

The complaint

Miss C is unhappy that a car supplied to her under a fixed sum loan agreement with Mitsubishi HC Capital UK Plc was of an unsatisfactory quality.

Miss C is being represented in this complaint by Mr S. However, for ease of reference in my decision, I'll refer to any actions taken, or comments made, by either Miss C or Mr S as being actions or comments by Miss C.

What happened

On 22 October 2019, Miss C was supplied with a used car through a fixed sum loan agreement with Mitsubishi. She traded in a car for £100, paid a deposit of £100, and the agreement was for £5,012 over 60 months; with monthly repayments of £118.83. At the time the car was just over six years old and had done 76,000 miles.

In January 2020 the car lost power, and Miss C took it back to the supplying dealership. The dealership say they replaced the catalytic convertor, which they said had fixed the fault. But the car lost power again about a month later. And the dealership replaced the spark plugs and coils.

Mrs C didn't use the car very much during the national coronavirus (Covid-19) lockdown, but she said the power fault persisted during and after this time. And, in June 2021, she complained to Mitsubishi, asking to reject the car. Mitsubishi didn't agree with this, so Miss C obtained a report from an independent engineer. Who said the car had a fault that was present or developing at the point it was supplied to Miss C. As a result, the dealership agreed to take back the car and pay Miss C £3,000. And Mitsubishi thought this was a fair offer. However, Miss C would still have been liable for any outstanding amount on the finance agreement (around £730).

Miss C wasn't happy with this, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said it wasn't disputed that the car was faulty, and he thought Miss C should be allowed to reject it and the agreement ended. But he thought that Miss C had use of the car until September 2021, so he said that Mitsubishi only needed to refund the payments she'd made since this date, along with £319 repair and inspection costs, plus statutory interest. He also thought that Mitsubishi should pay Miss C £250 compensation for the distress and inconvenience she'd been caused.

Mitsubishi didn't agree with the investigator. They said they hadn't been given any opportunity to provide any evidence in relation to Miss C's complaint. And they provided their casefile. But the investigator didn't think the information Mitsubishi had provided changed his mind.

I issued a provisional decision on 12 January 2023, where I explained my intention to uphold the complaint. In that decision I said:

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss C was supplied with a car under a fixed sum loan agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Mitsubishi are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Mitsubishi can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Miss C to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss C took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Mitsubishi to put this right.

Based on the evidence I've seen, the dealership has said they prepped the car for sale on 9 October 2019, which included a service. The car was then supplied to Miss C on 22 October 2019. On 10 January 2020, after Miss C had returned the car to the dealership due to loss of power, they say they replaced the catalytic convertor and the spark plugs. At the time the car had done 77,460 miles – 1,460 miles since it had been supplied to Miss C.

Miss C returned the car to the dealership in March 2020, as she'd again experienced a loss of power, but the dealership wasn't able to find any fault. At this time the car had done 78,283 miles – 2,283 miles since supply. Miss C returned the car to the dealership in May 2021, because of the same power fault. And the dealership replaced the spark plugs. The car had done 82,814 miles – 4,531 miles in the 19 months since supply.

Because of what'd happened, and because the dealership hadn't serviced the car since supply, they said the power fault with the car was as a result of general wear and tear and Miss C's failure to maintain the car correctly.

However, I've also seen a copy of the report by an independent engineer, dated 14 September 2021. The engineer said that "we were able to replicate a fault on the vehicle ... the catalytic convertor appeared to be aged and unorthodox repair had been made to it. There was also a fault ... with regards to a cylinder 1 ignition control fault." The engineer went on to say that the coils packs that had been fitted were a mixture of branded and non-branded products. In conclusion, the engineer said "due to the evidence that the client has provided with regards to the repairs, of which had been carried out historically on the vehicle, we are of the opinion that this fault was present or developing at the point of vehicle purchase" and "we do not consider that the faults have developed solely in the ownership of the client." Miss C paid £216 for this report.

Within the report, the engineer confirmed that their duty is to the courts, and not to the person who either instructed or paid for the report. Given this, I'm satisfied this report is reasonable to rely on.

In addition to the above, I've seen invoices for work carried out on the car. The dealership's internal invoice, dated 9 October 2019, shows what was done to the car when it was prepped for sale. And, this shows that the spark plugs were changed at this point.

