

The complaint

Mr T complains MIDLAND MERCANTILE FINANCE LIMITED (“MMFL”) isn’t taking responsibility for the quality of a car it part funded through a fixed sum loan agreement.

What happened

Mr T acquired a car in October 2020. It was about three years old, had travelled about 35,500 miles and cost about £70,000. Mr T paid £30,000 and the rest was financed through a fixed sum loan provided by MMFL.

In January 2021 Mr T experienced problems with the car. By this point the car had travelled about 38,500 miles. The problems were serious, and repairs involved a new engine costing around £20,000. In February 2021 Mr T asked the dealership to accept rejection of the car. The dealership didn’t accept rejection and MMFL declined to support rejection too.

Mr T asked our service for an independent review. The investigator thought the complaint should succeed. She thought MMFL was jointly responsible with the dealership for the quality of the car and in her view the car supplied to Mr T wasn’t of satisfactory quality.

Mr T accepted the investigator’s recommendation. MMFL didn’t. This was because, in summary, it didn’t think it was responsible for the quality of the car and even if it was, the car experienced problems because of Mr T’s lack of maintenance and/or Mr T’s driving behaviour and/or Mr T making a modification to the car. As an agreement couldn’t be reached the complaint has been passed to me to decide.

I issued a provision decision. I said:

“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 is fair and reasonable, I need to have regard to the relevant law and regulations, regulators’ rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

Mr T (the debtor) acquired the car in part through a fix sum loan agreement with MMFL (the creditor) from a dealership (the supplier). In this scenario Section 75 and Section 75A of the Consumer Credit Act 1974 are relevant considerations.

Section 75 allows a customer to submit a claim for breach of contract or misrepresentation by a supplier to their creditor. But it only applies in certain limited circumstances. One of these is the “single item” bought must have cost no more than £30,000. Here, the car had a cash price of about £70,000. So Section 75 doesn’t apply.

Section 75A doesn’t cover misrepresentation. But it does cover breach of contract, which is what Mr T is complaining about. Again, this section only applies in certain

limited circumstances. Here, though, the key consideration (amongst others which aren't in dispute) is whether the credit exceeded £60,260. When entering into this finance agreement Mr T took out about £40,000 of credit. This is less than £60,260, so Section 75A does apply.

As I'm satisfied Mr T can make a claim against MMFL for a breach of contract on the part of the dealership, I've gone on to consider whether the dealership breached its contract with Mr T. The Consumer Rights Act 2015 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 all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The dealership supplied Mr T with a car that was about three years old and had travelled about 35,500 miles. And the price of the car was lower than it would have been if it had been supplied new. So I think it's fair to say that a reasonable person would expect that parts of the car might have already suffered wear and tear. And there's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn when it was supplied. That being said, this was a relatively new car, with relatively few miles on the odometer and was expensive. So I don't think a reasonable person would expect any significant issues soon after acquiring this car.

Both parties accept there is/was a fault with the car. For completeness, I agree there is/was a serious problem with the engine having reviewed the input from the various engineers. So I've gone on to consider whether the car was of satisfactory quality when it was supplied. Having carefully considered all of the relevant circumstances, including the price, age and mileage of the car when supplied – and when the fault happened – I don't think the goods were of satisfactory quality at the point of supply. I say this because, as set out above, I think a reasonable person would expect a lot from this car and would therefore not expect this car to have such a significant fault so soon and after so few miles. MMFL have suggested the fault was the result of Mr T's actions. I'm not persuaded that's the case. I'll explain why.

The initial inspection dated 19 April 2021, completed by a specialist in this type of car, said:

"We know from our experience that the [engine] can suffer with timing chain tensioner failure and removed the left hand cam shaft to find this is exactly what had happened, resulting in the valves striking the pistons due to the timing chain jumping on the cam gears".

Another inspection dated 29 July 2021 also noted an issue with the timing chain tensioner, saying:

"We believe the timing chain tensioner has become lazy in operation, this induces timing chain chatter which causes the timing chain to jump one or more teeth on the drive sprockets causing an interruption in the valve to piston time."

The inspection goes on to say the most frequent cause of the lazy operation of the timing chain tensioner is a car being driven with improper oil levels leading to oil cavitation or a build-up of soot products inside the delicate passageways.

