

complaint

Mr A complains that a used car he got with finance provided by Burnley Savings and Loans Limited (BSLL) is of unsatisfactory quality.

Mr A was assisted in bringing this complaint by a family member at times, but I'll refer to anything that was said on his behalf as if Mr A said it himself - to keep things simple.

background

The background to this complaint and my provisional findings are set out in my provisional decision dated 22 May 2020 – a copy of this decision is attached and forms part of my final decision. In my provisional decision I explained what I'd decided about this complaint and what I intended to do – subject to any further submissions from the parties.

Neither party objected to my provisional findings and BSLL provided additional information in relation to the deposit paid as set out below.

my findings

I've considered all the evidence and arguments available so far to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete - as some of it is here - I make my decision on the balance of probabilities. In other words, I consider what is most likely to have happened, in the light of the available evidence and the wider circumstances.

BSSL sent us a breakdown that says price of the car was £7,682 and there was just over £1,800 owing from the previous finance - taking the part exchange of £9,000 into account. This £10,802 was added to the "cash" price of £7,682 on the finance agreement giving the total shown of £18,484. BSSL says it's satisfied the deposit paid was £250 and agreed to refund that – in addition to the other refunds set out in my provisional decision.

Our investigator sent this information to Mr A and explained I was minded to require BSSL to refund £250 in respect of the deposit, in the circumstances. He asked Mr A to respond by 1 July 2020. That date has now passed. Mr A hasn't objected or made any further submissions and I see no reason to depart from my provisional findings.

my decision

For the reasons I've given, my decision is I uphold this complaint and require Burnley Savings and Loan Limited to:-

1. take the car back at no cost to Mr A and cancel the finance with nothing further owing (in respect of this HPA) and mark it as settled on Mr A's credit file;
2. refund the deposit of £250;
3. refund any monthly payments made after the breakdown from (and including) November 2018;
4. refund the cost of repairs in the sum of £163.50;
5. pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement;
6. remove any adverse information recorded on Mr A's credit file about this HPA from November 2018 onwards; and

7. pay Mr A £100 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 September 2020.

Claire Jackson
ombudsman

**copy provisional decision
complaint**

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Mr A was assisted in bringing this complaint by a family member but I'll refer to anything that was said on his behalf as if Mr A said it himself - to keep things simple.

background

Mr A got this car in October 2016 with a hire purchase agreement (HPA) from BSLL. In October 2018, having driven the car about 20,000 miles, he had trouble with the engine overheating and low coolant levels. He had the car checked by a local garage (that I'll call M) and a coolant pipe was replaced but the car broke down a few days later.

Mr A thinks the coolant pipe was inherently faulty - as the manufacturer of his car recalled this part in other vehicles. The car was recovered to a main dealership where diagnostic checks identified low compression and coolant was found in the cylinders. Mr A was told the engine needed replacing and repairs would cost about £5,000. Mr A contacted BSLL (because it supplied the car) and got in touch with the manufacturer. After some discussion the manufacturer agreed to replace the engine at no cost to Mr A and BSLL said it would accept the car in part-exchange and arrange alternative finance after the car was repaired. The repairs took about four months and BSLL told Mr A it couldn't offer a part-exchange as he didn't meet lending criteria.

Mr A feels he was treated unfairly. He says the car came back in an unacceptable condition - it was mouldy and damp inside. He complained to the manufacturer who arranged for a third party to clean the car but Mr A says the cleaner told him the mould and damp would probably return - which it did, within days. Mr A has concerns about the way the car was stored and he doesn't think it is safe. He got a new car at the start of March 2019 - because the repairs took so long - and he wants to reject this car and end the finance agreement.

BSLL says Mr A had the car for more than six months before this issue appeared. He agreed to the repairs and the car was fixed at no cost to him so BSLL shouldn't have to do anything further.

Our investigator thinks the complaint should be upheld. He says (in summary)

- the car had a coolant pipe leak in October 2018 and the engine failed completely not long after;
- M says the engine probably failed due to damage caused by the faulty pipe;
- the failure occurred some two years after supply but a part like this wouldn't usually be expected to fail in a car of this age and mileage;
- it is likely the car had a manufacturing fault present when it was supplied;
- the manufacturer appears to have accepted that as it paid for repairs;
- Mr A wanted to reject the car and only agreed to further repairs because BSLL said it would look at arranging a part exchange;
- the repairs took far too long and Mr A was left with little option but to get another car; and
- it's reasonable to allow him to reject the car and end the HPA now.

He recommends that BSLL should take the car back at no cost to Mr A, cancel the finance with nothing further owing and refund any deposit paid along with any monthly payments made from November 2018 onwards. He says BSLL should also pay interest on the refunds and remove any adverse information from Mr A's credit file.

