

The complaint

Mr K complains that a used car supplied to him under a hire purchase agreement by Carmoola Limited (Carmoola) is of unsatisfactory quality.

What happened

Mr K took out the hire purchase agreement with Carmoola in May 2024 for a used car that was around eight years old and had done around 60,019 miles. The cash price of the car was £10,250 and, under the agreement, Mr K was to make monthly payments of £314 for 41 months and £315 on month 42.

Towards the end of August 2024, having driven around 2,000 miles, Mr K started having problems with the car. He says there was a significant loss of power on acceleration, white smoke was coming from the exhaust (Mr K has sent us a video of the smoke) and the engine was backfiring. In September 2024, Mr K got a diagnostic report from a motor engineer that showed various fault codes. Mr K says he got the spark plugs replaced but this didn't solve the problems.

Mr K then had discussions with the supplying dealership and his warranty company about getting the problems looked at. Mr K says the warranty company wanted him to pay to have the engine stripped before it would do anything – something Mr K says he couldn't afford to do.

So Mr K complained to Carmoola. There were then further discussions between Mr K, the supplying dealership and Carmoola about getting the car looked at. Mr K wasn't happy with the service he was getting from the dealership. Nor was he happy with the arrangements it proposed for taking the car in, or the length of time it might take for the car to be looked at. So Carmoola arranged for it to be inspected by an independent motor engineer at Mr K's home.

The inspection took place in December 2024. In his report, the independent motor engineer said:

"Further investigation will be required to identify the reason for misfire. This misfire may be an internal related issue. The misfire and fault code at this inspection would not have been present at the time of purchase. This issue would have been noticeable at purchase/test drive, if it was present, this fault has developed after 5 months with use."

Because of the independent motor engineer's report, Carmoola didn't uphold Mr K's complaint. Unhappy with this outcome, Mr K referred it to us. The investigator who looked at Mr K's complaint upheld it. Among other things, she said she didn't think it was fair for Carmoola to rely on the motor engineer's conclusion, since he didn't know what was actually causing the misfire.

Carmoola disagrees with our investigator's findings. It says Mr K hasn't given us substantive evidence that the problem was present when the car was supplied to him. And Carmoola

says the independent motor engineer's report is clear that the problem arose only after a period of use.

So Mr K's complaint has come 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've also considered the relevant law and regulations, any regulator's rules, guidance and standards, any codes of practice, and (if appropriate) what I consider was good industry practice at the time.

Having done so, I've decided to uphold Mr K's complaint. I'll explain why.

Carmoola supplied Mr K with a car under a hire purchase agreement. This is a regulated consumer credit agreement, which means we can look at complaints about it against Carmoola.

The Consumer Rights Act 2015 (CRA) covers agreements such as Mr K's. Under it, there's an implied term that the goods supplied will be of satisfactory quality. And the CRA says goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car, the cash price and its durability.

The CRA also says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

Under the CRA, the general position is a consumer must show there's a fault with the car. But if they can do this and the fault shows the car wasn't of satisfactory quality in the first six months from supply then, broadly speaking, it's for the supplier (Carmoola in this case) to show the goods did actually conform to the contract when supplied.

As I've mentioned, when Carmoola supplied the car to Mr K, it was around eight years old, had done around 60,019 miles and had a cash price of £10,250. So I wouldn't have the same expectations of this used car as I would of one that was brand-new. As with any car, there'll be ongoing maintenance and upkeep costs. In used cars, it's more likely parts will need to be replaced sooner or be worn faster than in brand-new cars. That means Carmoola wouldn't be responsible for anything that was due to normal wear and tear while the car was in Mr K's possession.

The first thing I have to look at in deciding Mr K's complaint is whether there were faults with the car. All the evidence I have – Mr K's testimony, the diagnostic report, the video of the smoke and the independent motor engineer's report – shows various fault codes, smoke coming from the exhaust and an engine misfire. So I'm in no doubt there were faults with the car.

But it doesn't automatically follow from this that the car was of unsatisfactory quality when Carmoola supplied it to Mr K. So that's what I have to look at next in deciding Mr K's complaint.

Mr K says the supplying dealership reset all the fault codes from the on-board diagnostics after he'd had his own diagnostics done on the car. Mr K also says a trusted garage told him there had to have been problems with the car for over a year for it to be running as badly as it was. Mr K also has his own diagnostic report identifying various fault codes, as well as the video of the white smoke. All of this, Mr K says, means the car was of unsatisfactory quality when supplied.

Carmoola, on the other hand, says the independent motor engineer's report clearly states the misfire problem wouldn't have been present at the time of supply. And, in subsequent testimony, Carmoola says the engineer more generally confirmed the car would've been of satisfactory quality when supplied. Carmoola says it's not reasonable to expect it to be liable for faults that occurred from Mr K's use nor to investigate faults further once it's been confirmed by an expert that they weren't present at the time of supply.

