

## **The complaint**

Ms R complains that MI Vehicle Finance Limited ("MI") refused to repair an acquired car after it had broken down.

## **What happened**

Ms R took out a hire purchase agreement with MI in January 2022 to acquire a used car which was initially registered in October 2018. She acquired the car from a dealership, which going forward, I will call ("D"). At the point of sale, the car had covered around 51,000 miles. The term of the agreement was 49 months; the monthly repayments were £409.55 after the first month; the cost price of the car acquired was £22,149, and an advance payment of £1,077.55 was made – with £1,000 of the advance payment being a dealer deposit.

Ms R was considering part exchanging the car and visited D around July 2022. During this day, the car broke down and it wouldn't restart.

D assisted Ms R in recovering the car. Ms R said they told her the oil in the car may have been low or the AdBlue needed topping up. MI say D topped up the AdBlue, after they saw a message appear on the car dashboard and charged the battery. However, this didn't resolve the issue.

On 15 July 2022, the car was then inspected by a manufacturer's main dealership, which going forward, I will call ("Garage A"). On the invoice Garage A supplied to Ms R, it said that they found the vehicle to have contaminated fuel. There was also a discrepancy on the mileage recorded on this invoice. It had the mileage recorded as 45,000 miles, which is lower than the mileage the car was sold at.

Ms R said she requested copies of the service reports from D on works completed on the car prior to acquiring it. A copy of the used car pre-sales inspection schedule was provided to our service. It said on it that an oil and filter service was completed and AdBlue was also topped up. It also confirmed the mileage prior to it being sold was around 51,000 and that a service was last completed in September 2020 at around 26,000 miles.

Ms R said she took the car to an independent garage, which going forward, I'll call ("Garage B"). She said they told her it didn't seem like the fuel filter had previously been serviced. She said Garage B also tested the car with a new fuel filter but it didn't fix the problem. And she said that Garage B found AdBlue in the fuel tank when testing it and also found evidence of AdBlue over the back wheel of the car near the fuel cap.

Ms R complained to MI and referred her complaint to our service. When Ms R brought her complaint to our service, she believed the issue with the car must have happened when D topped up the AdBlue or she believed it happened beforehand, as she thought D hadn't carried out works they said they completed prior to giving the car to her.

MI provided Ms R with their final response and said they didn't uphold her complaint. They said Garage A and Garage B confirmed the car failure was due to contaminated fuel. They said a car would normally fail shortly after contaminated fuel is added to it, and so the fuel

wasn't contaminated when the car had been sold. But in this instance, it had been driven over 5,000 miles from when it was sold. MI also said D only topped up the AdBlue after the car had broken down, and this suggested to them that the AdBlue had already been added to the fuel tank resulting in the break down.

MI provided us a copy of an email between themselves, and Garage B dated 20 September 2022. The email was about an estimate quote Garage B had given Ms R in July 2022. It stated the mileage on the car being 56,527 and it said:

*"We have drained the contaminated fuel and replaced the fuel filter, refilled with new diesel..."*

Ms R used the services of a third-party specialist to inspect and test the fuel system in the car. A copy of the receipt the fuel specialist supplied to Ms R was dated 27 September 2022. The specialist found the system to be functioning correctly and that diagnostic fuel figures were inside of the working range. They suggested the issue with the car might be due to a mechanical failure within the engine, rather than due to it being mis-fuelled.

Ms R commissioned an independent report on the car on 2 December 2022. At the time the inspection was completed, the car had travelled around 56,527 miles. The report concluded that the car was of current unsatisfactory quality and required further investigation into the exact cause of failure. It said that the fault consisted of the engine timing having jumped and showing inadequate timing angles of the camshaft sprocket, but further dismantling of the engine was recommended. The report also said that they couldn't comment on the fuel within the engine, but if other fuel substances had been used, it would not have affected the engine timing.

MI didn't think this independent report changed their position. They said it was inconclusive as it stated further investigation was required.

Our investigator issued his view and upheld Ms R's complaint. He concluded that the car wasn't of satisfactory quality at the point of supply. He thought there wasn't conclusive evidence to suggest the problem with the car was due to contaminated fuel in its tank and relied on the independent report supplied by Ms R, which suggested the mechanical fault identified wouldn't have been caused by any possible contaminated fuel. He also said that the car manufacturer's recommended interval to change the timing belt is every 100,000 miles or every 10 years.