BSLL disagrees. It says (in summary)

- the outcome proposed is disproportionate to the loss Mr A experienced;
- when Mr A first contacted the manufacturer it looked as if the problem was wear and tear related;

- an email from the main dealer says a report from the third party garage that serviced the car shows oil levels were low which BSLL considers could have damaged the cylinders;
- BSLL offered to part exchange the vehicle after it was repaired but this offer had to be withdrawn as Mr A did not meet lending criteria;
- the problem occurred more than six months after Mr A got the car and BSLL was entitled to one opportunity to have it repaired under the Consumer Rights Act 2015 (CRA) - it was just unfortunate the repairs took longer than expected;
- the manufacturer offered repair not replacement to all vehicles affected by this issue and would have supplied a courtesy car if Mr A wanted one;
- it's unreasonable for Mr A to feel unsafe in the car as repairs were carried out to the manufacturer's standards;
- BSLL didn't have the chance to discuss things with Mr A before he arranged to get a new car; and
- he had no problems with the car after it was returned.

BSLL asked for an ombudsman to review the matter.

my provisional findings

I've considered all the evidence and arguments available so far to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete - as some of it is here - I make my decision on the balance of probabilities. In other words, I consider what is most likely to have happened, in the light of the available evidence and the wider circumstances.

BSLL supplied this car to Mr A under a HPA and it was obliged to ensure that the car was of satisfactory quality when Mr A got it, under the CRA. This service provides informal dispute resolution and I must take account of the relevant law (amongst other things). I'm satisfied that includes the CRA here but it's not my role to apply the law - only a court can do that. I make my decision based on what I think is fair and reasonable - in all of the circumstances of this complaint.

satisfactory quality

The quality of goods includes things like fitness for purpose, appearance and finish, freedom from minor defects and safety and durability. And goods are of satisfactory quality if they meet the standard that a reasonable person would expect taking all of the relevant circumstances into account - such as the price paid as well as the age and mileage (amongst other things), in the case of a used car.

According to the HPA this car was about four years old and had about 31,000 miles on the clock at the point of supply. The HPA says the "cash price" of the car was £7,782 but (just underneath) it also says the "total cash price including VAT" was £18,484. I asked Mr A's representative how much the car cost. She told me the first amount sounds about right and I'm inclined to agree - for reasons I've explained further below (under the section headed redress). I think a reasonable person would accept that a car of this age and mileage wasn't going to meet the same standards as a brand new car - as some parts would be worn and need to be replaced sooner or later - which is reflected in the lower price paid for a used vehicle.

There appears to be no dispute that a coolant pipe failed in October 2018 then the car broke down and the engine had to be replaced. I'm satisfied, from paperwork I've seen, that the relevant manufacturer acknowledged there is a coolant hose issue in some of its engines - like the one in Mr A's car - but I accept this doesn't mean every breakdown involving this sort of engine must have been caused by this defect.

I can see that M checked the car when Mr A first experienced problems. M says the coolant hose failed and this failure probably damaged the engine causing the subsequent breakdown and need for the engine to be replaced. BSLL suggests this was caused by wear and tear and refers to an email and report that suggest oil levels were low when the car was inspected by the garage that serviced the car. BSLL thinks this could have damaged the engine. Our investigator asked for sight of these documents but BSLL hasn't provided them.

I don't think cars of this age and mileage usually need the engine replacing as the result of wear and tear. I have no reason to doubt what M says about the cause of the engine damage and I consider M's conclusions are not inconsistent with the results of the check undertaken by the main dealer. I also think it's reasonable to take into account the manufacturer's decision to pay for the repairs to Mr A's car - after it was inspected by a main dealer.

On balance, I find it more likely than not this car had an inherent manufacturing issue. I'm satisfied that would have been present when the car was supplied meaning it was of unsatisfactory quality when Mr A got it.

repairs

The CRA says a supplier is entitled to one chance to repair goods in this situation. I realise BSLL considers the car was repaired at no cost to Mr A so it shouldn't have to do more. But, I think it's understandable that Mr A feels the car was repaired once already by the time he complained to BSLL - when M replaced the defective hose. And, even if I accept that BSLL was still entitled to arrange for the car to be fixed, I am satisfied that right to repair is qualified under the CRA. This provides (broadly speaking) that repairs should not take too long or put a consumer to significant inconvenience.

I think Mr A probably thought these repairs wouldn't take more than a few weeks when he agreed the manufacturer could replace the engine in November 2018. I can see he contacted BSLL and the manufacturer several times over the next few months to say he was finding it difficult to manage without the car. I've seen an email to BSLL dated 22 January 2019 where he told BSLL that the manufacturer was unable to estimate when the repairs might be completed - as the replacement engine was on back order - and explained he was having financial problems. He couldn't afford to keep making the monthly payments due under the finance and fund the cost of alternative transport, such as taxis and a hire car, at the same time.

Mr A had been without the car for nearly three months at this point and neither he nor BSLL had any idea how much longer the repairs might take. It was open to BSLL to take some steps to try and assist Mr A - it could have tried, for example, to speed up the repairs or offered to arrange a courtesy vehicle or reduce or suspend the finance payments. I appreciate BSLL thinks the manufacturer would have offered a courtesy car. But, I've seen nothing to show that's the case - and it's difficult to see why Mr A would have gone to the trouble and expense of hiring a car if a courtesy car was available.

