

The complaint

Mrs N and Mr N complain about the quality of a car supplied to them under a hire purchase agreement with MI Vehicle Finance Limited, trading as Mann Island.

Mrs N referred this complaint to us. She also represents Mr N.

What happened

On 28 September 2022 Mrs N and her son, Mr N, took out a hire purchase agreement with Mann Island for a car. This car was just over four and a half years old and had travelled approximately 41,000 miles. The cash price was £20,750. Mrs N and Mr N agreed to pay £3,000 in advance, followed by 60 monthly instalments of approximately £373.

Mrs N told us that the car broke down in the early hours of the morning on 10 February 2023, whilst her son was driving home from a late shift at work. She said he'd been driving along at approximately 60mph when he heard clunking noises and the car suddenly lost all power, brakes, steering and lights.

The car was recovered from the roadside and arrangements were made for it to be inspected by a manufacturer's garage. The garage advised that the conrod had gone through the engine block in two places. Mrs N told us that the garage couldn't explain why this had happened as no fault codes were stored.

Mrs N said they were told the car would need a complete engine replacement, costing over £16,000. She said they contacted the warranty company, who arranged for the car to be inspected by an independent engineer on 8 March 2023.

The report of that inspection said the independent engineer had been told:

"on a social media site the owner had published that he had blanked off the air intake to the turbo to create more boost."

The independent engineer concluded:

"the air cleaner has been modified."

"the rear engine mount has been modified."

"the con rod has come through the engine block and caused catastrophic engine failure."

"With the age of the vehicle and the possible modifications that may or may not have been put on the vehicle to increase the boost pressure, I would consider the cause to be over revving as this is the main cause of connecting rod failures in new and high-performance engines."

"If the rev counter hits the red, even briefly, the connection rods are in danger of breaking."

"I would therefore consider this to be a driver error."

Mrs N told us that the warranty company wouldn't cover the cost of the repairs, so they complained to Mann Island. But Mann Island didn't uphold the complaint, saying they believed the issues to have been caused by driver error.

Dissatisfied, Mrs N referred the complaint to us. She said the car had been well maintained, with a full history of servicing by a manufacturer's garage. She said it recently had a new air filter and lower torque mount, both of which were approved by the manufacturer. She strongly disputed Mann Island's claim that the engine failure was due to driver error. She provided a copy of the dashcam footage recorded at the time of the incident.

After looking into what had happened, our investigator said he wasn't persuaded that the car hadn't been of satisfactory quality when it was supplied to Mrs N and Mr N. He thought the modifications were likely to have contributed to the issues that led to the engine failure – and that those modifications had most likely been carried out since the car was supplied.

Mrs N disagreed - I'll summarise the main points she made:

- No fault codes had been found on the car's electronic control unit (ECU). The cause of the engine failure is unknown - and can only be established by removing and dismantling the engine.
- The independent engineer had simply speculated that the failure was due to driver error. It can't be assumed that this was due to over-revving. The car has an indicator that tells the driver to shift gear before the rev-limiter kicks in.
- Their consumer rights hadn't been properly considered. The car had only been in their possession for four months when the engine failed.
- Whilst they'd had the car, no modifications were put on it to boost the pressure. They'd never had a plate fitted to blank off the air intake to the turbo. Only recommended or standard parts were fitted. There was no suggestion that the air filter and lower torque mount bush contributed to the issues that caused the engine to fail.

Mrs N asked for the case to be reviewed by an ombudsman, so it's been passed to me to make a final decision.

My provisional decision

I issued a provisional decision saying:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The agreement between Mann Island, Mrs N and Mr N was for hire purchase. I'm satisfied that I can consider complaints about this type of finance. Under a hire purchase agreement, Mann Island is the supplier of the car and is therefore responsible for a complaint about its quality.

The Consumer Rights Act 2015 ("the CRA") is relevant to this complaint. It says that under a contract to supply goods, there's an implied term that the quality of those goods is satisfactory. The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances.

In this case, I bear in mind that the car was just over four and a half years old and had covered around 41,000 miles when it was supplied to Mrs N and Mr N. It cost £20,750, which is significantly less than it would've cost when it was new.

I don't think a buyer would expect this car to be in perfect condition - I think they'd probably expect some parts to have suffered a bit of wear and tear. But I think they'd still expect it to be free from anything other than minor faults when it was supplied - and to be able to drive it for a reasonable amount of time without major issues.

It isn't disputed that the car now has a very significant fault. Both parties agree that the con rod has come through the engine block, causing catastrophic engine failure. The point for me to decide is whether this means the car wasn't of satisfactory quality when it was supplied to Mrs N and Mr N.

I've seen a copy of a report from Mr N's breakdown service confirming the car was recovered on 10 February 2023. That report records the mileage to have been 45,900 at the time. This means Mr N had less than five months' and 5,000 miles' use of the car before the engine failed. I wouldn't consider the car to be of satisfactory quality after that happened.

The CRA sets out the approach I must take where the car was found not to be of satisfactory quality within the first six months of the date it was delivered to the customer. In those circumstances, I'd generally start from the assumption that it wasn't of satisfactory quality when it was delivered.

But the CRA sets out circumstances in which I shouldn't make that assumption. This includes where doing so would be incompatible with the nature of the car or how it failed to be of satisfactory quality. I don't think it would be appropriate for me to make an assumption based on the engine having failed within the first six months if the car's been modified in a way that could cause that type of failure.

Mann Island say Mr N had modified the car, which is a breach of the terms of the hire purchase agreement. They say as it's no longer to the manufacturer's standard, the car will perform differently to the way it was designed to operate. For that reason, they feel it's Mrs N and Mr N's responsibility to prove the fault was present or developing when the car was supplied - and not linked to any modification they've made.

