

## **The complaint**

Mr T complains Borderway Finance Limited (Borderway) supplied a vehicle under a hire purchase agreement which wasn't of satisfactory quality.

## **What happened**

Mr T entered into a hire purchase agreement with Borderway in October 2022 in order to acquire a used vehicle – a pickup truck. The date of first registration of the vehicle was 15 December 2011 and it had travelled 84,260 miles. The total cash price including VAT was £9,594. Mr T made an advance payment of £1,599. The total amount payable under the agreement was £11,309.50. Mr T was to pay 49 instalments of £194.01 and a final instalment of £204.01.

Mr T took the car for an MOT test in October 2023 where it failed, and a number of major defects were reported which required immediate repair. He contacted Borderway to complain about the quality of the vehicle supplied to him.

Borderway responded to Mr T's complaint on 17 November 2023. It said the car was supplied with a valid MOT conducted by a garage on 7 October 2022. At the time of delivery, it said the car had covered 84,260 miles and by the time the MOT was carried out in October 2023 the vehicle had covered 94,017 which was a total of 9,757 additional miles. It understood Mr T had continued to use the vehicle following the MOT failure, potentially leading to further damage to the vehicle. It said this was in breach of section 4 of the Terms and Conditions under "Caring for the Vehicle". It went on to say that as the vehicle was used for business purposes, Borderway weren't responsible for the quality as per section 12 of the Terms and Conditions.

Mr T continued to liaise with Borderway and the dealership about the vehicle. Repairs were offered at a reduced rate, but Mr T didn't accept this. In April 2024 he decided to return the vehicle and it was sold at auction. Borderway have informed him he is still liable for the remaining balance under the agreement.

Mr T remained unhappy and referred his complaint to our service. Our Investigator issued a view which set out why they felt, although there was evidence to demonstrate there was a fault with the vehicle, it didn't mean the car was of unsatisfactory quality at the point of supply. This was bearing in mind the price, age and mileage of the vehicle.

Mr T didn't agree with the view. In summary, he said:

- The issue with the car was there at the point of supply. There was a court judgment in June 2024 on a separate case but regarding similar circumstances. The article confirmed a car dealership had to pay compensation for a car which was so badly riddled with corrosion that it could have caused the rear suspension to collapse. The article also explained relying on auction house checks and MOT test results didn't amount to taking reasonable precautions.
- The vehicle was not as described, and this is contrary to trading laws and

regulations. The June 2024 court case set legal precedent which can be applied to his own case as there is evidence that the vehicle was sold with issues. Borderway failed in its duty of care and could be the subject to criminal prosecution for selling a vehicle that was not safe to be on the road. It's only by good fortune that the vehicle did not separate while in use. If the appointed garage had carried out a proper MOT, then this defect would have been noticed.

- He received advice (and provided a copy of it) which stated the Consumer Rights Act 2015 means supplied goods must be of satisfactory quality. This includes being free from defects, safe and durable.
- The vehicle was used for work and pleasure. He went shopping and took his dog for walks. His partner needed their other car for work (which involved a significant amount of travel).
- He provided a photo and explained the vehicle wasn't properly repaired after the February 2022 MOT (where the fault was first discovered) but hidden in the under seal. The vehicle didn't get a full MOT at the time because of the fault and if the subsequent MOT in October 2022 had been properly carried out, then the fault would have been noticed. This is because it was still present when it went for the MOT in October 2023. His garage could not pass the vehicle due to that very reason as the vehicle would have broken apart.
- Our Investigator highlighted the older age of the vehicle and Mr T said Borderway should not provide finance for vehicles of this age. The manufacturer's warranty covers the vehicle for 100,000 miles or 10 years. The vehicle had not done this at the point it failed the MOT.
- Mr T said he was told by his own garage the rear end could have snapped off at any given time due to the condition. He also provided a copy of the invoice for the cost of repairs, and it was over £2,744 – after he only had ownership of it for one year.
- The vehicle should be able to do 150,000 miles and to fail at 84,000 (when the defect was first reported) then something more was going on. If it was just welding, then he would have had that done. His garage said it was almost impossible to do it to a high enough standard because of the chassis being curved and formed through pressing at the factory. The amount of corrosion made any attempt at welding hard, if not impossible.
- An MOT doesn't count towards a vehicle being of good quality.

As Mr T didn't accept our Investigator's view, the complaint has been passed to me to decide.

### **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 want to acknowledge I've summarised the events of the complaint. I want to assure the parties this doesn't mean I haven't considered everything which has been provided. Where I've not commented on a specific point, it's not because I've not considered it but because I've concentrated on setting out the key reasons for the decision I've reached. Having reviewed everything, I've decided this complaint should not be upheld.

The finance agreement in this case is a regulated hire purchase agreement. So, our service is able to consider complaints relating to it. Borderway is the supplier of the vehicle under

this type of agreement and so is responsible for dealing with a complaint about the quality of goods.

The Supply of Goods (Implied Terms) Act 1973 (SGA) covers hire purchase agreements where an agreement has been entered into for business purposes, but the amount of credit is less than £25,000. I've considered Mr T's intended usage of the vehicle. I understand he was self-employed and used the vehicle for work. I also acknowledge the vehicle was used in part for personal use. Nevertheless, I'm satisfied this is the appropriate legislation to consider in the circumstances of Mr T's complaint because it seems Mr T used the vehicle predominantly for business purposes.

