

complaint

Mr C is unhappy Allied Irish Banks Plc (AIB) rejected his claim under section 75 of the Consumer Credit Act 1974.

background

In July 2018, Mr C bought a used car on his credit card for £2,505. And the mileage of the car was around 93,000. Soon after the purchase, Mr C drove to another country. Mr C says he noticed the smell of fumes inside the car straight away, so he took the car to his local garage in August 2018. Mr C says he was told the car needed a new turbo fitted which would cost him over £1,000. Mr C then told the dealership about the issue and the car was inspected on 3 September 2018. It was at this point, the O-ring on the turbo was replaced. When Mr C went to collect his car, he noticed this repair didn't make a difference and the smell of fumes persisted.

Mr C is unhappy as he says the car was advertised as a quality used car with a new MOT, service and a six month warranty which would cover the turbo up to 100,000 miles. Mr C says he took the car to a local garage mid September 2018 to have the repair work carried out under the warranty. Mr C says the garage contacted the warranty company and they explained that they wouldn't authorise for the repairs to be carried out as the car's mileage was too high. Mr C says the car has been parked on his drive since September 2018 and the mileage is 94,468.

Mr C raised a section 75 claim with AIB and they said they didn't think there had been a breach of contract or misrepresentation in Mr C's case. AIB said the warranty didn't cover damage caused by any foreign matter getting into or onto a part of the car and that gradual deterioration of a component in line with age and mileage of a car would be considered as wear and tear.

Our investigator looked into Mr C's concerns. She said having considered the age and mileage of the car at the point Mr C started to notice the smell of fumes, that the issue with the turbo was down the general wear and tear. She also said had the damage been present at point of sale, she would've expected Mr C to notice the fumes straight away. But as this was after driving to another country, it suggests that the issue with the turbo wasn't present at the time Mr C bought the car.

Mr C disagreed. He says as the fault occurred within six months of having the car, it was the business' responsibility to prove the fault wasn't present when he bought the car. Mr C says he noticed the smell of fumes straight away so the issue must have been present at the time of sale. So, the complaint has been passed to me.

I issued my provisional decision on this complaint setting out:

Mr C bought his car using a credit card. In this case, the relevant law I have considered is Section 75 of the Consumer Credit Act 1974. This makes AIB liable for a breach of contract or misrepresentation by the supplier of the car.

The Consumer Rights Act 2015 says that goods should be of satisfactory quality at the point of sale. The quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory. Taking into account things like the description, age and

price of the goods.

When Mr C first got the car, it was around 11 years old and had done around 93,600 miles. It's reasonable to expect that the car would show some signs of wear and tear given its age and mileage. I think it's also reasonable to accept that faults may arise with the car earlier than one would expect with a newer, lower mileage car. However, there are still certain reasonable expectations - even with an older second-hand car.

AIB have said the warranty terms and conditions say that 'no liability will be accepted for damage caused by....any foreign matter getting into or onto a part'. So, they say the repairs weren't covered under the warranty because the seals of the turbo were allowing oil to pass through the car. They also thought the issues Mr C was experiencing with the car were down to fair wear and tear.

Mr C has provided three independent quotes which appear to comment on similar components of the car being faulty. From my own research, it seems the other issues noted on the reports were as a result of the turbo seals being faulty - for example, the oil leaking from the turbo which had gone into the intercooler and caused damage. Therefore, I think it's more likely than not that the other issues arose from the turbo seals being faulty.

Despite this being a second hand, older car I think the fault with the turbo is more than reasonable wear and tear in these particular circumstances. I say this because it is an expensive fault to fix, and I think it would be uneconomical to repair, given the car's value. And I don't think it would be reasonable to expect a fault such as this to be present or developing on the car so soon after Mr C acquired the car, even considering its age, mileage and price. I also don't think it would be reasonable to expect a car to be smelling of fumes instantly and I think having a smell of fumes in the car isn't right or in my opinion, safe.

