

The complaint

Mr S complains about a car he acquired through a conditional sale agreement with Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF). He believes the car was not of satisfactory quality when supplied to him and is unhappy that he is now facing significant repair costs as the car requires a third replacement engine.

What happened

Around May 2018 Mr S acquired a used car. At that time the car was a little over five years old and I understand had travelled just over 11,000 miles. In March 2021, when the car had travelled 35,604 miles, the car's engine needed replacing as it had failed through overheating. The engine was replaced, without cost to Mr S, but the replacement engine needed replacing in October 2021. By this time the car had travelled 39,321 miles and the engine was again replaced without cost to Mr S.

Around May 2023, by which time the car had travelled 54,500 miles, the car's engine failed again. The engine failure was again caused by overheating and on this occasion, the cap on the coolant reservoir was believed to be defective. This is believed to have therefore caused coolant to leak and the engine has overheated because of the lack of coolant. The engine overheating has caused water/coolant to enter cylinders two and three, requiring the engine to need replacing again.

Mr S complained to BPF, but it did not uphold his complaint. BPF referred to the Consumer Rights Act 2015 and that as Mr S has raised this after six months of acquiring the car the onus is on him to prove the issues were present or developing at the time of sale. BPF did not consider Mr S had provided sufficient evidence to demonstrate there was an issue present or developing at the time the car was supplied.

Unhappy with BPF's response, Mr S then referred his complaint to our service for consideration. It was considered by one of our investigators, but they also did not find there were sufficient grounds to uphold Mr S's complaint. As he is entitled to do, Mr S asked for his complaint to be considered by an ombudsman as part of the last stage in our process. The complaint was then been passed to me to consider.

After considering what the parties had said and provided issued a provisional decision setting out why I considered Mr S's complaint should be upheld and what should be done to resolve matters. My provisional decision stated:

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. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

First, I'm very aware that I've summarised this complaint in far less detail than the parties

and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. 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 argument to be able to reach what I think is the right outcome.

BPF supplied the car to Mr S under a regulated conditional sale agreement. Because of that, our service is able to consider complaints about the conditional sale agreement and the goods, i.e. the car, supplied under the agreement. As the supplier of the car, BPF has an obligation to ensure the car supplied was of satisfactory quality – as set out in the Consumer Rights Act 2015. Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car.

Section 9 of the Consumer Rights Act 2015 refers to satisfactory quality and notes the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods,

- (a) fitness for all the purposes for which goods of that kind are usually supplied;*
- (b) appearance and finish;*
- (c) freedom from minor defects;*
- (d) safety;*
- (e) durability.*

It is reasonable in my view to note the car here was not new when first supplied to Mr S and had already travelled some miles at the time of supply. So, it would be unreasonable to expect a used car like this to be in the same 'as new' showroom condition which it would have been when first supplied. But just because the car was used with some mileage, doesn't mean that BPF has no requirements in relation to satisfactory quality, or more specifically durability.

The car Mr S acquired was from a well-known brand and the type of engine in a number of this brand's models has widely reported issues caused by component failure that can then lead to the car overheating. The car's manufacturer has met the cost of repairing or replacing a significant number of engines that have been affected by this issue and this is in my view very strong evidence that demonstrates models with this issue were not of satisfactory quality when then were originally supplied.

The component that leads to the engine failure should last significantly longer than it does but in a number of cases it's prone to premature failure. This is again evidence that in my view demonstrates the component and ultimately the car, was not sufficiently durable in car's where it has failed prematurely.

My decision here is focused on Mr S's specific circumstances and it is accepted by all parties that the car's original engine failed and needed replacing because of the known issue with this type of model and/or engine. Considering the requirements of the Consumer Rights Act 2015 and in particular the requirements around durability, I consider it more likely than not Mr S's car was not of sufficient durability, or therefore of satisfactory quality when first supplied to him. Had the car and its components been sufficiently durable the component should not have failed when it did and would not therefore have required the engine to be replaced. Similarly, the replacement engine failed around nine months and 3,500 miles later and this again required replacing.

I understand the engines were replaced at no cost to Mr S and had he not experienced any further issues with the car, I'm sure Mr S would have been happy with this resolution. Sadly

however, Mr S yet again finds himself in the position of requiring another new engine, which will be the fourth engine this car has had in approximately 10 years and 54,000 miles. Ordinarily, it would be reasonable to expect a car with 54,000 miles to still be running well on its original engine and the fact that Mr S now requires a fourth engine does in my view demonstrate a significant issue with this car.