I think it should have been clear to BSLL that Mr A was struggling financially as a result of being without the car and experiencing significant inconvenience by the end of January 2019. Taking everything into account, I think it would have been reasonable to allow Mr A to exercise his final right to reject the car (under the CRA) at that stage. And I'm inclined to agree with our investigator that it is fair and reasonable for Mr A to be allowed to reject the car now and end the finance agreement.

redress

For the reasons I've set out above I am minded to find Mr A should be allowed to reject this car and end the finance with nothing further owing. We would usually require a lender to cancel the agreement and refund any deposit paid, in this situation. The HPA here says Mr A made an advance payment here of £9,000, by way of trade in, and paid £250 cash. But, looking at the other figures set out in the HPA, I'm not sure this is correct.

I say this because the HPA says the cash price of the car was £7,682 but the total price was £18,484. Looking at the rest of the agreement, I think the £18,484 may be the total of the amount the car was sold for - £7,862 - added to the balance outstanding on finance for the car Mr A traded in. If I'm right about that, the balance due on the trade in finance would have been about £10,802. (£18,484 minus £7,682). I think the dealer may have used the residual value of the car Mr A traded in - £9,000 - plus the £250 cash Mr A paid, to settle the trade in finance.

I appreciate the £9,000 is called an advance payment in the HPA but I'm not satisfied, on the current information, that this was a "deposit" in the usual sense of the word. If the calculations above are right it would mean £1,552 remained owing on the trade in finance after the £9,250 was deducted. It looks as if the £1,552 may have been added to this HPA. If I add £1,552 to the total cost of credit set out in the HPA of £5,740 and the cash price of £7,682 the total is £14,974 - which corresponds to the balance payable under the HPA of £14,975.

Mr A acknowledges there may have been some "negative equity" on the finance for the vehicle he traded in. I understand that finance was provided by BSLL as well. And I would be grateful if the parties could please comment on what I've said above in respect of the advance payment in their responses to my provisional decision. It would also be useful to see any relevant paperwork - the original sale invoice for this car and details of the trade in car finance and how that was settled would probably be particularly helpful.

The car broke down in November 2018 and the manufacturer didn't repair it until the end of February 2019. I think it is fair Mr A should have any payments made during this time refunded as he didn't have the use of the car and wasn't provided with alternative transport.

I accept the car was returned at the end of February 2019 after the engine was replaced. Mr A says he didn't use it after that. I can see it was probably frustrating for Mr A to find the car was mouldy and damp on collection. I understand he had concerns about the way it was stored and he had no faith that things wouldn't go wrong again. I'm also satisfied Mr A had already made arrangement to finance a replacement car by this point - with help from a relative. And I don't think that was unreasonable in all of the circumstances.

The replacement vehicle was delivered at the start of March 2019 - just a day or so after Mr A got this car back. I've seen evidence that the insurance on this car was cancelled the previous November. And I'm minded to find, on balance, that it's more likely than not Mr A did not use this car after it was repaired. I'm inclined to find it fair that BSLL should refund any monthly payments made from (and including) November 2018 in full, plus interest, in these particular circumstances.

Mr A has supplied some evidence about alternative transport expenses incurred for the time he was without this car before getting the replacement vehicle. I realise this is frustrating for Mr A but I'm not persuaded it would be fair to require BSLL to refund this in addition to the refund of monthly payments referred to above - as that would mean he paid nothing for transport during this period.

BSLL's customer contact records suggest that Mr A was struggling to keep up with the monthly payments due under the HPA at times. In the event that BSLL recorded any adverse information on Mr A's credit file after the engine failed, I think it is fair this should be removed.

From the information I have at the moment, it looks as if Mr A paid M to replace the faulty coolant pipe in October 2018. According to the relevant invoice (dated 18 October 2018) the related parts and labour cost £163.50 (including VAT but excluding the cost of the MOT). For the reasons I've given I think this pipe probably failed as the result of a manufacturing defect. And I am minded to find it fair that BSLL should refund the cost of these repairs.

Mr A says his partner used this car mainly. She's not named on the finance agreement so I'm unable to require BSLL to pay compensation for any distress and inconvenience she experienced. I think it is likely however that Mr A was put to some trouble and upset himself as a result of being supplied with this faulty car. He had to contact BSLL and the manufacturer numerous times and I think the fact his partner couldn't use this car probably resulted in additional trouble and upset for Mr A as well. I am minded to find BSLL should pay Mr A £100 compensation in recognition of that.

I now invite the parties to consider my provisional findings and let me have any further comments or information by the date below. I'll look at all of the evidence available after that and make my final decision.

my provisional decision

Subject to any further submissions that I may receive from the parties by 22 June 2020, my provisional decision is I intend to uphold this complaint and require Burnley Savings and Loan Limited to:-

1. take the car back at no cost to Mr A and cancel the finance with nothing further owing (in respect of this HPA) and mark it as settled on Mr A's credit file;
2. (subject to my comments above) refund any deposit paid;
3. refund any monthly payments made after the breakdown from (and including) November 2018;
4. refund the cost of repairs in the sum of £163.50;
5. pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement;
6. remove any adverse information recorded on Mr A's credit file about this HPA from November 2018 onwards; and
7. pay Mr A £100 for distress and inconvenience.