

The complaint

Mr H complains that a car he has been financing through an agreement with Clydesdale Financial Services Limited, trading as Barclays Partner Finance ("BPF") was misrepresented to him and was of unsatisfactory quality.

What happened

I issued my provisional decision on this complaint in May 2022. An extract from that provisional decision is set out below.

What happened

Mr H has been represented by his solicitors but for ease, and because Mr H is named on the finance agreement, I will refer only to him in this decision.

Mr H took receipt of a used car in May 2019. He financed the deal through a conditional sale agreement with BPF. The car was about four years old when supplied and the invoice suggested it had already covered 30,128 miles.

In March 2020, 16,000 miles and 10 months later, the engine failed catastrophically. Mr H identified a problem with the odometer reading. He noticed that the car had a recorded mileage of 38,951 in December 2017 but that during the MOT in May 2018 the car's mileage had been recorded as less than that and at 28,807 miles. He said that suggested the car's odometer had been rewound and that the car had therefore been misrepresented to him. He explained that as the car only needed a service every year or every 16,000 miles (whichever came first) he had not believed a service was required until May 2019. He suggested that the misrepresentation had therefore led him to not service the car properly and had been the cause of the engine failure.

He also said that the car hadn't been of satisfactory quality. He provided an independent inspection report to support that claim. The inspector noted that the engine was seized and thought that was probably due to crankshaft failure. He said the oil in the car was of a very poor quality and thought the oil would have been in that condition when the car was supplied to Mr H. He also reviewed the service and MOT history and noted the mileage discrepancy suggested there had been some alteration to the odometer.

Our investigator wasn't persuaded she had been provided with enough evidence to suggest the mileage had been misrepresented to Mr H, but she was persuaded by the independent inspector's comments that the car had probably been supplied in an unsatisfactory condition. She therefore suggested that BPF should allow Mr H to reject the car.

BPF didn't agree with the investigator's view. They noted that the inspector had identified an oil leak when he completed his inspection and they suggested Mr H would therefore have needed to top up the oil at some point. It was their assertion that Mr H had therefore added the incorrect grade of oil and that had contributed to the engine failing. They said if the oil was of such poor quality when the car was supplied they would have expected it to have failed earlier. They didn't think there was sufficient evidence to support rejection of the car

and they therefore asked for a final decision by an ombudsman.

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.

I know it will disappoint BPF, but I agree with the investigator's view that the car was of unsatisfactory quality. The inspector didn't think the car had also been misrepresented but, as I do, I am issuing this provisional decision. Please let me explain.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr H acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

Was there a misrepresentation?

Section 56 of the Consumer Credit Act (1974) explains that finance providers are liable for what they say and for what is said by a credit broker or a supplier before the consumer takes out the credit agreement.

So, If Mr H was given a false statement of fact by the dealership and if that false statement of fact led him to enter into an agreement that he wouldn't otherwise have entered into, I would think the goods had been misrepresented to him and I'd ask BPF to take some further action.

In 2017 the mileage reported to the National Mileage Register (NMR) by the dealership that had the car at the time, was 31,228 in April and 38,951 in December. That had reduced in May 2018 when during an MOT the mileage was reported to be 28,807.

The inspector has suggested that is a clear indication that the odometer has been altered and I'd agree that seems most likely. The mileage was reported to the NMR by a dealership who I think it's fair to say would be familiar with the requirement to report in miles, and also familiar with the units used in the odometer display. I think it's unlikely they'd get the mileage wrong and even more unlikely they'd get it wrong twice.

So, I think Mr H was given a false statement of fact about the mileage the car had completed so I'll go on to consider if I think Mr H would have proceeded with the deal had he not been given a false statement of fact. I don't think he would have as I think it's likely he would have challenged the price of the car had it had a higher mileage, especially as that mileage was likely to be significantly more than was reported to him.

So, I think there has been a misrepresentation here and in those circumstances we would usually try to put the consumer back in the position they would have been in had they not entered into the agreement. Before I explain how I'm expecting to ask BPF to do that I'll also consider whether I think this car has been of satisfactory quality.

Was the car of satisfactory quality?

The Consumer Rights Act (2015) is the relevant legislation. That says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then BPF, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they 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.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr H. The car here was about four years old and the NMR mileage records would suggest it had completed in excess of 38,951 when supplied. I think a reasonable person would expect some wear and tear on a car of that age and mileage.

But I don't think they'd expect the engine to fail catastrophically after only 10 months. The relevant legislation says that when we consider if a car has been of satisfactory quality we should also consider whether it's been durable. I don't think this car has been durable as I think a reasonable person would expect an engine to last significantly longer than this one has.

BPF suggest that Mr H has contributed to the failure by adding the wrong oil and by not servicing the car correctly, but the independent, expert engineer disagrees. It is his opinion that the condition of the oil in the engine at the time of purchase and coupled with the dubious service history is the most likely cause of failure.