Overall, I don't think a reasonable person would consider the car to be of satisfactory quality at the time of sale. Mr C paid £2,505 for the car and I don't think a reasonable person would expect a car, of this price, to have this level of fault or expect the car to be smelling of fumes, especially so soon after buying the car.

I note Mr C has also complained about the way the car was advertised - he said it was advertised as a quality used car, with a new MOT, service and a six month warranty. And Mr C feels he's been misled as he doesn't think this car was of satisfactory quality. However, I've already found that the goods weren't of satisfactory quality taking into account the age and mileage of the car, its description and what a reasonable person would expect.

I can see that the dealership had an opportunity to repair the car but it doesn't look like this repair fixed the issue. I say this because Mr C has told us he still continued to smell fumes in the car when he picked the car up after the O-ring had been replaced. And also, the third party inspection report that Mr C has provided from November 2018 indicates the car still had some of the same issues as the inspection report from before the O-ring was replaced. So, I don't think it would be fair to continue attempts at repair. So, I think Mr C should now be allowed to reject the car and AIB should take ownership of the car.

I've thought about usage and whether Mr C should pay for any usage he's had of the car. The mileage of the car when he brought it was 93,600 and Mr C has told us the current mileage is 94,468 as he hasn't driven the car and instead, has kept the car on his drive. So, with this in mind, I think it's fair Mr C receives a full refund of the amount he paid for the car as it's clear Mr C hasn't been able to use the car very much at all. I think a refund of the full

amount of the car also takes into consideration the inconvenience Mr C has experienced and the disappointment in not being able to drive a car he's bought. So, it's for these reasons I don't think it's fair to ask Mr C to pay for any usage he's had of the car, given that he's only been able to use the car for around 1,000 miles.

AIB's response to my provisional decision

AIB responded and said they think it's likely there was always going to be a fault with the car as the mileage was 94,000. So, they didn't think there was a breach of contract or misrepresentation.

Mr C's response to my provisional decision

Mr C responded with the following points:

- Other losses incurred – Mr C said he's also been at a loss by paying the tax and insurance for the car as he hasn't been able to drive it for around two years due to it being of unsatisfactory quality. Mr C asked me to consider a refund of these costs.
- The total cost of the car – Mr C says he paid more than £2,505 as mentioned in my provisional decision. Mr C says the total cost of the car was actually £2,866. Mr C says in addition to paying the £2,505 on his credit card, he also paid some of the payment using another card and some from a part exchange payment. Mr C also provided us with an invoice to show the cash price of the car was £2,655.
- Court fees – Mr C says when his complaint was pursued against the dealership via the court, they recommended he receive just over £3,000 – Mr C says this amount was also inclusive of other court costs and interest which had accrued. Mr C says this amount would have put him back in the position he would have been in prior to buying the car. I note Mr C didn't receive this payment as ordered under the court judgement as the dealership is no longer in existence.
- Storage fees – Mr C asked AIB to pay a weekly storage fee of £10 so that he can keep the car in a safe place and also to avoid the risk of potential vandalism. Mr C says if he had to claim on his insurance, the premiums would increase for the next five years.
- Mr C provided an invoice from July 2018 – which was for the supply and fit of two GB number plates and to also supply and fit head light beam adapters
- Mr C provided an invoice from August 2019 – call out to attach battery charger and fob battery

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've communicated my thoughts with both parties on all of the above points before reaching my final decision and gave both parties an opportunity to respond. I've addressed each additional point raised below:

Other losses incurred

I've thought about what Mr C has told us. It's clear from Mr C's testimony as well as what he has told us about the cars' current mileage, that he hasn't been able to drive the car. So, on reflection, I think it's fair AIB refund Mr C the cost of the following upon receipt of evidence from Mr C to AIB:

- Tax
- Insurance
- And any MOT costs during the time Mr C wasn't able to use the car.

Plus 8% simple yearly interest from date of payment to date of settlement.

