

The complaint

Mr K complains JBR Capital Limited (JBR) supplied him with a car that he believes wasn't of satisfactory quality.

What happened

In June 2022, Mr K entered into a 60 month personal contract purchase (PCP) agreement for a used car. The car's cash price was £82,600, it was first registered in March 2017 and it had travelled around 25,000 miles. Mr K paid a deposit of £12,400 and the rest was financed by a loan provided by JBR. The monthly payments were around £920 with a final optional payment of around £36,100 should he wish to purchase the car.

Mr K said when he test drove the car, he noticed an abnormal noise. He said it was agreed if he purchased the car, it would be fixed. The dealership arranged for the rear carbon undertray to be adjusted as that was said to be the issue. However upon collecting it, he said the noise was still present.

In June 2022 he took it to a local garage and they said the noise may be coming from the gearbox bell housing unit, they also indicated there appeared to be an oil leak. Mr K was unhappy these issues hadn't been identified sooner.

In December 2022, he took the car to a local specialist garage who said the noise was coming from the gearbox bell housing unit. It was said the flex plate inside the unit was rattling due to a worn bearing. They said this was a common fault in that particular range and model of car. They also said there was an oil leak from the turbo.

Mr K told the supplying dealership about the same and also said there was an issue with the brakes and one of the wheels 'wobbles'. The supplying dealership agreed to arrange repairs but Mr K declined this offer because he had lost faith in their repair garage as they failed to fix the issues prior to him taking possession of the car as they said they would.

In January 2023, Mr K complained to JBR and said the rattling noise was still present and he had been told the oil leak was coming from the turbo. In March 2023 the bell housing unit was replaced. But to identify the source of the oil leak, Mr K was told the engine and turbo would need to be removed and the turbo may need to be replaced or refurbished. He was quoted £1,740 for this work to be carried out.

JBR partially upheld the complaint- they accepted there were a few quality issues with the car. They agreed to cover the cost of the repair quote for the turbo provided by Mr K. They didn't allow the car to be rejected.

The garage looked at the car in June 2023. Although they initially thought the turbo was the cause of the oil leak, they no longer believed that was the case. They said the aftermarket manifold fitted to the engine was significantly below the manufacturer's specifications which was restricting the engine's breathing capability (ventilation). In turn, they believed the pressure had forced the oil to escape through any 'weak points' resulting in an oil leak from the engine's gaskets. They recommended the aftermarket manifold should be replaced and

the engine re-built with new gaskets. Mr D complained further to JBR and asked for rejection.

Based on the above findings, JBR said the oil leak appeared to be related to the aftermarket manifold. They went on to say the car was clearly advertised as a heavily modified vehicle and Mr K was fully aware of the same and he had experience in dealing with such cars. They didn't uphold the complaint.

Unhappy with their response, Mr K referred the complaint to our service. The investigator recommended the complaint wasn't upheld. He said the evidence provided wasn't enough to determine the source of the oil leak or the damage it's caused. He also mentioned the car is heavily modified and as reported by one of the garages, it's impacting the performance and effectiveness of the car. He concluded the car was of satisfactory quality at supply.

Mr K disagreed and maintained his stance. He commented:

- The noise from the bell housing unit was raised prior to the sale and immediately afterwards. It was only fixed after some back and forth with the dealership;
- He's provided evidence of conversations from the garages shortly after acquiring the car which confirmed there was an oil leak;
- He initially declined the dealership's offer to repair the bell housing unit as he didn't believe their repair garage was competent;
- The oil leak was first noted a few days after purchase and would've been present prior to supply. It could only be identified when the turbo was removed;
- The car was modified prior to supply and it caused the oil leak. He didn't believe the modification was carried out well as it was putting pressure on parts of the car;
- It shouldn't be necessary to rebuild the engine or its gaskets for a car of that mileage.

In March 2023, I sent a provisional decision outlining my intentions to uphold the complaint. I said:

"The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that, under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.

In this case, Mr K acquired a car that was over £82,000, around five years old and had travelled over 25,000 miles. As this was a used car, it's reasonable to expect parts may already have suffered substantial wear and tear when compared to a new car or one that is less travelled.

But I also need to bear in mind this is a very expensive high-performance car. Therefore, I think a reasonable person would expect it to be durable for quite some time.

The bell housing unit

Based on the evidence presented to me including job cards, diagnostic reports and Mr K's testimony, it's evident there was a fault with the bell housing unit. According to a couple of different parties, this is a known and common issue for this particular car model.

