under the agreement from May 2020 when Mr T was unable to use the car.

Our investigator recommended that Conister pay Mr T £350 compensation. Mr T has been put to distress and inconvenience in not receiving accurate information about the CRA when contacting M, having to allow repairs to the vehicle, arrange for inspections and the affect this has had on his credit file. Overall, I'm satisfied that £350 fairly reflects the distress and inconvenience caused to Mr T.

### **My final decision**

My final decision is that I uphold this complaint, and Conister Bank Limited must:

- End the finance agreement and collect the car at no further cost to Mr T, waiving any outstanding arrears.
- Refund Mr T's deposit of £2,500 plus 8% simple yearly interest calculated from the date of payment to the date of settlement.

- Refund Mr T £240.73 which is 30% of his monthly payments for February and March 2019 plus 8% simple yearly interest calculated from the date of payment to the date of settlement.
- Pay Mr T £350 compensation to reflect the distress and inconvenience caused
- Remove the agreement and any adverse information from Mr T's credit file once the outstanding payments have been settled.

If Conister considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 February 2023.

Zoe Merriman  
**Ombudsman**