Our investigator thought it was fair for Ms R to reject the car and that Ms R hadn't been able to use the car since early July 2022. So, he thought MI needed to:

- End the agreement with nothing further to pay;
- Collect the car at no further cost to Ms R;
- Refund Ms R's deposit/part exchange contribution;
- Refund Ms R's monthly repayments from 5 July 2022 to the date of settlement;
- Refund Ms R's additional expenses incurred, such as costs for independent inspections or reports which were commissioned, as well as insurance costs she's had to pay while she has been unable to use the car;
- Pay a further £200 for the distress and inconvenience this complaint has caused her;
- Remove any adverse information from Ms R's credit file in relation to this agreement, if any.

Ms R also provided a further invoice from another third-party garage dated 15 December 2022, which going forward, I will call ("Garage C"). The invoice gave a brief description of the works carried out. Within it, it said,

*"Removed cambelt cover to check timing – found timing incorrect."*

MI didn't agree with the investigator's view. Among other things, they said the car underwent a service and MOT at the point of sale and had travelled around 5,000 miles since it was sold. They also said the independent report does not determine the cause of the fault with the car. They also said that they would expect Ms R to have noticed a squealing type of noise earlier into the agreement if it was present or developing at the point of sale.

Our investigator explained that MI didn't uphold Ms R's complaint as they alleged there was contaminated fuel in the car. Miss R didn't believe she had contaminated the fuel, so she sought a report by a third-party specialist to test the fuel system and she also sought an independent report on the car. He said the diagnosis from Garage A which MI are relying on also didn't go further to see if there were any other issues causing the fault with the car. So, having relied on the independent report, the investigator wasn't persuaded the problems with the car were caused by contaminated fuel. He went on to explain what The Consumer Rights Act 2015 ("CRA") said about quality of goods. He concluded that the car wasn't reasonably durable as he wouldn't have expected a car that was less than four years old and had travelled around 56,500 miles to have an engine failure.

MI said that although a mechanical fault was present on the car, they did not think there was sufficient evidence to confirm that this mechanical fault was present at the point of sale, given the time which has passed and the mileage covered. They said the independent report confirmed that both the timing belt and tensioner were of satisfactory condition, however, visible incorrect timing of the cam belt was identified showing several teeth knocked out of alignment. MI believed this has been caused by an external influence and not as a result of a pre-existing fault.

Ms R said the car hasn't been in use since it broke down in July 2022. And while Ms R has been without the car, she said she hadn't been offered a temporary car to use. Ms R has also told our service that she has registered her vehicle with DVLA as off the road. She expressed to our service how frustrating this issue has been for her and would like the car to be returned.

As MI disagreed with the investigator's view, the complaint was passed to me to decide.

*I issued a provisional decision on 12 June 2023 where I explained why I intended to uphold Ms R's complaint. In that decision I said:*

*"Ms R complains about a car supplied to her under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Ms R's complaint about MI.*

*When considering what's fair and reasonable, I take into account relevant law and regulations. The CRA is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – MI here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. It's important to point out in this case that the CRA specifically explains that the durability of goods can be considered part of whether they are satisfactory quality or not.*

*I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note here that the car Ms R acquired was used. I can see this car was over three years old, cost over £20,000 and had around 51,000 miles on the odometer when Ms R got it. So, I think a reasonable person would accept that it would not be in the same condition as a newer car and was likely to have some parts that are worn. But a reasonable person would still expect the car to be free from anything other than minor faults and would've expected trouble free motoring for a reasonable time.*

*There has been significant information that has come to light since this complaint was initially brought to our service by Ms R. In summary, MI has relied on the diagnostics completed by Garage A and believe the fault with the car is due to contaminated fuel in its fuel tank – and not to do with a fault at the point of supply. They also believe the independent report commissioned in December 2022 is inconclusive and that any mechanical issue with the engine timing is due to external factors and wasn't present at the point of supply.*

*Firstly, I think it is likely there was contaminated fuel in the car. I say this as it was identified by Garage A and Garage B. So I've thought about when this likely occurred, and most importantly, whether I think the contaminated fuel caused the breakdown.*

*To determine this, I considered how much the car had travelled between when it was acquired and it breaking down. But there was some discrepancy about the mileage of the car when it had broken down.*

*The car was recovered in July 2022, around six months after Ms R acquired it. Garage A's invoice suggests the mileage at the time was 45,000 miles, but I don't think this is correct, given this mileage is lower than when the car was sold to Ms R in January 2022.*