I have considered what has been said about Mr S travelling around 15,000 miles since the engine replacement in October 2021 and that the current issue is believed to be caused by a defective cap on the coolant reservoir, that has failed and caused coolant to leak. The engine has then I understand overheated because of the lack of coolant.

I think it is important to note that the issues that are well known to cause problems with this type of engine are related to the cooling system. The cooling system is a vital part of the car and when working correctly, should ensure that the hot water circulating through the engine is cooled before being recirculated again. As is clear in Mr S's case, a cooling component failure can therefore have a significant impact on the car's engine and can cause catastrophic consequences.

The cooling system in a car is made up of numerous components and hoses. When working correctly they do ensure the engine temperature is maintained at the required level. But where there is an issue with the cooling system, the coolant temperature rises and this impacts on the connected or associated components. The car's head gasket is within the engine and is a common component failure that can be caused by a cooling system issue. The head gasket is often then ultimately what leads to the engine failure and needing replacement.

In Mr S's case it has been argued that the current engine failure has originated from a defective or failed cap on the coolant reservoir. It is argued that this is a separate and unrelated component to the engine and is not connected in anyway to the previous engine replacements.

It is not disputed in this case that Mr S's car required two previous engine replacements and that these were the result of a cooling system issue with the car. As I have already referred to, the cooling system is an integral part of the engine working effectively and where an engine has failed because of overheating, it is clear that connected components in the cooling system will have suffered significant stresses, pressures and degradation caused by the overheating. A car's head gasket is again a good example of a component not specifically linked to the cooling system but can suffer significantly when there is a coolant issue.

This car has again suffered multiple engine failures caused by overheating before the current engine failed in May 2023. It is not clear exactly what components were replaced when the two replacement engines were fitted but I have not seen anything to demonstrate the coolant reservoir or reservoir cap were replaced when the engines were replaced.

From the evidence presented in this case I consider it more likely than not that the coolant reservoir and/or reservoir cap were not replaced. And that the prior increase in temperature and resulting overheating that caused the engines to require replacing are more likely than not to have caused significant stresses, pressures and degradation on the coolant reservoir and/or reservoir cap that have caused it to fail prematurely.

The coolant reservoir is not intended to be a serviceable component and should not therefore require replacing after 54,000 miles if the engine has been running and performing correctly. The premature failure of the coolant reservoir and/or cap is again therefore likely to be as a result of the prior overheating.

If I am wrong and the coolant reservoir and/or cap was replaced as part of the previous two engine replacements, I again would not have expected it to have failed so soon after being replaced. And would therefore consider its replacement to be an inadequate repair alongside the prior engine replacements.

Whether replaced or not, I am satisfied that this component should not have failed when it did and that when considering the broader circumstances – in particular the previous overheating and engine failures, and the requirements BPF has under the Consumer Rights Act 2015, I consider it more likely than not the car was not of satisfactory quality when it was supplied to Mr S.

I have noted what has been said about the need for Mr S to regularly service the car and check the coolant level frequently. I understand however the car was serviced within a reasonable period of time prior to the engine failure and I am not therefore persuaded Mr S's actions have caused or contributed to the current engine failure.

Putting things right

As I have explained why I consider BPF is liable for the engine failure, I shall now set out what I consider should be done to put things right. I have had regard to the available remedies as set out in the Consumer Rights Act 2015, in addition to what I consider is fair and reasonable in the broader circumstances of this complaint.

Considering the significant repeated issues Mr S has had with this car I find he has been more than patient and accommodating in the circumstances. Mr S has explained that he is happy for the car to be repaired, plus some additional costs I shall refer to later. Mr S is of course well aware of the issues the car has experienced and the fact that the car has already had multiple engine replacements.

There is of course potentially no reason why the car cannot now be repaired, or more specially, the car is fitted with a replacement engine. For the reasons already set out above, any replacement would need to include any associated parts of the car's coolant system to ensure any damage caused to these parts through the previous overheating does not remain and then cause further damage in the future.

Mr S has asked that at least a 12 month warranty is provided if the engine is replaced and this is not unreasonable in my view. If the car is repaired, it would now be on its fourth engine and this is something that would need to be disclosed to any warranty provider. It may not therefore be easy to find a suitable warranty that would give Mr S the reassurance he understandably wants.