When thinking about the point Mann Island have raised here, I've started by considering whether I think the car had been modified.

Was the car modified?

I've reviewed what the independent engineer said about this in his report dated 8 March 2023. I note that his conclusions were based on "the age of the vehicle and the possible modifications that may or may not have been put on the vehicle to increase the boost pressure".

I asked Mann Island for clarification as to which modifications the engineer is referring to here, but I've yet to receive more specific information. In the absence of further evidence about this, I'm not persuaded that the car was in fact modified. I'll explain why.

(i) Blanking plate

When the independent engineer examined the car on 8 March 2023, he noted "there is no blanking plate on the air pipe at this moment in time."

The report says the independent engineer was told that “on a social media site the owner had published that he had blanked off the air intake to the turbo to create more boost.” I’ve seen no supporting evidence showing Mr N published a comment to that effect.

Mann Island have provided screenshots of comments that appear to have been posted by Mr N on a social media forum. I’ve seen a comment dated 27 January, saying “Looking to add a turbo blanking plate to my [car], wondering if anyone’s done this and any bad effects on the turbo/engine.”

I think this shows Mr N was thinking about fitting a blanking plate to the turbo and wanted to know whether this could cause problems. Mrs N says no blanking plate was fitted at any time whilst the car was in their possession. As I’ve seen no evidence that shows otherwise, I’m not persuaded that a blanking plate was fitted.

(ii) Air filter

This is a component that’s expected to be replaced periodically during routine servicing. So long as the replacement air filter is appropriate for the model of car, I see no reason why this should cause any problems. If anything, I’d expect it to allow the engine to run more efficiently.

Mrs N has provided evidence showing the replacement air filter was purchased in September 2022 – and that exactly the same product is offered for sale by one of the manufacturer’s network of suppliers for use in this model of car.

For these reasons, I’m not persuaded that the replacement air filter should be considered a modification of the car.

(iii) Engine mount

Mrs N has provided evidence showing a replacement lower torque mount bush was purchased in January 2023, and that it was sold as being appropriate for this model of car. I’ve seen no evidence to suggest this component could have any detrimental effect on the car.

Based on the evidence I’ve seen so far, I’m not persuaded that this should be considered to be a modification, rather than routine maintenance.

Was the car of satisfactory quality when it was supplied?

I return to the fact that the car was found not to be of satisfactory quality within six months of the date it was supplied to Mrs N and Mr N.

I’ve seen no evidence to show why the engine failed when it did. In the absence of evidence that persuades me this was due to one or more modifications that had been carried out on the car, I take the view that it wasn’t of satisfactory quality when it was supplied.

Putting things right

The evidence I’ve seen suggests it would be uneconomical to repair the car. So I think Mrs N and Mr N should be allowed to reject it, and receive a refund of the deposit they paid. This

means Mann Island should make arrangements to collect the car and bring the agreement to an end, at no further cost to Mrs N or Mr N.

The car has been undriveable since the engine failed on 10 February 2023. I think it's fair for Mann Island to refund all monthly payments made for the period of time Mrs N and Mr N have been unable to use it.

As Mann Island didn't uphold their complaint, Mrs N and Mr N obtained two independent engineer's reports to support their position. I've seen copies of invoices showing Mrs N and Mr N were charged £48 and £150 for those reports. I think it's fair for Mann Island to reimburse those costs, on production of receipts or other suitable evidence confirming the dates Mrs N and Mr N made payment.

I can see Mrs N and Mr N have been caused stress and inconvenience because they were supplied with a car that wasn't of satisfactory quality. Mrs N says the car had to be recovered from the roadside in the early hours of the morning. Mrs N and Mr N have had to get independent reports on the car to support their complaint. I think Mann Island should pay them £250 compensation for the distress and inconvenience they've been caused.

For the reasons I've explained, I intend to uphold this complaint and direct MI Vehicle Finance Limited to:

- Arrange for the car to be collected and bring the agreement to an end, at no further cost to Mrs N or Mr N.*
- Refund all monthly payments Mrs N and Mr N have made for the period since 10 February 2023, when the car's been undriveable.*
- Remove any adverse information that's been recorded on Mrs N or Mr N's credit file about this agreement since 10 February 2023.*
- Reimburse Mrs N and Mr N a total of £198 for the two independent reports they obtained, on production of receipts or other suitable evidence confirming the date these invoices were paid.*
- Add interest to each of the refunded and reimbursed amounts, calculated from the date of each payment until the date of settlement at 8% simple per year.*
- Pay Mrs N and Mr N £250 compensation for the distress and inconvenience they've been caused.*

I invited both parties to send me any further information or comments they'd like me to consider.

Mann Island didn't respond. Mrs N said she had nothing further to add.

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.

As no new information has been provided in response to my provisional decision, I see no reason to change my mind.

My final decision

For the reasons I set out in my provisional decision, I uphold this complaint and direct MI Vehicle Finance Limited to:

- Arrange for the car to be collected and bring the agreement to an end, at no further cost to Mrs N or Mr N.
- Refund all monthly payments Mrs N and Mr N have made for the period since 10 February 2023, when the car's been undriveable.
- Remove any adverse information that's been recorded on Mrs N or Mr N's credit file about this agreement since 10 February 2023.
- Reimburse Mrs N and Mr N a total of £198 for the two independent reports they obtained, on production of receipts or other suitable evidence confirming the date these invoices were paid.
- Add interest to each of the refunded and reimbursed amounts, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Pay Mrs N and Mr N £250 compensation for the distress and inconvenience they've been caused.

If Mann Island consider tax should be deducted from the interest element of the award, they should tell Mrs N and Mr N how much they've taken off. They should also provide a tax deduction certificate if Mrs N or Mr N ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 14 May 2024.

Corinne Brown
Ombudsman