*Garage B didn't state the mileage in their estimate quote they gave Ms R a couple of days after the car broke down. But in an email exchange between Garage B and MI in September 2022, Garage B said the mileage was 56,527. The independent report conducted in December 2022 also confirmed the mileage of the car to be 56,527.*

*I accept several months had passed between these recordings of the mileage, but given Ms R has said the car hasn't been driven since it broke down and MI contacted Garage B in September 2022 to enquire about an estimate quote they gave Ms R in July 2022, I think it's likely the car had travelled 56,527 miles when it had broken down. So, I think it's likely the car had travelled around 5,000 miles between when it was acquired and it breaking down.*

*Considering everything here, I'm satisfied the contaminated fuel wasn't in the car when it was supplied to Ms R. I say this because, the car had travelled 5,000 miles before breaking down, which meant the fuel would have had to be replaced and wouldn't have been the same fuel that was supplied with the car. I also think, had there been contaminated fuel in the car at the point of supply, the fault would have presented itself much sooner.*

*I've also noted that both D and Ms R say the car had broken down before AdBlue was added by D. So, I don't think the contaminated fuel caused the breakdown. And I've also placed weight on the independent report produced which also says:*

*"...but if... any other fuel substance has been used, this would not affect the engine timing."*

*Ms R says that a fuel specialist tested the fuel and found the system to be functioning correctly and that diagnostic fuel figures were inside of the working range. Thinking about things here, the fuel that was tested in the car was new fuel and not the same as when it had broken down. This is because Garage B had already drained and replaced it. So, I would*

*expect to see the diagnostic fuel figures to be inside the working range. So, I'm not putting much weight on this specialist test when forming my opinion.*

*As I don't think the contaminated fuel caused the breakdown, I've turned to whether the mechanical issue identified with the car caused the breakdown and whether it was present at the point it was supplied.*

*Ms R has supplied an independent report as well as an invoice from Garage C which suggests there is a fault with the engine timing. MI feels the report is inconclusive and that any mechanical issue with the cam belt or teeth being knocked out of alignment is due to external factors and wasn't present at the point of supply.*

*I've thought carefully about this. While the independent report suggests further inspection is required to be certain of an engine timing issue, Garage C conducted a check after the report and also found incorrect timing. Given the fuel has now been replaced and the car still isn't working, alongside the consistent comments in both the independent report and Garage C's invoice, I think it is likely there is a mechanical issue with the car.*

*What I need to consider is whether this fault meant the car was of satisfactory quality or not when it was supplied.*

*The car had travelled around 56,500 miles and was around three and a half years old when it broke down. I appreciate MI's comments that the issue with the engine timing is due to external factors, but the independent report says no evidence of external engine damage could be identified. And MI hasn't provided any evidence to back up what they say here.*

*I have also reviewed guidance from the manufacturer to see when they recommend a timing belt interval change. However, the manufacturer handbook is silent on the issue. On their website, around servicing the car in general, it says that after 50,000 miles to ask your retailer for their advice but doesn't specifically recommend or say that it needs to be replaced at this interval.*

*The only information I have been able to find about a recommended timing belt interval change is through a third-party website which had reviewed the car. Within the review, it says:*

*"... they need to be replaced every 10 years or 120,000 miles."*

*While I appreciate this isn't directly from the manufacturer, it is broadly in line with interval changes from other manufacturers.*

*Having considered everything here, I think the conclusion reached by both Garage C and the independent report is the reason why the car broke down. I think the engine failed earlier than I would have expected it to. Thinking about the car Ms R got, its age, and the price she paid, I don't think a reasonable person would consider it to have been reasonably durable. It follows that I do not think the car was of satisfactory quality due to the engine timing having jumped and showing inadequate timing angles of the camshaft sprocket.*

*Putting things right*

*As I explained above, I'm satisfied the car wasn't reasonably durable because of the fault with the engine timing having jumped and showing inadequate angles of the camshaft sprocket. MI have had the opportunity to repair the car already. I'm also mindful about the inconvenience a repair will cause. So, thinking about what the CRA says, Ms R is entitled to reject the car and I think it is fair and reasonable to do so in this instance.*

*I've also considered here that Ms R says she hasn't used the car from when it broke down in July 2022. I'm persuaded by what she has told our service and from the mileages supplied in various emails, inspections and repair quotes.*

*I've gone on to consider if Ms R mitigated her losses.*

*I'm mindful that Ms R was led to believe the fault with the car was due to contaminated fuel. And as a result, has incurred costs to repair or further diagnose the fault which led to the car breaking down. Ms R has provided receipts of costs she has incurred:*