The independent motor engineer's report is clear in its conclusion that the misfire wasn't present at the time of supply. In most circumstances, I'd attach significant weight to an expert's conclusion in reaching my decision. But in this case, the engineer's conclusion begins with him saying: *"Further investigation will be required to identify the reason for misfire"* and *"This misfire may be an internal related issue"*.

I understand there are limits to what an engineer can do during a mobile inspection – as the engineer himself says in later testimony, he couldn't do any dismantling to identify the exact fault. But I think when an engine misfires, it's a symptom, rather than a cause – and I think that's implicit in the engineer's conclusion that further investigation was needed. I don't think there's any reasonable doubt that, as the engineer says, the car wasn't misfiring when Mr K got it. But that doesn't mean there wasn't a fault developing at supply that later led to it misfiring. This doesn't seem to be something the engineer considered.

Mr K says he'd had the spark plugs changed, which I think is perhaps the most obvious thing to do when an engine misfires. But the problem persisted and the engineer knew this and was also shown the video of the white smoke. So I would've thought he ought to have considered what the underlying cause for the misfire might be. From my own research, the problems Mr K experienced – misfiring, loss of power on acceleration, white smoke – are in keeping with a head gasket failing. I wouldn't expect this to happen to a car that had done just over 60,000 miles (unless the engine had overheated, which we've no evidence of). But there's nothing in the engineer's report to show he thought about this. For example, it doesn't seem as if he checked the coolant level. For me, what this means all in all is that the engineer's approach in this case wasn't as thorough as I would've expected, so I don't find his conclusion persuasive. And that's why I'm not attaching as much weight to it as I would in most circumstances.

In May 2024, when Mr K took out the hire purchase agreement, the cash price of the car was around the market value for its make and model and, from the sales advert (which we've recently got hold of), it looks as if it was serviced before Mr K took possession of it. Mr K hadn't had the car for long and hadn't done many miles when he started to have problems. And, although the car was around eight years old and had done over 60,000 miles, I would've expected Mr K to have had some time with the car before it developed any major problems. But that isn't what happened. So, on balance – and this is finely balanced – I don't think Carmoola has shown that the goods conformed to contract when the car was supplied. On balance, I think it's more likely than not the car had an engine fault that was developing when it was supplied which affected its durability. Because of this, I don't think the car was of satisfactory quality when Carmoola supplied it to Mr K.

Having decided the car was of unsatisfactory quality, I now need to decide what Carmoola needs to do to put things right for Mr K.

Section 23 of the CRA says that if the consumer requires the trader to repair or replace the goods, the trader must do so within a reasonable time and without significant inconvenience to the consumer. I know that, before the independent motor engineer's inspection, there were discussions about the car being taken in for repair at the supplying dealership that didn't come to anything. But I think Mr K's concerns about his car being taken in for repair far from his home, and with the possibility it wouldn't be looked at for some weeks, were legitimate. And, in the unusual situation where the independent motor engineer's report wasn't as thorough as it could and, in my view, should've been, I think Carmoola ought to have done more to consider what underlying fault was causing the misfire before refusing to accept Mr K's rejection of the car. In these circumstances, I think it's arguable Carmoola failed to comply with the CRA and I think the fair and reasonable outcome here is that Mr K should be able to reject the car by ending his agreement and returning the car.

Mr K says he stopped using the car in September 2024. Given the problems he was having, I think that was fair and reasonable. Because Mr K didn't have use of the car from this time, Carmoola should refund him all his monthly payments from September 2024 until the date of settlement (plus interest). Before then, Mr K did have use of the car, so I don't think it would be fair and reasonable to direct Carmoola to refund him the payments he made before September 2024.

Mr K had diagnostics done on the car and says he replaced the spark plugs. If Mr K has invoices for these expenses and proof that he paid them, Carmoola should reimburse him for them (plus interest)

Mr K says his experiences with the car have left him feeling neglected and have affected his mental health badly. And from the correspondence I've seen, he's spent time and effort with the dealership and Carmoola trying to sort out the problems. So I think Carmoola's failure to supply Mr K with a car that was of satisfactory quality has caused him distress and inconvenience. And for this I think it's fair and reasonable for Carmoola to pay Mr K £250 in compensation.

My final decision

For the reasons I've given, I uphold Mr K's complaint and direct Carmoola Limited to:

- End Mr K's hire purchase agreement with nothing more to pay.
- Collect the car at no cost to Mr K.
- Remove any adverse entries relating to the agreement from Mr K's credit file.
- Refund all monthly payments Mr K has made under the agreement from September 2024 until the date of settlement.
- Reimburse Mr K his costs for the diagnostic test and replacing the spark plugs if Mr K supplies it with proof of payment.
- Pay 8% simple yearly interest on all sums refunded or reimbursed to Mr K, calculated from the date of payment to the date of refund/reimbursement.[†]
- Pay Mr K £250 to compensate him for the distress and inconvenience caused by being supplied with a car that wasn't of satisfactory quality.

[†]If Carmoola Limited considers that tax should be deducted from the interest element of my award, it should give Mr K a certificate showing how much it's taken off so he can reclaim that amount, if he's eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 8 October 2025.

Jane Gallacher
Ombudsman