

The complaint

Mr K is unhappy with the quality of a vehicle that was supplied to him under a hire purchase agreement with MI Vehicle Finance Limited, trading as Mann Island.

What happened

On 27 July 2023 Mr K took out a hire purchase agreement with Mann Island. This was for a used vehicle with a cash price of £35,995. At the time it was just under four years old and had covered around 24,148 miles. Mr K paid a deposit of £24,495. The rest was to be repaid over five years, using the finance agreement.

Mr K told us that he didn't use the vehicle for the first week because he was waiting for his private number plate to arrive. He said the engine started making a noise on 14 August 2023, so he got in touch with the dealer and sent them a video of the noise it was making.

Mr K said he tried to drive straight back to the dealer, but the engine cut out. He's shown us a copy of the report he was given by his breakdown and recovery service which records the mileage to have been 24,918 at that time. The breakdown report confirms the problem couldn't be fixed, so the vehicle was transported back to the dealer for Mr K.

Mr K told us that the dealer contacted him a week later, asking if he'd changed the sump. He said he hadn't had any work done to it – and that he wouldn't have any need to pay for repairs because the vehicle came with a six-month warranty.

The dealer arranged for an independent engineer to inspect the vehicle on 21 August 2023. The engineer reported:

"It is clear the oil sump is in as new condition with also a new sump plug with visible signs of sealant around the edge of this.

The oil sump bolts have signs of being moved, and the sump pan is not in the condition of the surrounding components.

The vehicle appears to have had a new DPF fitted the prop shaft bolts have been changed.

With the engine running there is a loud audible knock from what sounds/appears to be the bottom end of the engine.

The engineer is unable to confirm when these repairs have been carried out, due to no proof/invoices to verify.

Mann Island told us that they received a complaint from Mr K on 23 August 2023, saying he wanted to reject the vehicle. The dealer arranged for it to be inspected on 9 October 2023 by a local mechanic, who reported:

"engine sump is brand new and scrupulously clean.... the inference being that the engine sump has been fitted subsequent to the point of sale."

"I suspect the original engine sump suffered possible impact damage, loss of oil and subsequent engine damage, the underside of the vehicle seems to have been cleaned to remove traces of oil etc."

Mr K arranged for another independent engineer to inspect the vehicle on 31 October 2023. That engineer's report concluded:

"We were unable to confirm any fault with the vehicle as we were advised not to start the engine. However, it is reported that the engine is running on its own lubricant and this is often an indication of deterioration developing, most often in the turbocharger bearings which allows oil to enter the induction system and causes the particular condition; it can also cause the engine oil to become depleted leading to bearing failure.

"Assuming the information provided is correct... this condition has not solely developed in the 732 miles the vehicle has covered since point of purchase and would be considered a developing fault at the time of sale."

"We can confirm that some components appear to have been replaced and the vehicle has been cleaned on the underside. However, we cannot confirm at this stage when or where repairs have been completed."

Mann Island rejected Mr K's complaint. They said both independent engineers' reports confirmed the vehicle had been worked on since it was delivered to Mr K. They said there was evidence that the car had covered nearly 1,000 miles whilst it had been in his possession, but the parts were brand new and clean.

Dissatisfied with this response, Mr K referred his complaint to our service. After reviewing the evidence, our investigator said he didn't think the vehicle had been of satisfactory quality when it was supplied to Mr K.

To put things right, the investigator said Mann Island should end the agreement with nothing more for Mr K to pay; refund the £24,495 he'd paid in advance; and refund all the monthly payments Mr K had made since the car broke down on 14 August 2023.

The investigator also thought Mann Island should pay Mr K £200 for the distress and inconvenience caused by being supplied with a car that wasn't of satisfactory quality; and remove any adverse information they'd recorded on his credit file about the agreement.

Mr K accepted our investigator's recommendations for how his complaint should be resolved. Mann Island disagreed. They said both independent reports said some of the parts underneath the vehicle were brand new – and that it wouldn't be possible for those parts not to have picked up dirt and dust if it had travelled 1,000 miles since they were replaced.

Mann Island supplied more evidence from mechanic who'd inspected the vehicle on 9 October 2023. He said he'd carried out the pre-delivery inspection, oil and filter change on this vehicle on 28 July 2023. He said he would've commented if the sump was brand new at that time. He pointed out that the independent engineer noted the engine oil was *"very clean in appearance"* on 31 October 2023, and said:

"this would not be the case after running the vehicle for 730 miles under normal circumstances because of contamination / missing of residual oil remaining in the engine from a normal drain."

"If indeed the turbo has suffered damage this would be concurrent with the loss of oil as was suspected in my original report coupled with major engine damage due to lack of lubrication."

Mann Island asked for an ombudsman to make 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.

