DRN-5061484

The complaint

Mr C complains that MBNA Limited hasn't refunded a payment he made to purchase a car he says is faulty.

What happened

In January 2022, Mr C purchased a used car from a car dealership. The cash price of the car was £6,250 and he paid £1,250 of that using his MBNA credit card, he paid the remaining balance in cash. The car was around eight years old and had travelled approximately 70,000 miles.

Mr C says that after around five months he found the car to be running 'rough' and he approached the supplying dealership about this who directed him to another garage to inspect the car. Mr C says the garage found no faults and told him the car was fine. He said he wasn't convinced by this and then in April 2023 the car had a sudden and catastrophic engine failure while he was driving.

Mr C said that the mechanic that inspected the car at the roadside said there had been a coolant leak which had caused damage to the engine. After conducting some research, Mr C says he discovered this was a commonly reported fault with the type of engine fitted into this car. He said that the manufacturer had even accepted that certain models of its cars fitted with these engines had manufacturing defects. Mr C said a friend of his had faced a similar issue with his car and the manufacturer had paid for all the repairs.

Mr C tried to contact the supplying dealership for assistance without success. He then contacted the manufacturer and had the car taken to a manufacturer approved garage to investigate the faults and have repairs carried out. He supplied the garage with the requested information such as the car's service history but says that to this day has not had any update from the garage as to the status of a repair being completed.

As he had no joy with the garage or manufacturer, Mr C contacted MBNA to make a claim for a refund under section 75 of the Consumer Credit Act 1974 ("section 75"). MBNA responded not upholding Mr C's claim and complaint and said that it had not seen any evidence to suggest there had been a breach of contract or misrepresentation by the car dealership that sold him the car. On that basis it didn't consider it had any liability to refund Mr C's payment (or any amount he paid towards the purchase of the car).

I sent MBNA and Mr C my provisional decision on 13 September 2024. I explained why I thought the complaint should be upheld. I said:

> *I've taken into account – among other things – section 75 and the Consumer Rights Act 2015 ("CRA").*
>
> *The general effect of section 75 is that if Mr C has a claim for breach of contract or misrepresentation against the car dealership he can bring a like claim against the provider of credit (in this case MBNA). There are other requirements that also need to be met in order for a section 75 claim to be made. For completeness, I'm satisfied*

those other requirements are met here.

Mr C says there was a breach of contract because the car he purchased was not of satisfactory quality. The CRA implies a term into the contract between Mr C and the car dealership that the goods sold will be of satisfactory quality.

The CRA 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. In the case of a car, I consider the other relevant circumstances might include things like the age and mileage at the time of sale and the car's history.

The CRA 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.

Mr C did not buy a new car. It was around 8 years old and had covered around 70,000 miles. Therefore, what would be considered satisfactory won't necessarily be the same as if it had been a brand new car. However, it would still be expected to be free from defects and be sufficiently durable. Having considered everything here, I don't think the car was reasonably durable or free from defects.

The car suffered a fault causing the engine to fail around 15 months after Mr C acquired it and after he had travelled around 8,000 miles in the car. It appears an issue with a coolant leak caused the engine to fail. Mr C says this is a known issue with this type of engine from the manufacturer. He says that although the manufacturer recalled some of the engines due to this issue, it is widely reported to impact a far greater range of engines than those limited to the manufacturer recall. He says as the engine had an inherent fault which caused it to fail prematurely, the car was not of satisfactory quality.

It has been widely reported that the type of engine Mr C had was susceptible to known manufacturing defects and that these are linked to the coolant system. While the manufacturer has issued a recall on some engines (which didn't extend to the engine in Mr C's car), I'm aware that the manufacturer has nevertheless agreed to cover full repair costs on other similar engines not subject to the recall.

The nature of the fault described by Mr C and the roadside mechanic that was called out to inspect the car are consistent with the type of known and accepted manufacturing defect within these types of engines. Further, I've seen from the MOT history of the car that it had previously suffered from a coolant leak (which is linked to the known manufacturing defect) prior to Mr C taking possession of it. So it appears there was an underlying problem with the coolant system prior to Mr C buying the car.

I note that the car has also been with one of the manufacturer approved garages for a significant period of time while the manufacturer decides whether to cover the costs of the repair. Given the manufacturer hasn't simply immediately dismissed a claim for repair costs also supports my view that the fault Mr C experienced is consistent with the known manufacturing defect in similar engines.

Overall, from everything I've seen, I'm persuaded that it is more likely than not that the engine in Mr C's car suffered from an inherent manufacturing fault and failed prematurely because of it. I'm satisfied the car was therefore not of satisfactory quality and by extension this was a breach of contract for which MBNA might be

jointly liable under section 75. For this reason, I think it would be fair and reasonable for MBNA to put things right.

The CRA sets out that where the goods are not of satisfactory quality, the trader (in this case the car dealership Mr C bought the car from) has one opportunity to repair or replace the goods. Mr C asked the car dealership to assist him, but it appears it never responded to his contact attempts. He therefore contacted the manufacturer which directed him to one of its approved garages where the car has remained since.

Our service has attempted to contact the garage to understand why repairs have so far not been carried out or approved by the manufacturer. The latest response from the garage says that the manufacturer needs to see the service records before making a decision about what repairs to approve. However, it seems Mr C provided the service records to the garage soon after giving them the car (over a year ago). Further, as the car appears to have a full manufacturer service history, the manufacturer ought to have access to these records itself if required.