The total cost of the car

I've looked at the invoice provided by Mr C and I can see the cash price for the car was £2,655 – this was made up of £2,505 on his AIB credit card, £100 deposit in cash and £50 from a car he part exchanged. I note Mr C has said the total cost of the car was actually £2,855 (inclusive of a £60 charge for paying on his credit card). I asked Mr C to provide me with evidence to show the further amount he paid (the difference between the cash price of the car showing on the receipt which was £2,655 and the total price Mr C says he paid which was £2,855).

Mr C responded and said for security reasons, he shreds all bank and credit card statements once he checks them over. Mr C also says he wipes all financial transactions from his computer to avoid any security risks. I've thought about what Mr C has said, however, I can only base my decision on the evidence I have. And this shows the total cash price of the car was £2,655. So, I don't think I can fairly ask AIB to pay Mr C more than £2,655.

Court fees

Mr C has provided us with a breakdown of what the court ordered he receive from the dealership. Whilst I can appreciate Mr C has asked for the same amount, we are an alternative to the courts so we wouldn't necessarily make the same award as a court. And we don't usually award any legal fees which a consumer may have incurred. I have to also bear in mind that it was Mr C's choice to pursue matters through the courts, which he was of course free to pursue. But I don't think it's fair to ask AIB to cover the court fees Mr C incurred.

Storage fees

I appreciate Mr C has asked AIB to pay weekly storage costs for the car. But from what I understand, Mr C's car hasn't been vandalised and where Mr C chooses to keep his car is down to him. Mr C hasn't shown that he has incurred these costs, so I won't be asking AIB to pay Mr C £10 a week for storage.

Invoice from July 2018

Mr C says he had to get two GB number plates fitted and also head light beam adapters on the car – Mr C says these are a legal requirement to drive outside of the UK. Mr C has told us the dealership agreed to fit these but that this didn't happen. So, Mr C had to arrange for this to be done himself and he has provided us with an invoice to show the amount he paid. Whilst there isn't a record of this conversation with Mr C and the dealership, I'm persuaded by what Mr C has told us. I say this because the reason Mr C bought this car was so he could drive abroad. In addition to this, I think Mr C has incurred a cost for something he's not been able to use due to the car being of unsatisfactory quality. The invoice provided by Mr C

seems to be cut off at the end, but I think the amount paid was £35.93. Mr C hasn't provided us with anything to persuade me he paid a different amount. So, I require AIB to refund Mr C £35.93 plus 8% simple yearly interest from the date of payment to the date of settlement.

Invoice from August 2019

Mr C says he had to arrange for the car battery to be charged in order to rotate the wheels to stop the tyres from deteriorating. Mr C paid £30 for this to be done. I think it's fair for AIB to reimburse Mr C this amount plus 8% simple yearly interest from date of payment to date of settlement. I say this because I'm satisfied based on everything Mr C has told us and the current mileage of the car, that Mr C hasn't been able to use the car for two years. Therefore, I think the issue with the car battery not being charged flows from the car being of unsatisfactory quality.

my final decision

I'm upholding this complaint and I require Allied Irish Banks Plc to:

- arrange to take ownership of the car and for it to be collected at no cost to Mr C;
- refund Mr C the cost of the tax, insurance and any MOT costs incurred during the time Mr C wasn't able to use the car upon receipt of evidence from Mr C to AIB,
- refund the £35.93 Mr C paid from the July 2018 invoice and the £30 from the August 2019 invoice,
- pay Mr C 8% simple yearly interest on all refunds calculated from the date of payment to date of settlement*; and
- rework Mr C's credit card account as if the payment of £2,505 for the car was never made, refunding any associated interest and charges – if this results in a credit balance Mr C should receive a refund plus interest at 8% per year simple from the date of that credit balance to the date of settlement*.
- Refund Mr C the additional £150 he paid towards the cost of the car plus 8% simple yearly interest from the date of payment to date of settlement.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 December 2020.

*If Allied Irish Banks Plc think that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr C how much they've taken off. They should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.