MMFL says Mr T drove the car with improper oil levels. I haven't been presented with the car's service history, but I note the dealership's website says cars are serviced prior to handover, so it seems likely to me the car would have been serviced before it was supplied to Mr T in October 2020, and generally a service will include an oil change. So I think it's unlikely a lack of oil would have been the root cause for such a significant issue so soon and after so few miles. In any case, the July 2021 inspection refers to frequent causes. It doesn't say oil was the issue here and I note the engineer says there was no evidence of long-term lubrication issues. I'm not persuaded, on the evidence available to me, the fault was caused by Mr T not maintaining the car properly.

MMFL says Mr T drove the car at excessive speeds, including at times of up to 126 miles per hour on the motorway, and at times braked harshly. It has provided black box style data to support its position. MMFL consider this to have put strain on the car which led to the fault. I take MMFL's point. But this isn't a small hatchback with a small engine. The car here is large and has a V8 5.0 litre engine with a top speed well in excess of 126 miles per hour. I'm not persuaded Mr T's driving behaviour, in three months and over about 3,000 miles, caused this fault in this car.

MMFL says Mr T made a modification to the exhaust system which contributed to the fault. This is a relatively late development – it wasn't something commented on by the initial engineers or highlighted in the April or July 2021 inspections. The modification, making the exhaust system 'straight piped', appears to increase the engine noise and reduce exhaust gas pressure to increase performance. I haven't been presented with compelling evidence, however, that this would have a bearing on the timing chain tensioner. So I'm not persuaded Mr T making the modification led to this fault with this car.

I'm satisfied based on the information available to me the car was most likely not of satisfactory quality when supplied as it wasn't sufficiently durable – and, under Section 75A, MMFL needs to do something to put things right.

My understanding is the car has now been repaired at no cost to Mr T, but that the repairs weren't completed within a reasonable amount of time and the car still hasn't been returned to Mr T. In my view, to bring matters to a close, MMFL should arrange to take permanent possession of the car and return Mr T to the position (or as close as practically possible to the position) he was in before being supplied it.

Mr T had use of the car for some months, so it's appropriate he pay for that use. Having not had use of the car from January 2021 onwards, he should be refunded any loan repayments he made from then onwards, plus interest. And any adverse information related to these payments should be removed from his credit file.

Mr T appears to have incurred some direct costs associated with this matter - £150 to have the car transported to a garage and £360 for a diagnostic. In my view MMFL should refund these costs, plus interest.

I also consider MMFL should pay Mr T compensation for the distress and inconvenience he was caused. He was supplied with a car which failed when it shouldn't have and has had the ongoing impact of that for some time, including the need to make alternative transport arrangements and the implications of damage to

his credit file. The investigator recommended MMFL pay Mr T £500. I consider that a fair sum in the circumstances.”

Mr T responded to my provisional decision to say he agreed with what I'd said but didn't consider £500 compensation enough given the impact this matter had on him.

MMFL responded to my provisional decision to say it didn't consider Section 75A applied, and Mr T therefore had no claim against it for the quality 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.

As I set out in my provisional decision, Section 75A only applies in certain limited circumstances. There had been some disagreement on the cash price/amount of credit provisions. MMFL has acceded to that point and brings my attention to other conditions for Section 75A to apply. The Consumer Credit Act 1974 says, amongst other things:

- (1) If the debtor under a linked credit agreement has a claim against the supplier in respect of a breach of contract the debtor may pursue that claim against the creditor where any of the conditions in subsection (2) are met.*
- (2) The conditions in subsection (1) are—*
 - a) that the supplier cannot be traced,*
 - b) that the debtor has contacted the supplier but the supplier has not responded,*
 - c) that the supplier is insolvent, or*
 - d) that the debtor has taken reasonable steps to pursue his claim against the supplier but has not obtained satisfaction for his claim.*
- (3) The steps referred to in subsection (2)(d) need not include litigation.*
- (4) For the purposes of subsection (2)(d) a debtor is to be deemed to have obtained satisfaction where he has accepted a replacement product or service or other compensation from the supplier in settlement of his claim.*

MMFL has said: the supplier can be traced; the supplier has responded to the debtor's contact; the supplier is not insolvent; the debtor has not taken reasonable steps to pursue his claim against the supplier. In its view, therefore, the conditions necessary for Mr T to have a claim against MMFL under Section 75A haven't been met.

