

The complaint

Miss M complains about the quality of a car supplied on finance by MI Vehicle Finance Limited ('MI').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Miss M was supplied a car on hire purchase by MI in July 2023. However, she complained to MI that she had problems with it from an early stage – particularly with the turbocharger which she says failed while she was driving. She says that the issues with the car caused her distress and inconvenience and out of pocket expenses.

MI did not agree to reimburse Miss M or pay compensation when it responded to her complaint in November 2023. So Miss M escalated her complaint to this service.

Our investigator did not uphold the complaint so the matter has been escalated to me for a final decision. I issued a provisional decision which said:

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

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

The Consumer Rights Act 2015 is of particular relevance 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".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they 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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from here') says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

MI supplied Miss M with a second-hand car around five years old and with around 66,000 miles on the clock. So I think it's fair to say that a reasonable person would expect it to be more wear and tear than a brand new car. And that might mean repairs and maintenance are required sooner than on a less road-worn vehicle.

However, while Miss M would expect some wear and tear related issues, she wouldn't be expecting notable problems straight away – particularly considering that she financed a car priced at about £20,000 and slightly over market value at the time.

Immediate issues are what Miss M appears to have suffered with the car in this instance. It is clear from messages she sent to the dealer very soon after supply that she was having an engine warning light come on – and issues with losing coolant. Communications between the dealer and Miss M show that it agreed to and carried out repairs to rectify these issues in the first four weeks of Miss M having the car. It appears that during this time it replaced a sensor, a water pump and tank and covered the cost of these.

Because of the number of issues so soon after supply, I think the car wasn't of satisfactory quality. However, repair was not an unreasonable remedy under the CRA.

However, it appears this was not the end of the early problems. I can see that Miss M says the car then wouldn't start – which was diagnosed as the starter motor. She has provided a receipt and invoice for the supply and fit of a new starter motor just over four weeks after taking supply of the car. This appears to have cost £210 in total. I don't think a reasonable person would expect to take delivery of a £20,000 car, even a second-hand one and have this type of issue in the first four weeks with moderate mileage covered during that time. So I think the car continued to exhibit early issues that show it was of unsatisfactory quality.

I know that MI has questioned why Miss M started to take the car to her own garage at this stage. But she has indicated she lost faith in the dealer considering the early issues she had – and what she (reasonably in my view) perceived as its failure to identify and sort out the quality issues with the car. So I don't think this should have prevented MI from offering to refund Miss M for this extra, unexpected cost of the starter motor.

Then it appears on 1 September – about 2 months after taking delivery of the car - the turbo failed. Miss M has provided credible evidence of this in the form of her testimony and a recovery report. Miss M says the whole experience was very traumatic as the car stopped mid-journey and started to smoke. I am sorry to hear about this.

Once again, it seems that a reasonable person would not expect the turbo to fail so soon after taking supply of the car – with moderate mileage covered. Therefore, prima facie the turbo failure is also something that makes the car of unsatisfactory quality and MI is fairly liable for putting right.

From the evidence that has been presented to me (including our investigator's conversation with the supplier of the new turbo) I am satisfied that the cause of the turbo failure is because the car had an undersized turbo in it. This appears to have strained and eventually failed. However, this matter has been complicated by what appear to be conflicting allegations as to why the car had an undersized turbo in it. The conflicting allegations are as follows:

- Miss M says that after the sale she found out from the dealer that the turbo had been modded prior to supply – and it told her to keep quiet about it in order to get a warranty repair – something she said she was unwilling to do.*
- The dealer has alleged that Miss M's partner was interested in modding the car. Furthermore, it is Miss M's partner who took the failed turbo in to the parts supplier to get the replacement – which all appears to have led MI to infer that it was Miss M's partner who was responsible for the undersized turbo fitment in the first place.*

I am unlikely to know exactly what happened here. But where things are unclear I make my decision on the balance of probabilities.

There isn't really any persuasive evidence of Miss M's partner modifying the car. Miss M has explained how he simply helped her in getting the issues with the car sorted by ordering parts and going to collect these as it was causing her a lot of stress as this was her first car. Furthermore, Miss M's credible and detailed account (that the dealer told her about a mod and asked her to keep quiet about it) is supported by some messages she sent to the dealer back in August 2023 before the turbo even failed. So it seems more likely that what Miss M is saying is correct here. Furthermore, I note Miss M has supplied diagnostic reports showing that problems with the turbo (fault codes) were first identified in early August 2023 – around 4 weeks after taking delivery of the car. Considering the short timeframe – and the history of other issues (requiring visits back to the garage to repair) it seems unlikely that Miss M would have had the car modified herself at this stage.

So I think that the turbo issue is more likely than not to be something that the car was supplied with. And I consider it rendered the car of unsatisfactory quality at the point of sale. It follows that MI is fairly liable for reimbursing Miss M for the cost of this repair. From what I have seen the fitting cost was £350 (from an invoice) and the part cost £300 (from a receipt). Once again, the replacement and repair was carried out by third parties – but considering the history here with the dealer I don't consider this was unreasonable.

