

The complaint

Mr D complains that the car he acquired financed through a hire purchase agreement with Mallard Finance Leasing Limited, trading as Mallard Finance, isn't of satisfactory quality.

What happened

In March 2023 Mr D acquired a car financed through a hire purchase agreement with Mallard Finance. Mr D received the car on 10 March after the dealer replaced the battery. Mr D reported that faults were immediately noticeable on the car including with the steering wheel and fuses. The dealer went on to fix these.

Mr D said on 25 March after taking the car for a longer journey he noticed it was misfiring/idling roughly when stationary. He spoke to the dealer who suggested repairing a few things including the ignition coil. Mr D said he wasn't able to use the car. After the coil was replaced the engine was running smoothly and he thought the issue was fixed. Almost immediately the misfiring continued, and he let the dealer know on 1 April. Mr D had decided he'd had enough trouble with the car and that it was a persistent issue. He messaged the dealer on 3 April requesting to return the car and unwind the finance agreement.

Mallard Finance and the dealer instructed Mr D to book the car with a mechanic to diagnose the problem. Mr D said by this time the car had stopped completely so he booked a mobile mechanic. The mechanic was able to start the car after trying for 30 minutes. He said he couldn't diagnose any misfiring issues, but he noted that there seem to be changes to the factory wiring harness. He recommended to take the car to a manufacturer's specialist dealer (S) as they would have the right diagnostic equipment to find the fault.

Mr D said after going backwards and forwards for several weeks Mallard Finance commissioned an independent inspector to look at the car. By this time Mr D said he hadn't been able to use the car for two months. The inspector reported the car was working fine. Mr D said the mechanic that came spent less than 10 minutes looking at the car. He got it to start and took it for a 2 mile test drive again unable to diagnose any misfiring issues. Mr D said the mechanic he hired had spent more than an hour looking at the car.

In its final response Mallard Finance did not uphold Mr D's complaint. It said two independent reports hadn't identified any issues with the car.

After receiving the final response letter Mr D took it to S. Mr D said this dealer was able to diagnose the problem with the vehicle and provided a quote of around £900 to repair it.

Mr D said he reported the findings to Mallard Finance. Mallard Finance said it felt like this was a sudden failure and that this issue wasn't present when Mr D bought the car. Mr D was frustrated with this because he said it was exactly the same issue he had reported to the original dealer on 25 March, 15 days after buying car. He said he reported this issue to Mallard Finance on 3 April. He brought his complaint to this service.

Our investigator concluded that the car wasn't of satisfactory quality at the time Mr D acquired it. Initially Mr D requested to reject the car, but he subsequently asked for the car to

be repaired.

Mallard Finance didn't agree and asked for a decision from an ombudsman.

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.

Having done so I consider that Mr D's complaint should be upheld for these reasons:

- Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it to reach the right outcome;
- Mallard Finance as the supplier of the car was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr D. Whether it was of satisfactory quality at that time will depend on several factors including the age and mileage of the car and the price that was paid for it;
- The car that was supplied to Mr D was 14 years old, had covered 72,000 miles and cost £4,900;
- Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time. But exactly how long that time is will depend on several factors;
- I'm persuaded there is currently something wrong with the car. Besides Mr D's testimony that he's had issues from the beginning, which I find persuasive, he has provided evidence from S that repairs are required to the engine, specifically injector four. It said:
 - *"Stripped wiring loom back to repair, found wiring loom previously repaired poorly, in multiple areas. Wiring not attached, soldering poor quality, bare wires exposed – new loom required. Wiring loom partially open to view issue."*
 - *"Inspected wiring loom prior to repair. Due to previous repair from third party loom is beyond repair and requires replacement."*
 - *"Wiring fault apparent to fuel injector previous repair is evident"*
 - *"Check for DTC's code P0204 cylinder four injector a circuit/open test circuit found previous repair to injector loom and broken wire to number four injector will need to repair and retest may be more issues with loom or injector";*
- I've seen two other technical/mechanical reports for this vehicle.
 - The independent inspector commissioned by Mallard Finance said:
 - *"Under the bonnet, additional wiring was noted near the fuel injection wiring loom, this appears to have been the result of a historical repair to the wiring loom, with the repair standards being considered acceptable."*
 - *"During the inspection we could not identify any issues that warranted imminent repairs; the engine performed as expected, as did the transmission, there was no evidence of overheating, and no evidence of excessive smoke from the exhaust. The vehicle owner had said the vehicle would not start, but it was stopped and started several times"*

