

The complaint

Mr O complains about a car acquired through a Hire Purchase agreement with Conister Bank Limited ('Conister'). Mr O has had problems with the car and says these defects would've been present when the car was supplied. Mr O brought his complaint through representatives, but for ease I will refer to Mr O throughout.

What happened

Both sides are well-acquainted with the circumstances of this complaint and I outlined these in detail in a provisional decision. So I shan't outline everything once more here.

But in summary, Mr O acquired the vehicle in September 2022. When it was sold, it was four years and nine months old, had covered 46,418 miles and cost £29,147 including extras.

After faults arose with the car and it was inspected a number of times. The first report found the issues likely stemmed from a cracked DPF monolith which was more likely a progressive issue and not one that would've been present at the point of supply.

A separate inspection, which involved an in-depth stripping of the engine, found the most likely cause of the fault was the failure of the crankshaft bearing material. While the fault itself may not have been present when the car was first supplied, they thought this meant the material was not sufficiently durable and they found no evidence to say the way the car had been driven contributed to the issue at hand.

The car had to be serviced early and Mr O highlighted a 'Service Compliance Notification' from the manufacturer dated July 2017 referencing all 2016/17 cars. This outlines that the car may display a 'service required' message as a result of oil dilution before a service would usually be due, where continued use with high oil dilution would result in engine failure.

The investigator who initially reviewed the complaint felt the issues were consistent with a known issue, and the part in question failed prematurely. As such it wasn't sufficiently durable at the point of supply.

They thought it was fair for repairs to be carried out and a refund to cover the monthly payments under the agreement while the car wasn't working as it should. They also recommended Mr O be refunded the costs of the inspection he had carried out and be paid £250 to reflect the trouble he'd experienced.

Conister didn't agree. It felt the reports indicated the issues wouldn't have been present at point of supply and Mr O had continued to drive the car, causing additional damage. It felt the DPF fault was more likely linked to Mr O's maintenance of the car or driving style.

The investigator felt the mileage covered wasn't so significant and Mr O had serviced the car as expected, so he had maintained the vehicle as intended. And the amount of mileage covered would've most likely entailed motorway use that should've regenerated the DPF.

Conister asked for the case to be reviewed by an ombudsman and so it was passed to me to issue a decision. I issued a provisional decision upholding Mr O's complaint.

My provisional decision

After considering all the evidence, I explained I was intending to reach a slightly different outcome to the investigator.

Although the car was used, the most recent and most in-depth inspection of the car concluded that the most likely cause of the fault was bearing failure, not connected to Mr O's use or maintenance of the car. And it found the failure of the bearing material meant it was likely not sufficiently durable. This report persuaded me the components weren't durable enough, Mr O didn't cause the fault, and therefore the car wasn't of satisfactory quality.

This inspector didn't see the 'Service Compliance Notification', but I thought this would have likely influenced the conclusions of the report – and make it more likely that the issue at hand stemmed from an inherent defect rather than from user error or normal wear and tear.

In order to put things right I recommended the rejection of the car, because of how long this matter had been drawn out and that repairs could no longer be fairly completed in the circumstances. This essentially included a refund of payments Mr O made, minus an amount for the use of the car while Mr O had it, and a refund of some of his evidenced costs.

Responses to the provisional decision

Conister agreed with the provisional decision and it seems contact was made with Mr O to carry out the settlement. However Mr O had not accepted the provisional decision.

He wanted confirmation that the redress would include a refund of his deposit, in line with the rejection of the car. He also highlighted off road parking costs he has incurred since the car hasn't been usable and the costs of legal advice he obtained.

Conister was informed the rejection of the car would include the refund of the deposit and that Mr O's costs would be considered as part of the final decision.

Following this the case comes to me to issue a final decision.

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'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.

Where information or evidence is missing or contradictory, I'll make my decision based on the balance of probabilities – that means what I consider to have more likely than not happened – given the available information.

I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision. Having considered the responses to the provisional decision, I've reached broadly the same outcome.

It seems all sides agreed with my findings in relation to satisfactory quality, so I won't outline that again in great detail. I echo the findings in my provisional decision, but I will address the queries about the redress to put things right.

Mr O acquired the car through a Hire Purchase agreement with Conister. Under this type of arrangement, Conister became the supplier of the car and is responsible if the goods aren't of satisfactory quality when provided. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.

Satisfactory quality is described as the standard that a reasonable person would expect given, among other things, the description, age and price of the goods. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.