I have thought more generally about the remedies under the CRA and whether reimbursing Miss M for the cost of repairs is a sufficient and fair way to put things right. I note that technically she had the right to reject the car at several points as repairs had already taken place – but appears to have accepted more repairs. She also appears willing to keep the car now despite initially asking MI if she could reject it – and has since carried out work on the car consistent with a desire to keep it (which I will discuss shortly) so overall, at this stage keeping the car but receiving reimbursement for repairs seems fair.

The turbo appears to have been replaced on 18 September 2023. But Miss M says that the car started to run noisily on 20 December 2023, and she eventually made the decision to replace the engine at a cost of £3,000 to avoid any further issues. I have thought about how MI responded to Miss M's complaint and the events since in order to decide what is fair here.

I note that Miss M when she brought her complaint to it did say to MI that she had been to garages and mechanics had told her the engine was in poor condition and a bad example of a 2018 engine. She had also inferred the car needed a new engine. However, when considering MI's response at the time I note:

- Miss M apparently had not provided MI any credible or persuasive expert reports to substantiate her claims and show the whole engine needed replacing. And considering the claims made and the significant cost of remedy – it would seem reasonable for her to have done so.*
- MI had offered to facilitate an expert inspection of the car at the time (which presumably would have helped identify if the engine did need replacing).*

So I don't think it was unreasonable for MI not to have accepted that the car needed a new engine at the time it considered the complaint.

I also note that presently:

- I have very little information or documentation about the circumstances of the claimed engine replacement;*

- the engine noise which Miss M says prompted her to get an engine replacement appears to have occurred months after the turbo repair was carried out and after MI initially considered the matter; and
- it isn't clear if and why an engine replacement was necessary and proportionate – and how that is connected to anything that had occurred previously.

Considering the factors I have identified above I cannot make a fair finding on the more recent engine issues and subsequent replacement. I think that an appropriate course of action might be for Miss M to gather any pertinent information (including any expert opinion) in respect of the engine noise problems from December 2023 and the subsequent replacement and present these to MI in order that it can consider this new information and decide if it is willing to compensate Miss M. I appreciate this might all take some time – but I don't propose to hold up this complaint. So, for clarity I am making a finding here only on the quality issues up to the failure of the turbocharger. If Miss M wishes to bring a new complaint about MI's response to any subsequent claim for reimbursement for the more recent engine replacement then she can consider doing this going forward.

Redress

As I have explained I think Miss M should fairly be reimbursed by MI for the starter motor and turbocharger repairs. MI has questioned the credibility of the invoices for these – but I am satisfied that our investigator has spoken to the garage that carried out the repairs. And that it is a legitimate garage. Furthermore, and in any event the parts companies used appear to be genuine – and I don't see why Miss M would get parts if she wasn't going to have these fitted (which naturally would attract some cost). So the costs fairly due back to her are as follows:

- £210 for the starter motor and labour
- £650 for the turbo and labour

One issue I identified is that at least one of the receipts is in the name of Miss M's partner. This service is only able to award Miss M for her own losses – not those of a third party – so in order for me to make a final direction against MI I would ask Miss M to clarify how she is out of pocket for these repairs. For example, has she or does she have to pay her partner back – or did the funds come from a shared account?

I have also considered Miss M's claim for taxi expenses. But I think a reasonable and clearer way to do things is to refund Miss M for rentals for the periods she says she was out of the car and without a courtesy car in respect of the repairs up to and including the turbocharger issue. Miss M has given us those dates and they seem credible and line up with other information like invoices and correspondence with the dealer. It appears that due to the initial issues with the car, broadly Miss M was not driving it for about a month. So I think she should get back her August 2023 monthly rental.

Miss M has described the inconvenience and distress she has suffered from the early issues with the car. Particularly, as I have said, the turbocharger incident which she says has had a lasting impact on her mental health going forward. I am very sorry to hear about this. I need to point out that I am unable to award for long term health issues as a consequential loss. These are known as claims for loss of amenity. If Miss M considers there is a wider claim in relation to her health here then before accepting any decision by me she might wish to take appropriate legal advice as to how my award (and her acceptance of it) might impact any other claims she might be considering.

I am able to make a more general award for the distress and inconvenience caused by the issues with the car and MI's response – and I think that it is clear that the issues have caused Miss M unnecessary stress and inconvenience over a period of several weeks. I also think that with the information available to it at the time MI could have arranged to reimburse her sooner. I think MI in some respects did offer support – for example its offer for inspections at its own cost. However, Miss M provided a lot of information to it to help answer its queries – and I think MI could have been more supportive in its approach to reimbursement overall.

Deciding compensation is not a science here. And issues and problems in everyday life are expected. However, here Miss M suffered more than the usual problems you might expect in everyday life and it went on sometime as she tried to get things sorted with MI. I have thought about our website guidance on such awards. I do think from what Miss M has said that the issues with the car and her claims for reimbursement have caused her considerable upset and worry. She has also described in detail the traumatic impact on her – which I am satisfied MI was aware of at the time it responded to her concerns and I think it could have done more to show its support. Therefore, I think an award of £400 is fair and reasonable here. I know Miss M has claimed significant health impacts and wants £5,000 – however, as I have said I can't make awards for loss of amenity. If Miss M wants to pursue this and a more substantial award she should note my prior comments.