According to Mr K he was told by the dealership following the test drive that the noise would be fixed by the time he collected the car. I have no reason to doubt what he's said as it appears the dealership arranged for the rear carbon undertray to be adjusted. This supports that they were aware of this abnormal noise and they agreed to fix it before Mr K took possession of it. So it could be said this was an expressed term of the contract.

Under section 56 of the Consumer Credit Act 1974, it says the creditor (JBR) can be held responsible for antecedent negotiations by the broker (the dealership) before the agreement was entered into. Meaning what was said about the car. Here, the dealership acted as the credit broker so JBR can be held liable for information the dealership provided at the point of supply, that Mr K relied on. Here, the dealership agreed to fix the fault, but it remained. I consider that to be a breach of contract.

Given Mr K reported the noise remained on the day of collection, it's evident the fault was present at supply so I can't say the car was of satisfactory quality. This fault doesn't appear to be in dispute, JBR accept there were quality issues with the car.

After some back and forth, a repair was later carried out in March 2023. If Mr K was required to pay for this out of his own pocket, this cost should be refunded to him by JBR (upon proof of payment).

The oil leak

Within a relatively short time after acquiring the car, Mr K said he was told there was an oil leak. There's conflicting opinions on this, the repair garage used by the supplying dealership says there was simply evidence of oil residue (not a leak), another party suggests there was a minor oil leak. Neither go into any real detail about it, they don't identify the source or extent of the leak.

Having carefully considered the differing reports on this, I'm most persuaded by the findings of the garage who removed the engine. I say this because it's clear they carried out an in-depth investigation and moved the relevant parts to get a greater understanding of what was happening. So I've placed greater weight on this report.

They said the aftermarket manifold fitted to the engine, namely the breather, was significantly reduced and well below the size of the manufacturer's recommended size. They provided photos of the same which I've considered. In turn, they said it was restricting ventilation and the pressure was causing oil to leak through the engine's gasket seals. I note the aftermarket manifold was fitted to the car before Mr K acquired it.

I'm not a car expert but from my understanding, replacing the aftermarket manifold isn't uncommon. It can improve the way air enters the engine, optimises fuel combustion and can result in improved engine efficiency, fuel economy and increased power. However what appears odd is why was such a key part of the car replaced with one that was significantly reduced in size when compared to the manufacturer's standard. It's evident this was a non-standard part and there's nothing to suggest that was specifically brought to Mr K's attention before he bought it. Based on the garage's report, it wasn't appropriate for such a change to have happened and they recommended it was replaced back to the manufacturer standard. JBR has argued Mr K bought the car knowing it was highly modified and he should expect that could lead to issues. Having looked online, I can see the modification package that was

fitted to the car and I can't see it mentions the aftermarket manifold breather would be reduced in size. So while I accept Mr K bought a modified 'supercar', that doesn't mean he should expect issues with it. The car must still be of satisfactory quality at supply.

There was a non-standard part fitted to the car and on balance I believe it's more likely than not it's causing an oil leak and potentially impacting other parts of the car such as the engine. In my opinion, I don't believe a reasonable person would expect an oil leak from a key part of the car to be present at the point of sale. Especially when considering this car's cost, age and mileage.

As mentioned above, JBR had already agreed to cover the cost of the repair when they believed the oil leak related to the turbo so it's fair to assume they accepted liability for it. So it's unfair for their stance to change now that it appears the fault is bigger than what was previously thought.

The garage's report proposes a two option solution to remedy the fault, this includes replacing the aftermarket manifold but they say this may not eliminate the oil leak. The second is to rebuild the engine with new gasket seals. Given the likely cost and time to do so, I don't believe this would be a proportionate action.

Taking a broad view of the case and the timeline of events - the abnormal noise not being fixed as agreed, the repair to the bell housing unit (opportunity to repair) and the issue of the oil leak, I'm recommending JBR should allow Mr K to exercise his final right to reject the car.

Putting things right

To put things right, JBR should end the agreement, collect the car, refund the deposit (£12,400) and remove any adverse information about this agreement from Mr K's credit file. As he's had use of the car, it's fair Mr K pays to reflect that use. There's insufficient evidence to demonstrate he wasn't able to drive it or his use of the car was so significantly impaired that a proportion of the instalments should be refunded. So I won't be saying JBR need to refund the monthly instalments paid.

If Mr K paid for any of the diagnostic reports or for the repair to the bell housing unit, these costs should be reimbursed by JBR upon proof of payment.

Lastly, I've thought about the likely impact of this situation on Mr K including multiple trips to garages for the faults. For this, I believe JBR should pay £200 compensation to Mr K for the trouble and upset caused.

Summary

Overall, I don't find the car was of satisfactory quality at supply due to the issues with the bell housing unit and the oil leak. JBR must put things right as outlined above".