In this instance Mr O acquired the vehicle in September 2022. When it was sold, it was four years and nine months old, had covered 46,418 miles and cost £29,147 including extras.

The age of the car would mean it wouldn't be in the same condition as it was when it was first manufactured. But it wasn't so old and didn't have such a significant amount of use at the point of supply that any faults arising with it were to be expected given the previous age and use. I've also given consideration to the cost of the car which was substantial.

In general the older and more used a car is when it's supplied - and the longer a car is kept and the more it's used afterwards - the more difficult it might be to determine that any faults make the car not of satisfactory quality. In these circumstances, I would expect compelling evidence to be provided to indicate the issues here made the car not of satisfactory quality.

The first warranty report found soot contamination around the exhaust, which it says was indicative of the DPF monolith having cracked. But dismantling the engine would be necessary to confirm the state of the engine. They thought these issues would not have been developing at the point of supply, because of the time and mileage since then.

A further report, which was the most in-depth one we have, found the most likely cause of the issues here was bearing failure, not connected to Mr O's use or maintenance of the car. And I haven't seen any evidence to indicate that Mr O unreasonably contributed to the ultimate failure of the car. In relation to durability, which is a requirement for goods to be of satisfactory quality, the report says *"obviously this is a major engine unit issue which in our view should stay serviceable for more than 14,000 miles covered before requiring extensive repairs as in this case, as such, it is not likely to have reached that threshold."*

In the context of this evidence, the most likely cause of the fault here was the premature failure of the bearing material - and Mr O would not have contributed to the issue. It said *"the evidence currently will not support that the operator of the vehicle has had an effect on this particular condition"*. Given the report's conclusion points to the material components failing, I'm persuaded Mr O's use of the car wasn't the cause here.

So, the independent expert opinion persuades me the components were not adequately durable and, as Mr O did not contribute meaningfully to the fault occurring, this made the car not of satisfactory quality.

Putting things right

As I've found the car wasn't of satisfactory quality, there are a number of potential remedies under the CRA. Outside of the short-term right to reject the goods, a supplier would generally be entitled to repair the goods. However there's a requirement for repairs to be completed in good time, without significant inconvenience to a consumer, and consideration must be given to whether the extent of the repairs is disproportionate in the circumstances.

Because of the significant engine failure, and the fact the precise extent of the damage and repairs hasn't been fully established, it's quite possible repairs would be disproportionate in the circumstances. Additionally the car has not been running since September 2023. Even if repairs are now completed speedily, the time for repairs to be carried out in a reasonable time and without significant inconvenience to Mr O has long since passed. By the time this matter will have been settled the car will have been relatively untouched for over 18 months and it's not clear what condition the car is in, whether additional issues have arisen, and whether a repair of the issue at hand will make the goods conform to contract once more.

Because of this, I think it's fair in the circumstances, and consistent with the remedies available under the CRA, for Mr O to be able to reject the car. He should be refunded his deposit and all his payments since September 2023 while he hasn't been able to use the car. Once he's provided evidence of the costs he's incurred for two inspections to be carried out (£144 each), these should be refunded. Being unable to use the car, he's had to keep it safely off-road since September 2023. These costs aren't unreasonable or disproportionate and should also be refunded. The invoices provided show these currently sit at £2,375.

Mr O has asked me to consider the cost of his professional representatives. While Mr O has used a professional representative to bring his complaint, there was no requirement to do so and I don't think this was an inevitable cost of him pursuing his complaint. So I don't think it's fair to require Conister to refund him this.

This has been a drawn-out process for Mr O and would have caused a great degree of frustration. He was without a functioning car for quite some time and all this would have caused much inconvenience. He should also be paid £250 compensation to reflect the distress and inconvenience of dealing with all this.

Conister should now:

- Collect the car and end the agreement with nothing further for Mr O to pay
- Refund Mr O's deposit and all Mr O's payments since September 2023
- Refund the cost of the inspections Mr O paid for, once evidence is provided
- Refund Mr O's parking costs from September 2023 until the car is collected
- Pay 8% simple interest on those refunds, from the date of payment to the date of settlement*
- Pay £250 to reflect the distress and inconvenience caused**
- Remove any adverse information that may have been reported to credit reference agencies

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

**** If Conister does not pay this £250 compensation for distress and inconvenience within 28 days of the date on which we tell it Mr O accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.**

My final decision

My final decision is that I uphold Mr O's complaint against Conister Bank Limited. It must settle the complaint in line with what's outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 21 April 2025.

Scott Walker
Ombudsman