I accept conditions a), b) and c) haven't been met. But I'm satisfied condition d) has. I'll explain why.

When Mr T brought this complaint to our service, he set out what had happened. He said, in summary:

- He asked to return the car to the dealership for a refund.
- The dealership said it would repair the car, which he begrudgingly agreed to.
- A week later the car hadn't been looked at and the dealership didn't return his calls.
- He asked to reject the car by email.
- He received a letter from MMFL saying it was looking into his complaint.
- He was accused of speeding and no remedial action was taken.

Mr T has provided a copy of his email to the dealership and MMFL dated 5 February 2021 in which he asks to exercise his final right to reject the car. He's provided a copy of an acknowledgement to his email from MMFL saying it will investigate the issues he'd raised, dated 9 February 2021. And a letter from a solicitor's firm dated 19 March 2021. This letter

refers to their client as the dealership *and* MMFL, and rejects Mr M's claim. This letter also says it was their final position and Mr T was permitted to challenge their decision by bringing the matter to our service.

From the above, I'm satisfied Mr T took reasonable steps to pursue his claim against the dealership – considering he made his claim known, was told to approach our service if he remained dissatisfied, and as set out in the Act, such steps didn't need to include litigation. And Mr T did not obtain satisfaction for his claim – considering no remedial action was taken and the letter dated 19 March 2021 made it clear the dealership (and MMFL) had no intention of settling the claim.

I remain satisfied Mr T can make a claim against MMFL for a breach of contract on the part of the dealership under Section 75A. And, having reconsidered all the available evidence and arguments I remain satisfied - for the reasons set out in my provisional decision - the car was most likely not of satisfactory quality when supplied as it wasn't sufficiently durable - and, under Section 75A, MMFL needs to do something to put things right.

Mr T doesn't consider £500 compensation enough. He has reiterated the issues he experienced because of the impact this matter had on his credit file - namely he says he couldn't purchase another car, move to a new house, or open a new bank account for his business. Having reconsidered appropriate redress, I still consider £500 compensation is fair and reasonable in the circumstances. I'll explain why.

When there is a dispute of this nature the expectation is the debtor continues to make their contractual payments. This is because, in brief, not doing so can cause significant detriment to their credit file and as is the nature with disputes, they don't always go in the debtor's favour. I'm aware Mr T had some issues with payments in the early stages of the dispute which would have led to adverse information on his credit file which could likely have been avoided. But my understanding is payments continued not to be made which led to the agreement being terminated. It seems to me this is more likely than not the primary cause of the impact Mr T says he has experienced. I can't fairly hold MMFL responsible for this.

Putting things right

MIDLAND MERCANTILE FINANCE LIMITED should:

- 1) Take permanent possession of the car at no cost to Mr T;
- 2) End the fixed sum loan agreement at no further cost to Mr T;
- 3) Remove any adverse information related to the fixed sum loan agreement from Mr T's credit file;
- 4) Refund Mr T's contribution of £30,000 plus simple interest* at 8% per year calculated from the date of payment to the date of settlement;
- 5) Refund Mr T's loan repayments from January 2021 onwards plus simple interest* at 8% per year calculated from the date of each repayment to the date of settlement;
- 6) Refund Mr T's direct costs plus simple interest* at 8% per year calculated from the date of each payment – 15 January 2021 for the transport and 27 January 2021 for the diagnostic – to the date of settlement. And;
- 7) Pay Mr T £500 compensation** in recognition of the distress and inconvenience he's been caused.

*If MIDLAND MERCANTILE FINANCE LIMITED consider 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.

****If MIDLAND MERCANTILE FINANCE LIMITED doesn't pay the compensation within 28 days of Mr T accepting my decision, it should pay him simple interest* at 8% per year on the £500 from the date of acceptance to the date it is paid.**

My final decision

I uphold this complaint and require MIDLAND MERCANTILE FINANCE LIMITED to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 July 2022.

James Langford
Ombudsman