The inspector is an expert in these matters, and I've found his report compelling and well reasoned.

I think it's therefore likely that this car was provided with oil that was of an unacceptable standard and that it was therefore of unsatisfactory quality.

So, because I think this agreement was misrepresented to Mr H and because the car was of unsatisfactory quality, I think BPF should allow him to reject the car.

Putting things right

BPF will need to end the finance agreement and collect the car at no cost to Mr H. They'll also need to refund his deposit and add interest to that refund as he's been deprived of the money.

Mr H was able to drive over 15,000 miles in the car until it failed in March 2020. So, I think he had reasonable use of the car up until that point and I therefore think it would be fair for BPF to retain any finance instalments he paid until the car broke down. Thereafter, they will need to refund any finance instalments that have been paid by Mr H, or waive any that were due but haven't been paid. They should add interest to any refund.

Mr H has also had to commission an independent inspection. He wouldn't have had to do that if the car he had had been of satisfactory quality so BPF should refund those consequential costs if Mr H can provide them with the receipt.

I understand that Mr H would like his legal costs refunded. It was for Mr H to decide whether to incur those costs and I don't think he had to. I think the process we ask consumers to follow to register a complaint with this service is simple and I therefore think Mr H could have mitigated those cost. I'm not expecting to ask BPF to refund them.

If Mr H has incurred costs to keep the car insured or taxed whilst it's been awaiting repairs I would think they were costs that were incurred as a consequence of the car's failure and I

therefore expect to ask BPF to refund them if Mr H can provide receipts.

Mr H has clearly been inconvenienced by these issues. He's had to escalate his complaint to this service when I think it could have been resolved earlier and he's had to commission an independent report and seek professional advice. In the circumstances I think BPF should pay him £250 in compensation for the distress and inconvenience he's experienced.

My provisional decision

For the reasons I've given above I expect to uphold this complaint and to tell Clydesdale Financial Services Limited to:

- *End the finance agreement and collect the car at no cost to Mr H.*
- *Retain any finance instalments paid up until 20 March 2020 when the car broke down. Refund all the other instalments and add 8% simple interest per year from the date of payment until the date of settlement.*
- *Refund the cost of the independent inspection report and any diagnostics upon provision of the receipts from Mr H. Add 8% simple interest per year from the date of payment to the date of settlement.*
- *Provide a pro-rata refund of any car insurance or road tax if Mr H can provide receipts. Add 8% simple interest per year from the date of payment to the date of settlement.*
- *Refund any deposit paid adding 8% simple interest from the date of payment to the date of settlement.*
- *Remove any adverse reports they may have made to Mr H's credit file in relation to this issue.*

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.

BPF didn't have any further information to add but Mr H did. He thought BPF should pay him more compensation and explained that he'd been put under immense stress over a two-year period. He detailed that stress and explained that his wife had been left stranded; he'd made thousands of calls at a time when the family was recovering from the loss of Mrs H's father and when Mr H was recovering from illness.

Mr H also disputed my view that legal costs shouldn't be recoverable explaining that it wasn't possible to get support during the pandemic.

I was sorry to hear of the difficult and distressing time Mr H and his family had experienced but having considered all of the circumstances and the level of award this service would usually suggest I am not minded to increase the level of compensation.

I've thought about whether to allow Mr H's legal costs. It was for Mr H to decide whether to incur those costs and I still don't think he had to. I think the process we ask consumers to follow to register a complaint with this service is simple and the vast majority of claims proceed without the need for legal advice. I think Mr H's legal costs could therefore have been mitigated.

Mr H has explained that there was an additional expense to have the car recovered to the garage. He says this cost £200. If Mr H can provide a copy of the receipt for that recovery I think it is a cost that BPF will need to refund to him as it will have been incurred as a consequence of the car being of unsatisfactory quality.

Putting things right

Having considered the additional information provided by Mr H I am not persuaded to change my provisional decision other than to order BPF to refund recovery costs of £200 if Mr H can furnish them with the receipt for that recovery.

My final decision

For the reasons I've given above I uphold this complaint and tell Clydesdale Financial Services Limited to:

- End the finance agreement and collect the car at no cost to Mr H.
- Retain any finance instalments paid up until 20 March 2020 when the car broke down. Refund all the other instalments and add 8% simple interest per year from the date of payment until the date of settlement.
- Refund the cost of the independent inspection report and any diagnostics upon provision of the receipts from Mr H. Add 8% simple interest per year from the date of payment to the date of settlement.
- Provide a pro-rata refund of any car insurance or road tax if Mr H can provide receipts. Add 8% simple interest per year from the date of payment to the date of settlement.
- Refund any deposit paid adding 8% simple interest from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to Mr H's credit file in relation to this issue.
- Refund the consequential recovery costs of £200 if Mr H can provide the receipt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 July 2022.

Phillip McMahon
Ombudsman