*Given Ms R was still trying to obtain information to confirm why the car had failed as she felt strongly that contaminated fuel hadn't been the reason the car failed, I'm not sure what else she could have done here. So, I think it's reasonable that Ms R is reimbursed for these repairs, inspection reports and for her time without use of the car here.*

*Our investigator directed the business to also reimburse insurance costs while the car has been insured but unable to be driven. However, I don't think it is fair to MI to ask them to pay insurance costs. I say this because it is a legal obligation for Ms R to insure the car. And Ms R has benefitted from the protection her insurance policy has brought her from damage or theft of the car while it hasn't been in use. If Ms R feels she should be reimbursed this cost, I suggest she contacts her insurance provider to see whether they would consider giving a rebate.*

*I'm also satisfied Ms R has suffered distress and inconvenience because of what's happened. It must have been upsetting for the car to have broken down and need of repair. And it must be frustrating to not have use of the car for so long due to it needing repairs. So I think MI should pay her £200 to reflect this."*

I set out what I intended to instruct MI to do to put things right. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

#### Responses to the provisional decision

Ms R responded and said she accepted my provisional decision.

MI responded and said, among other things, that they did not believe the issue to have been present or developing at the point of sale. They also said they didn't believe Garage A's report had been considered in this case.

MI confirmed the inspections and service completed on the car at the point of sale and they also went on to summarise events they believed took place which they felt showed the fault wasn't developing at the point of sale. MI said that I was more persuaded by Ms R's testimony than by Garage A's report.

MI also went on to say that teeth knocked out of alignment can be caused by something external getting into the part and knocking it out of alignment.

MI also said that Ms R had a warranty in place with a third-party at the point of purchase which would have covered a percentage of the costs.

#### **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.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome.

In summary, MI are more persuaded by Garage A's report completed when the car first broke down than by the independent engineer report. MI also say that I was more persuaded by Ms R's testimony that she didn't contaminate the fuel, than by what Garage A said. To be clear, I reached my provisional decision on all the evidence presented in front of me. And having considered it, I was more persuaded by the independent engineer report and their findings. I appreciate MI's comments about Garage A's expertise, but I have also taken into account that the independent engineer report says that fuel contamination wouldn't have caused an issue with the engine timing.

The independent engineer report and Garage C both concluded that there was an issue with the engine timing. I note that Garage A hadn't identified this same issue. And it isn't in dispute that the car hadn't been driven in-between the reports being created. So I consider the latter reports to be more conclusive, considering the latter reports had picked up on the mechanical fault and the initial reports hadn't.

MI believe the incorrect timing to the cam belt was caused by an external factor. However, none of the reports provided show any indication that the damage has been caused by an external factor. And the independent engineer reports says no evidence of external damage to the engine could be identified. So, without evidence to the contrary, I don't think it was caused by an external factor.

MI said that Ms R had a warranty in place with a third-party. While that may be so, that doesn't absolve MI of their obligations under the CRA.

Having considered everything here, I think the conclusion reached by both Garage C and the independent report is the reason why the car broke down and I have already summarised in my provisional decision on how I reached that conclusion.

So, I think MI needs to do more in this instance to put things right.

### **My final decision**

For the reasons I've explained, I uphold this complaint and instruct MI Vehicle Finance Limited to put things right by doing the following:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Ms R.
- Refund Ms R's deposit/part exchange contribution, less any dealer deposit that might have been contributed towards the cost price of the car. \*
- Refund Ms R's monthly repayments from July 2022 to the date of settlement. \*
- Refund Ms R's additional expenses incurred which are listed below. \* \*\*
- Pay a further £200 for the distress and inconvenience this complaint has caused her.
- Remove any adverse information from Ms R's credit file in relation to this agreement, if any.

\* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If MI considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Ms R how much it's taken off. It should

also give Ms R a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

\*\* For clarity, Ms R's additional costs which need to be refunded are:

<b>Invoice name</b>	<b>Cost (£)</b>	<b>Date on invoice</b>
<i>Garage A's invoice</i>	118.80	15 July 2022
<i>Garage B's invoice</i>	579.46	10 October 2022
<i>Independent engineer report</i>	199.00	23 November 2022
<i>Fuel specialist's receipt</i>	290.00	27 September 2022
<i>Garage C's invoice</i>	562.02	17 January 2023
<b>TOTAL</b>	1,749.28	

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 26 July 2023.

Ronesh Amin  
**Ombudsman**