Miss M also told MI that she was concerned about how her credit file was being impacted by the issues with the car as she had to pay for repairs which meant she missed a payment on the finance. I think that MI should ensure that there is no adverse information in respect of this agreement from inception to its final response – because although Miss M was under an obligation to pay for her finance, it's not fair if she couldn't do that because of repair expenses she shouldn't have had in the first instance.

My provisional decision

I uphold this complaint and direct MI Vehicle Finance Limited to:

- *(subject to the requested clarification as stated above regarding loss) refund Miss M for her loss in relation to the repairs as follows:*
 - *£210 for the starter motor*
 - *£650 for the turbocharger*
- *refund Miss M her August 2023 rental payment to reflect the loss of use of the car as discussed above;*
- *pay Miss M 8% simple yearly interest on all refunds calculated from the date of payment to the date of settlement;*
- *pay Miss M £400 for the distress and inconvenience caused to her; and*
- *ensure there is no adverse information on her credit file in relation to the finance agreement in respect of the period described above.*

If MI considers it should deduct tax from the interest element of my award it should provide Miss M with a certificate of tax deduction.

Miss M responded to say that she agrees with the decision but thinks that £1,000 would be a fairer figure for compensation considering the impact of the situation on her.

MI responded to say that the broker/dealer said:

1. Miss M's only complaint to it was about the coolant light coming on – and even though it offered repairs Miss M refused – and chose to take the car to a third party garage. It says that Miss M signed a disclaimer about the quality of repairs by this garage and it came to light the repairs were completed by a friend.
2. The dealer honoured its responsibilities towards the customer but apart from the coolant issue Miss M never returned to advise of problems and took it on herself to diagnose and repair faults for which she expects to be compensated.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below.

The submissions that MI has put forward from its dealer/broker are not persuasive in changing my decision here and I question why this information is coming to light at such a late stage. It is clear that Miss M did give the dealer the opportunity to fix some initial issues – and it previously accepted that it did carry out/arrange repairs so I am unsure why it is now indicating it hasn't had a chance to look at the car. I have already said why I don't consider that after these initial problems Miss M was acting unreasonably in going to a third party garage. And the allegations regarding the quality of work carried out on the car, or work being carried out by unqualified persons are unsubstantiated and strongly denied by Miss M. Furthermore, I don't consider the text message exchange the dealer has now produced means that MI is not liable for issues which render the car of unsatisfactory quality. It is quite unclear but to me it simply shows that the dealer acknowledges that Miss M would like to have future issues resolved herself and that because of this it won't necessarily be able to assist with costs or parts.

I also don't think saying Miss M has taken it on herself to diagnose and repair faults is fair. Miss M has described issues that occurred during her use of the car and has produced invoices from what appear to be genuine garages/parts suppliers. And there appears to be no dispute the turbo failed here. While an expert report might have been useful it seems there is sufficient evidence that the turbo failed because an undersized turbo was fitted in the car. The key issue in contention around the turbo appears to be the allegations that Miss M was responsible for this modification and I am not sure what an expert report would add to that specifically. I agree that an expert report would be useful in regard to the overall condition of the engine and the need for replacement – but I have already explained why I am not making a finding on the replacement engine issue here.

I know Miss M has said she wants more compensation for distress and inconvenience and has explained why. I want to assure her that I have carefully considered what she has said – and still consider £400, when taken with the overall redress to be fair and reasonable in the circumstances to put things right. I note Miss M has emphasised the ongoing impact on her mental health whenever she drives and panic attacks when she sees smoke. I am once again very sorry to hear this. However, as I have already said I am unable to make awards for loss of amenity. I want to underline the following from my provisional findings:

I need to point out that I am unable to award for long term health issues as a consequential loss. These are known as claims for loss of amenity. If Miss M considers there is a wider claim in relation to her health here then before accepting any decision by me she might wish

to take appropriate legal advice as to how my award (and her acceptance of it) might impact any other claims she might be considering.

I note that in her response Miss M has clarified that the receipt in her partner's name was because he collected a part for her as she works full time - but she paid for the part. So I consider this is fairly Miss M's loss and something MI should reimburse her for.

Putting things right

For the reasons given above I direct MI to put things right as set out below.

My final decision

I uphold this complaint and direct MI Vehicle Finance Limited to:

- refund Miss M for her loss in relation to the repairs as follows:
 - £210 for the starter motor
 - £650 for the turbocharger
- refund Miss M her August 2023 rental payment to reflect the loss of use of the car as discussed above;
- pay Miss M 8% simple yearly interest on all refunds calculated from the date of payment to the date of settlement;
- pay Miss M £400 for the distress and inconvenience caused to her; and
- ensure there is no adverse information on her credit file in relation to the finance agreement in respect of the period described above.

If MI considers it should deduct tax from the interest element of my award it should provide Miss M with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 26 September 2024.

Mark Lancod
Ombudsman