A further internal invoice from the dealership, dated 10 January 2020, shows that they replaced the catalytic convertor and spark plugs at no cost to Miss C. However, given the comments on the independent engineer's report, and given I've seen nothing else that shows me any work was done on the catalytic convertor, it's seems likely that the dealership actually did a poor quality unorthodox repair on the catalytic convertor, instead of replacing it as they said they did.

Miss C has provided invoices from a local garage, dated 20 October 2020 and 3 February 2021. She said that she took the car here for inspection and repair after two further instances of loss of power. She was charged £535.26 in October 2020 for a replacement timing chain; and £158.24 in February 2021 for replacement coils and spark plugs.

Finally, there's an invoice from the dealership dated 19 May 2021 when they replaced the spark plugs again. And they charged Miss C £103.10 for this.

Based on what I've seen, I'm satisfied that the car was faulty and that this fault was present or developing when it was supplied to Miss C. As the nature of the fault caused a loss of power when driving, I'm also satisfied that this fault made the car of an unsatisfactory quality. What's more, I've seen that the dealership has had multiple attempts to fix the fault, and that this has been unsuccessful. Given all of this, I'm satisfied that in these circumstances, Miss C should be allowed to reject the car.

Miss C has had use of the car since it was supplied to her, so I think it's only reasonable that she pays for this usage. However, it's my understanding that Miss C stopped using the car after the independent engineer's report on 14 September 2021. I've checked the national MOT database and I've seen that the MOT on the car expired on 9 November 2021, and a SORN has been registered since that date. Given this, I'm satisfied it's more likely than not that Miss C did stop using the car after receiving the engineer's report. So, I think Mitsubishi should refund any payments she made after this date.

I also think that Mitsubishi should refund Miss C the cost of the repairs she's had done to the car, as Miss C should've been offered the chance to reject the car after the failed repair in January 2020. This also includes the cost of the independent engineer's report

Finally, Miss C was provided with a car that had an intermittent fault and needed to go in for inspection and repair on a number of occasions. This would be both stressful and inconvenient for Miss C. However, I also need to take into consideration that Miss C didn't use the car for an extended period of time due to the national lockdown conditions in place.

The investigator has recommended Mitsubishi pay her £250 compensation for this distress and inconvenience, which I think is reasonable when taking all of the circumstances into consideration. And I see no compelling reason not to adopt this as part of my overall decision.

So, Mitsubishi should:

- end the agreement with nothing further to pay;*
- collect the car at no further cost to Miss C, if this hasn't already been done;*
- refund the £200 trade-in value/deposit Miss C paid;*
- refund all the payments Miss C has made after 14 September 2021;*

- *refund the £848.60 repair costs and the £216 inspection cost Miss C has incurred on having the car investigated for faults;*
- *apply 8% simple yearly interest on the refunds, calculated from the date Miss C made the payments to the date of the refund [†];*
- *remove any adverse information relating to this agreement from Miss C's credit file; and*
- *pay Miss C an additional £250 for the distress and inconvenience she's suffered as a result of being supplied a car that wasn't of a satisfactory quality.*

[†]HM Revenue & Customs requires Mitsubishi to take off tax from this interest. Mitsubishi must give Miss C a certificate showing how much tax they've taken off if she asks for one.

Responses

Miss C responded to my provisional decision and didn't raise any objections to what I'd recommended. However, Mitsubishi chose not to respond.

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.

Your text here

Putting things right

Neither party has objected to my provisional view. And I haven't been provided with any further evidence by either party. Given this, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision.

My final decision

So, given the above, Mitsubishi should:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Miss C, if this hasn't already been done;
- refund the £200 trade-in value/deposit Miss C paid;
- refund all the payments Miss C has made after 14 September 2021;
- refund the £848.60 repair costs and the £216 inspection cost Miss C has incurred on having the car investigated for faults;
- apply 8% simple yearly interest on the refunds, calculated from the date Miss C made the payments to the date of the refund [†];
- remove any adverse information relating to this agreement from Miss C's credit file; and
- pay Miss C an additional £250 for the distress and inconvenience she's suffered as a result of being supplied a car that wasn't of a satisfactory quality.

[†]HM Revenue & Customs requires Mitsubishi to take off tax from this interest. Mitsubishi must give Miss C a certificate showing how much tax they've taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 3 March 2023.

Andrew Burford
Ombudsman