Under a hire purchase agreement, the SGA implies a term that the goods supplied will be of satisfactory quality. The SGA says the aspects of the quality of the goods includes their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability. The vehicle would be of satisfactory quality if it was of the standard that a reasonable person would regard as acceptable taking into account the age and mileage of the vehicle and the price paid.

I'm mindful the vehicle supplied was second hand, had travelled over 84,000 miles at the time the agreement was entered into and was nearly 11 years old. The cash price of the vehicle was around £9,594 which was considerably lower than if it had been purchased brand new.

Additionally, I've also thought about the type of vehicle acquired by Mr T – a pickup truck – and its likely usage. Considering the circumstances, I think it's reasonable to expect that the vehicle might be subject to more wear and tear than a vehicle with less years and mileage. There was also a greater risk that the vehicle might need to be maintained and repaired sooner than a brand new one which wasn't as road worn.

Having reviewed the evidence, I'm satisfied there does appear to have been a problem with the vehicle. Mr T has provided pictures of the underside of the vehicle which he has explained shows the problem areas. Importantly, the vehicle failed its MOT in October 2023, and I can see there were a number of major defects which required immediate repair. This included (but wasn't limited to) defects such as:

- Rear suspension component mounting prescribed area excessively corroded significantly reducing structural strength cross member;
- Nearside rear hydraulic brake cylinder excessively weakened by corrosion;
- Offside rear hydraulic brake cylinder excessively weakened by corrosion;
- Nearside rear brake pipe excessively corroded; and
- Offside rear brake pipe excessively corroded.

Additionally, there were advisories which included (but weren't limited to):

- Rear oil leak, but not excessive diff corroded; and
- Vehicle structure is corroded but structural rigidity is not significantly reduced.

Therefore, I'm satisfied there was a problem with this vehicle. However, in order to uphold this complaint, I'd need to also conclude this was present or developing at the time it was supplied and the vehicle was of unsatisfactory quality.

Mr T feels the issues reported on the MOT failure in October 2023 are the same, or similar, to those previously reported on MOTs. He says this shows the vehicle was of unsatisfactory quality at the point of supply. He has provided an invoice itemising the parts and labour time for repairs as well as testimony in respect of what his own garage told him about the vehicle. There are no further reports about the nature of the problem. So, I've relied on the information I do have.

I've reviewed the MOT history of the vehicle. I won't repeat it in detail here, but I've noted corrosion was first reported in an MOT in February 2020. The vehicle failed the MOT at this time, but it seems repairs were undertaken, and it went on to pass in the same month.

Similarly, in February 2021 and February 2022 the vehicle also failed the MOT but subsequently passed with advisories. So, it seems reasonable to conclude the necessary repairs had been undertaken to ensure the roadworthiness of the vehicle. There were also advisories noted particularly in respect of the vehicle structure being corroded but it stated the structural rigidity hadn't been significantly reduced, and the rear brake pipe being corroded. Mr T has said brake performance was not tested in February 2022 due to the chassis being fractured. This was noted in the MOT as a major defect. However, the vehicle went on to pass in March 2022 (with advisories) indicating repairs had been carried out in this regard.

As mentioned, in October 2022 (shortly before the vehicle was supplied to Mr T), the vehicle failed the MOT. However, repairs seem to have been undertaken and the vehicle went on to pass the MOT. Mr T has questioned the validity of the MOT. I've thought about the comments he's made in relation to the vehicle but ultimately the validity of the MOT is something which falls outside the scope of our service's remit.

The vehicle had a valid MOT certificate at the point it was supplied and there are no references in this to corrosion (or any other issue) at the level that would make the car dangerous to drive or which persuades me it was of unsatisfactory quality when supplied. The vehicle passed two MOTs since February 2022, and I would've expected this to be noted on the MOT had there been faults present which had not been repaired. So, whilst the vehicle had failed the MOT previously and I note Mr T's concerns, I can't conclude the vehicle was of unsatisfactory quality at the point of supply.

Additionally, at the point the vehicle failed the MOT in October 2023, Mr T had driven it over 9,400 miles and it had been in his possession for around a year. I'm not aware Mr T raised any issues with the vehicle prior to the failure of the MOT and I think it's likely he would have reported any issues had he experienced them prior to this point. So, even though the vehicle failed the MOT in October 2023, given the time Mr T had it for and the miles added, I don't think this necessarily meant it was of unsatisfactory quality when it was supplied.

Mr T has said the manufacturer's warranty extended to 100,000 miles or ten years which ever came sooner. So, he would have expected the vehicle to last longer without needing such costly repairs. However, as mentioned this car was nearly 11 years old at the point it was supplied to Mr T and older when it failed its MOT in October 2023. Although the vehicle hadn't done 100,000 miles, I don't think this means it wouldn't have been subject to reasonable wear and tear particularly because it had already done a significant amount of mileage. I note the vehicle had failed an MOT earlier than this – but it seems it was able to be repaired to ensure its roadworthiness. So, I'm not satisfied this meant the car was of unsatisfactory quality.

I've also taken into consideration the article and information Mr T has provided about the court judgment in June 2024. I must consider relevant legislation and the information I have about the individual circumstances of Mr T's complaint. Having done so and for the reasons

set out above, I'm unable to conclude the vehicle was of unsatisfactory quality at the point of supply.

So, having carefully considered everything, I won't be directing Borderway to take any action to resolve the complaint. This is because I'm not satisfied the vehicle supplied to Mr T was of unsatisfactory quality.

### **My final decision**

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 April 2025.

Laura Dean  
**Ombudsman**