The agreement between Mr K and Mann Island was for hire purchase, so I can consider a complaint about it. Under this type of agreement Mann Island is the supplier of the vehicle, so they're responsible for a complaint about its quality.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says every contract to supply goods is to be treated as if it includes a term saying the quality of the goods will be satisfactory. The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances.

I wouldn't consider the vehicle to be of satisfactory quality after it broke down, because I've seen evidence showing the engine couldn't be started again. The point for me to decide is whether it had been of satisfactory quality when it was supplied to Mr K.

The report from Mr K's breakdown service, dated 14 August 2023, records the mileage of the vehicle to have been 24,918. So, Mr K only had around two weeks' and 732 miles' use of it before there was a problem with the engine.

The CRA explains the approach to be taken if a vehicle is found not to be of satisfactory quality within six months of the date it was delivered to the customer. In those circumstances, I'd generally start from the assumption that it wasn't of satisfactory quality when it was delivered.

But in this case Mann Island argue that there's evidence showing work's been carried out underneath the vehicle whilst it's been in Mr K's possession. They suspect the original sump suffered impact damage, and the loss of oil caused the damage to the engine. Mr K says he hasn't had any work done on the vehicle. Where the evidence is contradictory, as some of it is here, I need to decide what I think is most likely to have happened.

It isn't disputed that parts underneath the vehicle have recently been replaced. I've seen reports from three different businesses, all confirming this.

Two of the reports were from independent consultant motor engineers. Those engineers are in business to provide independent expert opinions to help resolve complaints and disputes. Having reviewed their reports dated 21 August 2023 and 31 October 2023, I note they both said they were unable to confirm when the repairs had been carried out.

Only one of the independent engineers commented about the likely cause of the engine problem. He said this may be due to turbo failure, but that it would need further investigation.

The other evidence I've seen about the condition of the vehicle is from a mechanic based in the dealer's area. He said he'd carried out a pre-delivery inspection for the dealer on 28 July 2023 - and that he would've commented if the sump had looked new at the time.

The mechanic provided a copy of his inspection sheet, on which he'd noted that he'd changed the oil and filter. He said on 31 October 2023 the independent engineer reported that the oil was "very clean in appearance". The mechanic said this wouldn't be the case if the vehicle had driven 730 miles since its last oil change.

I don't find this mechanic's evidence persuasive. Although he inspected the vehicle before it was supplied to Mr K, I'm not convinced he would've made a note of any parts that looked new. I say that because I don't think that's what he would've been asked to look for, or record.

If it was clear that the same sump and engine oil couldn't have been present since the vehicle was supplied to Mr K, I think the independent engineers would've said so. When thinking about this I also bear in mind the mechanic's pre-existing business relationship with the dealer. I don't think he can be said to be independent in this matter.

None of the evidence I've seen confirms what caused the problem with the engine. But for the reasons I've explained, I'm not persuaded that it was most likely to have been caused by something that's been done to the vehicle whilst it's been in Mr K's possession.

Given that Mr K only had around two weeks' and 732 miles' use of the vehicle before the engine problem came to light, on balance, I consider it more likely that this issue was already present or developing when he got it. It follows that I find the vehicle wasn't of satisfactory quality when it was supplied.

Putting things right

I've seen evidence confirming Mr K asked to reject the vehicle within 30 days of getting it, and I'm satisfied that he had the right to do so. So, Mann Island should collect the vehicle and end the agreement with nothing further for Mr K to pay. And they should refund the deposit he paid upfront.

Mr K was able to use the vehicle until it broke down on 14 August 2023. I think it's fair for him to pay for the use he's had. But Mann Island should refund all the payments he's made for the period since it broke down, because he hasn't been able to drive it.

Mr K told us that this situation has been stressful and caused problems for him. I've seen evidence showing he had to have the vehicle recovered because it wasn't driveable. Mr K said he's had to get another car – and that he's found it very difficult to keep up the repayments, road tax and insurance for this vehicle at the same time. I think it's fair for Mann Island to pay Mr K £200 compensation for the distress and inconvenience this caused him.

I don't think it would be fair for Mr K's credit file to be adversely affected as a result of him being supplied with a vehicle that wasn't of satisfactory quality. So Mann Island should remove any adverse information that's been recorded about this agreement.

My final decision

For the reasons I've explained, I uphold this complaint and direct MI Vehicle Finance Limited to:

- Collect the car and end the agreement, at no further cost to Mr K.
- Refund the £24,495 deposit Mr K paid up-front.
- Refund all monthly payments Mr K has made for the period since 14 August 2023.
- Add interest to each of the amounts to be refunded, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Pay Mr K £200 compensation for the distress and inconvenience he's been caused.
- Remove any adverse information that's been recorded on Mr K's credit file about this agreement.

If Mann Island consider tax should be deducted from the interest element of the award, they should tell Mr K how much they've taken off. They should also provide a tax deduction certificate if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or

reject my decision before 7 August 2024.

Corinne Brown
Ombudsman