Any warranty should in my view be limited to the replacement engine and associated parts, and not the entire car. The car is now aged with around 54,000 miles and cars of this age and mileage would usually require some upkeep and maintenance. It would not be reasonable in my view to expect any warranty to cover anything other than the issues being discussed here around the current replacement engine.

Should the engine now be replaced and Mr S experience similar issues with that replacement engine or cooling system, this might be something BPF remains liable for as any repair required through this decision would need to last a reasonable period of time. So a further failure, within a reasonable period of time, might suggest the repair was not a reasonable repair in line with the requirements of this decision.

I am also mindful of the car having been sat unused in its current state of failure and this may have then caused additional issues or problems with the car. For example, the battery

may be flat and require replacement, plus other potential issues that have not yet been identified. If the car is repaired, and requires additional work associated with the car being left unused as a result of the delayed repair, BPF should also meet any reasonable costs associated with these, such as replacing the battery etc. These should however be associated with the engine failure and/or car being in a long period of unrepair and would not apply to more general servicing and upkeep requirements of the car.

Should the parties be willing to accept the engine replacement, including the additional points I have referred to above around the cooling system and potentially the battery and other components, then I consider this to be a reasonable remedy in the circumstances of the complaint.

BPF would need to arrange for an appropriate third party to carry out the repairs and this would be subject to a suitable replacement engine, with similar or less mileage, being available. BPF would also need to ensure any repairs lasted a reasonable period of time and should problems occur again in the near future, BPF may need to revisit things here again if these repairs weren't sufficient or suitable.

Mr S has said that he is willing for the car to be repaired but I am not sure if he has considered the potential implications of this, especially considering this will again be the fourth engine the car has had fitted.

I would invite both parties' comments on this point specifically when responding to my provisional decision. In particular whether repairing the car in line with what I have set out about is acceptable and achievable.

Considering this will be another replacement engine for the car if it is repaired, and the potential issues and challenges I have already set out above around arranging repairs and providing some form of warranty for those repairs, allowing Mr S to reject the car is in my view also a reasonable remedy.

The conditional sale agreement Mr S took out to acquire the car has now been settled in full and Mr S is the owner of the car. The fact that the finance was a conditional sale agreement, rather than a hire purchase or PCP where Mr S could hand the car back, suggests Mr S always wanted to keep the car when the agreement was repaid.

Should Mr S now be allowed to hand back the car, he is in effect losing the value of that car. So, if BPF is required to take back the car, it would be reasonable for Mr S to be compensated for this. Calculating fair redress in this type of scenario is not easy but it would be reasonable in my view to compensate Mr S for the cost of acquiring an equivalent like for like car that has a fully working engine.

Our service has access to a well-known car valuation site and when submitting the details of Mr S's car, with mileage of 54,500 and a current valuation date, the 'Retail Valuation' is shown to be £5,545. This is I understand the likely cost should Mr M be looking to buy the same car now and what it would therefore cost him to replace the car with a like for like replacement.

So should BPF be required to take back the car, rather than arrange for its repair, Mr S should be paid £5,545. I would again invite both parties' comments on this potential remedy and in particular if the parties disagree with the valuation, I have set out here. I should be clear that if either party considers the valuation to be too high or too low, additional supporting documentation should be provided to support those arguments.

Regardless of whether the car is now repaired or taken back by BPF, Mr S has referred to

some additional costs he says he has incurred as a result of the car's engine failure.

Mr S has said he incurred a diagnostics fee of £156 and a £40 fee for recovering the car. Mr S has provided a copy of an invoice and bank statement showing the payment of £156 to the garage. As the diagnostics and recovery fee would not have been incurred by Mr S if the car was of satisfactory quality, it would be reasonable in my view for these sums to be refunded to Mr S. Interest should also be added to these amounts.

Mr S has also referred to the continued insurance costs for the car and these amount to £443.35 between June 2023 and November 2023 inclusive. It would not be reasonable to expect Mr S to have to pay out for insurance when he has not had the benefit of that insurance because of the car being unavailable in the garage. This amount should therefore be refunded to Mr S, along with interest.

Finally, I have considered the trouble and upset that Mr S has experienced as a result of BPF supplying the car that was not of satisfactory quality. It would have been inconvenient and time consumer for Mr S having one engine failure and then needing to wait while those repairs were carried out. Having to return for the replacement engine to be replaced, only to then suffer a further engine failure would have compounded things and significantly increased the impact on Mr S.