Response to the provisional decision

Mr K accepted the findings. He provided copies of invoices for the repairs and asked to be reimbursed for these out of pocket expenses. He also says the car has recently stopped working but he's unclear whether it's due to the faults already reported or something else. JBR Capital didn't accept the findings. In summary they said:

- Mr K has extensive knowledge of cars and the motor industry and he should've been aware of the possible consequences of the car being modified;

- Mr K accepted the car and signed the agreement to state he was happy with its quality;
- The age and mileage of the car should be considered;
- Mr K's use of the car is higher-than-average, the faults would've presented themselves earlier if it was present at supply;
- JBR Capital can't be held liable for the information that the dealership provided to Mr K prior to entering into the agreement. The onus was on him to ensure he was happy with the car;
- The car passed its MOT in March 2022 shortly before Mr K took possession of it and no issues were found;
- JBR Capital accept there were some quality issues which is why they paid £1,740 towards the turbo repairs.
- Mr K has driven the car at high speeds therefore presumably it's fit for purpose;
- Mr K is still having modifications (re-mapping) carried out to the car whilst this complaint has been ongoing;
- The garage who fitted the aftermarket manifold has questioned the pictures from the report stating the images of the car don't appear to match;
- The issues with the car can be put down to Mr K's heavy use and the engine being overused which can lead to oil leaks.

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.

I thank both parties for their further responses. I've considered them in full but I won't comment on each point raised. Instead I will focus on what I consider to be key to reach a fair outcome.

I wish to reiterate the focus of my decision is the actions and obligations of JBR Capital under the relevant laws as outlined in my provisional findings. As the supplier of the car they are responsible for its quality and by their own admission, there were quality issues to which they've paid £1,740 towards the cost of the turbo repairs. On that basis, I'm unclear as to why they are now saying the car was fault free at supply. As already mentioned, it's unfair for JBR Capital's stance to change now that it appears the issue relating to the oil leak is bigger than what was previously thought.

I wish to make it clear, JBR Capital's belief of Mr K's extensive knowledge of cars and the fact he knew the car was modified doesn't negate their obligations under the relevant law. Equally Mr K signing the agreement to say he accepts the quality of the car doesn't absolve them of the same. Moreover, under section 56 of the CCA, JBR Capital can indeed be held responsible for the antecedent negotiations (what was said) between Mr K and the dealership before he entered into the agreement.

I can provide reassurance that I have considered the car's age and mileage. It's clear JBR Capital believe his use of the car has caused or contributed to the issues however there is insufficient evidence to support such accusations.

I've considered the correspondence from the garage that previously carried out modifications to the car in 2019 (before Mr K acquired it). They confirm they fitted this particular aftermarket manifold to the car, that isn't in dispute. While it's entirely possible the previous owner was happy with it and it caused no issue, that doesn't mean that was still the case by the time Mr K bought the car in 2022. The garage has questioned the images but there's

insufficient evidence to suggest the images don't relate to the car in question. I'm satisfied it's the car.

Based on the evidence, I'm satisfied the fault with the bell housing unit was present on the day of collection so I can't reasonably hold Mr K responsible for that. The aftermarket manifold was fitted to the car before Mr K acquired it and based on the findings of the report, I believe it's more likely than not it's causing the oil leak. Therefore I find both issues were present and/or developing at supply so I can't say the car was of satisfactory quality.

On the basis I haven't been provided with any further information to change my decision I still consider my provisional findings to be fair and reasonable in the circumstances.

Mr K has provided an invoice for the repairs to the bell housing unit (£130) and for the turbo repairs carried out in June 2023 (£3,414). I'm aware JBR Capital has already contributed £1,740 towards the latter meaning Mr K had to pay the remaining balance of £1,674. As these costs were incurred as a result of being supplied with a faulty car, JBR Capital should reimburse him for the same, upon proof of payment.

Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Mr K's complaint.

To put things right, JBR Capital Limited must:

- End the agreement with nothing further for Mr K to pay;
- Collect the car at no cost to Mr K;
- Refund the deposit amount*;
- Pay £1,674 to Mr K to reimburse him for the turbo repair cost in June 2023 (upon proof of payment)*;
- Refund Mr K for the cost of the bell housing unit - £130 (upon proof of payment)*;
- For the above payments, pay 8% simple interest per annum from the date of payment up to the date of settlement;
- Remove any adverse information about this agreement from Mr K's credit file;
- Pay £200 compensation to Mr K for the trouble and upset caused.

*If JBR Capital Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 31 May 2024.

Simona Reese
Ombudsman