during this inspection without issue. In our opinion this vehicle is fit for purpose and would have been road legal at point of sale, this was reaffirmed by the MOT that was passed on 21 December 2022 with a similar mileage as at the point of sale."

- The mobile mechanic Mr D used said:
 - *"I found changes to the factory wiring harness under the bonnet see attached pictures."*;
- I have no reason to dispute any of the technical findings. All three accounts are independent and were provided in good faith. But their conclusions differ. Where evidence is missing or conflicting, as it is here, I'll look at what's available and the surrounding circumstances – to decide what I think is most likely to have happened;
- Mallard Finance commissioned an independent inspection to identify what, if any, problem could be identified. It concluded the vehicle was *"fit for purpose and would have been road legal at point of sale"*. But it also identified a previous repair to wiring related to the injector which it said was acceptable standard. The mobile mechanic also noted wiring changes. The problems Mr D is experiencing with the car has been diagnosed by S to be related to injector four and wiring. I find S's report to be the most persuasive because the testing used was deeper and more specific to the vehicle;
- In its response to our investigator's view Mallard Finance said:

"The nub of your decision is that you consider the inspection from the manufacturer's main dealer is more instructive than that generated by the independent engineer. This is clearly an untenable position: you could never take a 14-year-old vehicle to a main dealer without them recommending urgent work to one or more part. This is because a main dealer will work to the standard expected in a car that is up to 3 years old. This car was supplied aged 14. The main dealer is not giving a view about whether the vehicle is of satisfactory quality based on its age or mileage. This is just not something they are qualified to do. The independent engineer is qualified to do this."

In this instance the main dealer is S;

- I don't agree with Mallard Finance's view on the scope or limit to what S would do. S is a specialist in the brand of car Mr D has. While there may be limits on the age of the vehicle it would look at, clearly in this case it isn't limited to 3 years as it has diagnosed the fault using the specialist equipment which is not available to the independent engineer. In addition it appears its mechanics looked more closely at the wiring as S's report says *"Stripped wiring loom back to repair"*;
- S wasn't asked to provide an assessment of whether the car was of satisfactory quality. I have no reason to dispute the findings of the independent engineer but I'm persuaded by the findings in S's report as their inspection appears to be more invasive;
- I'm persuaded that the issue Mr D has with the car now is related to the wiring repairs noted on all three reports and linked to the injector. As Mr D had difficulties with the vehicle misfiring/idling roughly as early as 25 March I'm also persuaded the problem likely existed when he acquired the car. And that the car wasn't of satisfactory quality at the point of purchase.

Putting things right

The relevant law says that Mr D can reject the car. He has asked that the car is repaired instead of rejecting it. So to put things right Mallard Leasing Limited, trading as Mallard Finance, must:

- Cover the cost of the repair quoted by the manufacturer's dealership. So that Mr D isn't troubled with the expense of the repair, Mallard Finance must arrange for the car to be repaired by the manufacturer's dealer, and pay for it directly;
- Refund 10% of the payments made from 25 March 2023 to the date of settlement. This reflects the fact that Mr D has had limited use of the car;
- Refund the cost of diagnosis by S, £119.40. Mr D should provide Mallard Finance with receipt for this.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment
- until the date of settlement;
- Pay Mr D £200 compensation for the distress and inconvenience caused by this situation

My final decision

My final decision is that I uphold this complaint and Mallard Leasing Limited, trading as Mallard Finance must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 March 2024.

Maxine Sutton
Ombudsman