Mr S has had to make alternative arrangements and I'm sure incur additional costs with replacement travel arrangements and these again could have been avoid. In the somewhat unusual circumstances of this complaint, i.e. the multiple engine failures, I consider that BPF should make an additional payment to Mr S of £500 to compensate him for the considerable distress and inconvenience these multiple engine failures have caused him.

My provisional decision

For the reasons set out above, I consider that Mr S's complaint against Clydesdale Financial Services Limited trading as Barclays Partner Finance should be upheld. I again invite further comments and where necessary supporting evidence from the parties and I will reconsider the complaint once I have received those.

Based upon the information I have considered so far, my provisional decision is that I uphold Mr S's complaint against Clydesdale Financial Services Limited trading as Barclays Partner Finance. Subject to any further submissions from the parties, to settle the complaint Clydesdale Financial Services Limited trading as Barclays Partner Finance should do A or B, plus C as set out below:

- A. Arrange for the car to be repaired and meet the cost of those repairs. That would include the cost of the engine replacement and associated cooling system components to ensure those components are not compromised because of the prior overheating. Any associated costs caused by the car being unused for so long should also be covered and any work should be completed to a good standard and last for a reasonable period of time.*

or,

- B. Arrange for the car to be collected and ensure Mr S is not liable for any costs applied by the garage. Take ownership of the car from Mr S and pay Mr S £5,545 as the cost of Mr S sourcing a like for like replacement.*

and

C. Pay Mr S £156 for the diagnostic fee and £40 for the recovery fee, with interest. Reimburse Mr S the £443.35 insurance costs he incurred and received no benefit from. Pay Mr S £500 for the distress and inconvenience he has been caused.

Interest should be calculated at 8% simple per year from 16 August 2023 on the £156; 26 April 2024 on the £40 recovery fee and 2 November 2023 on the £443.35 insurance costs, until the date of settlement.

Should the £500 payment for distress and inconvenience not be paid within 28 days of Mr S accepting my final decision, interest at the same rate should also be added to this sum.

Both Mr S and BPF responded swiftly to my provisional decision. BPF explained that as the full extent of any repairs is not actually known and it cannot guarantee how long any repairs completed by a third party will last, it does not feel it can offer redress in line with option A. It is however happy to offer redress in line with option B and C.

Mr S initially said that he had always intended to keep the car and would still be happy for it to be repaired. Once BPF had responded to the provisional decision the investigator contacted Mr S to explain the reasons why BPF did not consider it could proceed with repairs. And that I had considered what BPF had said and was minded to proceed on the basis of redress in line with B and C. Mr S was happy with redress on this basis.

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 reconsidered what the parties had originally set out, plus the responses to my provisional decision, I have come to the same overall conclusions about the quality of the car for the same reasons as set out in my provisional decision. I have nothing further to add here to what I have already set out.

I have noted what BPF has said about my proposed redress scenarios and why it does not consider it can offer to arrange for the car to be repaired. This seems reasonable in my view and I share similar concerns about BPF's ability to guarantee any repairs. Mr S has not objected to BPF taking back the car and paying him what I believe the equivalent amount of money it would now cost to buy a like for like replacement car. This is the most appropriate way forward now in my view.

Putting things right

In order to settle Mr S's complaint, BPF should now:

Arrange for the car to be collected and ensure Mr S is not liable for any costs applied by the garage. Take ownership of the car from Mr S and pay Mr S £5,545 as the cost of Mr S sourcing a like for like replacement.

BPF should also Pay Mr S £156 for the diagnostic fee and £40 for the recovery fee, with interest, and reimburse Mr S the £443.35 insurance costs he incurred and received no benefit from.

BPF should also pay Mr S £500 for the distress and inconvenience he has been caused.

Interest should be calculated at 8% simple per year from 16 August 2023 on the £156; 26 April 2024 on the £40 recovery fee and 2 November 2023 on the £443.35 insurance costs,

until the date of settlement.

In the unlikely event that BPF does not settle the complaint with 28 days of Mr S accepting my final decision, interest at the same rate should also be added to the £500 payment above.

My final decision

My final decision is that I uphold Mr S's complaint and direct Clydesdale Financial Services Limited trading as Barclays Partner Finance to settle the complaint in line with the *Putting things right* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 September 2024.

Mark Hollands
Ombudsman