In any event, Mr C has been awaiting a repair (or a decision on a repair) for nearly a year and a half. The CRA says that any repair attempt needs to be completed within a reasonable time and without significant inconvenience to the consumer. I think it's clear that a repair hasn't been carried out promptly and that Mr C has been significantly inconvenienced. I therefore consider that Mr C now has the right to reject the car.

I'm mindful that Mr C's contract to purchase the car was with the car dealership and not the manufacturer or garage who currently have possession of it. However, Mr C originally approached the car dealership for assistance and it did not respond so it has also not carried out a repair promptly and without significant inconvenience to Mr C. Further, even if the car dealership had agreed to investigate the faults it seems it would always have had to liaise with the manufacturer about the repairs and therefore Mr C would unlikely have been in any different position than he is now.

Given that Mr C had use of the car for 15 months I think it's fair he pays for that use. The CRA says that when rejecting goods that a deduction for usage can be made and I consider that to be reasonable here.

There isn't an exact formula for working out what fair usage ought to be. But in deciding what I think is fair and reasonable I've taken into consideration the mileage Mr C covered, how long he had the car before the engine failed, the original cash price and its age. Having done so, I consider a fair deduction for use to be £1,100.

As I think there's been a breach of contract, I think it's fair and reasonable that MBNA put things right. I consider it should now collect the car at no cost to Mr C and refund him the full cash price he paid, less an amount of £1,100 for his usage of the car. As Mr C ought to have been entitled to reject the car and therefore receive this refund at an earlier point, MBNA should also add interest at 8% simple per year to the refund.

As I've stated above, any repair ought to have been carried out in a reasonable period of time. The car had been with the manufacturer approved garage since the beginning of June 2023. I accept that engine repairs would likely take some time to complete, but I would consider that by August 2023 at the latest Mr C ought to have reasonably expected any repairs to have been carried out. I therefore think it's fair and reasonable for MBNA to pay the interest on the refund from 1 August 2023 until the date of settlement.

Both MBNA and Mr C accepted my provisional decision in principle but had further comments to make.

MBNA said that it did not have the facility to be able to collect or take ownership of the car. It said that instead Mr C could sell the car for scrap and that it would refund Mr C the difference between what I had recommended and what he received as scrap value. MBNA said that most firms that would offer to scrap a car would collect the car for free, but should there be a cost involved in collection, MBNA would be willing to cover that cost if Mr C provided proof of payment.

Mr C said that not having access to a car had impacted him significantly over a prolonged period of time. He said that he was unable to purchase another car because his funds were tied up in the purchase of this faulty car. He said that MBNA's failure to promptly uphold his claim for a refund therefore impacted his ability to work and stay mobile. He said it has also had a significant impact on his health.

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 done so, I've reached broadly the same outcome I did in my provisional decision and for similar reasons. However, I'll address the additional points raised by both MBNA and Mr C.

I accept that taking ownership of the car might be problematic for MBNA, especially in circumstances such as these where it appears the garage that has the car has now set a deadline for the car to be removed from its premises by Mr C (for reasons which aren't entirely clear). In the circumstances, I consider it fair and reasonable for Mr C to arrange to have the car scrapped and for MBNA to cover any costs involved in doing so (if there are any). Once Mr C provides MBNA with evidence that the car has been scrapped and what value he received for it, I think it's reasonable that MBNA deducts what Mr C receives from the refund of £5,150 that I set out in my provisional decision.

Mr C has set out a detailed response as to the impact not having the car has had on him. I'm sorry to hear about the difficulties he's faced and I accept not having access to a car and the funds to pay for a new one will undoubtedly have been very difficult. However, I'm sorry to disappoint Mr C, but I don't consider it fair and reasonable to direct MBNA to pay any further compensation for the impact those issues have had on him.

The underlying cause of the difficulties Mr C was facing was to do with the garage the car was with and the manufacturer not promptly repairing the car. MBNA could not reasonably be held jointly liable for the actions of either of those firms under section 75 (or any other way).

I'm satisfied that MBNA responded to Mr C's section 75 claim and subsequent complaint reasonably promptly so I don't consider there was any undue delay which might have exacerbated his losses unnecessarily – the delay remained with the garage and the manufacturer.

While I understand Mr C's point that MBNA's failure to uphold his claim and complaint in September 2023 has prolonged how long his loss has continued, I don't think this is a reason for me to award further compensation. I say this because MBNA were entitled to reach the conclusion they did. I don't think the issue of a breach of contract was so clear cut as to have made MBNA's conclusion on its liability to have been wholly irrational. And as I've

said above, the underlying issue here causing Mr C an ongoing loss was the garage and the manufacturer, something that MBNA are not responsible for under section 75.

My final decision

For the reasons given above, I uphold this complaint and direct MBNA Limited to:

- Refund £5,150, representing the original cost of the car less a deduction for Mr C's fair usage of the car. MBNA can also deduct from this refund any amount that Mr C receives as a scrap value for the car.
- Pay 8% simple interest per year on that refund from 1 August 2023 to the date of settlement.
- If Mr C incurs any costs in removing the car from the car dealership, MBNA should refund those costs on receipt of evidence that Mr C paid it.

If MBNA considers tax should be deducted from the interest element of my award, it should provide Mr C with a certificate showing how much it has taken off, so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 November 2024.

Tero Hiltunen
Ombudsman