

**BETWEEN**

**EP**  
APPLICANT

**AND**

**UK LTD**  
RESPONDENT

**AND**

**UKU LTD**  
SECOND RESPONDENT

Date of Order:

7 December 2016

Referee:

Referee Perfect

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the first respondent, UK Ltd, is to pay the sum of \$3530.82 directly to EP on or before 26 December 2016 and EP is declared to be not liable for the amount of \$670.74. The claim against the second respondent, UKU Ltd is dismissed.**

## **Facts**

[1] In May 2014 EP delivered her vehicle via tow-truck to UK Ltd because it failed to go into gear while driving home.

[2] In December 2014 the vehicle, still in UK Ltd's possession, failed a Warrant of Fitness, further work was done on it and the vehicle passed. An invoice was issued by UK Ltd for \$3895.74, on which the date of 10.12.2014 is handwritten. EP has paid \$3225.00 in total in three separate payments.

[3] After the WOF was obtained, EP says she was advised by UK Ltd that the car now had an idling problem that needed to be addressed. From May 2014 to October 2015, EP emailed UK Ltd regularly to ask when her car would be ready. She finally got it back on a tow-truck in October 2015 which had picked it up from the yard of UKU Ltd.

[4] EP says that the original gear issue has not been resolved and the car is not driveable as well as being in a considerably worse state cosmetically than when she delivered it to UK Ltd. She questions how it obtained a WOF in December 2014 and requests a refund of the amount paid as well as a declaration of non-liability for the balance of the amount invoiced by UK Ltd, plus compensation for tow costs, registration and insurance and remedy to the cosmetic issues evident on the car's return.

[5] UKU Ltd attended the hearing, having been joined to the claim after an initial hearing before another Referee where UK Ltd had stated that UKU Ltd had been the last company to work on the vehicle and implied that UKU Ltd may therefore be liable for any current problems with the vehicle. It was also unclear at that stage which party had contracted UKU Ltd to undertake any work.

[6] UK Ltd did not attend the hearing so this order is made in its absence as per section 42 of the Disputes Tribunals Act 1988.

## Issues

[7] The issues to determine are:

- a) Did EP have a contractual relationship with one or both respondents?
- b) Did UK Ltd perform its car repair service in a reasonable time as per section 30 of the Consumer Guarantees Act 1993 ('CGA')?
- c) Did UK Ltd perform its service with reasonable care and skill (section 28, CGA)?
- d) Was any failure a failure of substantial character (section 36, CGA)?
- e) What remedy is available to EP?

*Did EP have a contractual relationship with one or both respondents?*

[8] I find that EP contracted UK Ltd to repair her car and had no direct relationship with UKU Ltd. EP says that she did not know UKU Ltd were involved with the matter until she discovered around October 2015 that her car was/had been on their yard.

[9] This is consistent with UKU Ltd's version of events. Mr A and Mr B for UKU Ltd say that they received a call from C at UK Ltd asking them to check the idling on an Alfa but not to spend too much time on it. They could not diagnose an obvious fault without spending more time so they say they ended up doing no chargeable work on the car, as they were waiting for further instructions from C that did not come, and they therefore do not have a job card recording dates. The car ended up sitting in their yard for some months in 2015 until a tow truck collected it and delivered it to EP. They did not know who owned the car and are clear that they were engaged by UK Ltd to do some preliminary diagnosis and nothing further.

[10] UKU Ltd consequently has no contractual liability to EP and the claim against them is dismissed.

*Did UK Ltd perform its car repair service in a reasonable time as per section 30 of the Consumer Guarantees Act 1993 ('CGA')?*

[11] I find that the 17 months that UK Ltd had EP's car in its possession is an unusual and unreasonable amount of time. EP says that C of UK Ltd told her that he had to get parts in from the US but here is no evidence of parts having been obtained (such as international freight on the invoice).

[12] The UKU Ltd representatives said that the work shown on UK Ltd's invoice, which was apparently completed between May 2014 and December 2015 should take no more than 1.5 days once parts are received. No evidence of timing was received from UK Ltd to account for the extraordinary length of time taken, even for the initial repair (on the gears).

[13] In addition, the idling issue for which UK Ltd delivered it to UKU Ltd for preliminary diagnosis was never repaired as UKU Ltd spent many months waiting for instructions from UK Ltd which were not forthcoming (UKU Ltd say they were told by C at one point that the car's owner had been run over and they should not incur any charges, a statement that they later discovered was untrue).

*Did UK Ltd perform its service with reasonable care and skill (section 28, CGS)?*

[14] EP says that when she received her car back, she could not put it into first gear without it popping back out, which was the same problem she had it towed to UK Ltd to fix in May 2015. While she did not provide independent mechanical evidence of this issue, she has provided multiple signed statements from neighbours and friends that attest to the fact that the car was not driveable when she received it back.

[15] Even though the car passed a WOF in late 2014 during its time in UK Ltd's possession, the UKU Ltd representatives noted that transmission issues would not necessarily be picked up during WOF testing. I therefore do not see the WOF as proof that the transmission work charged for had in fact been done.

[16] I also infer from the fact that EP asked for an invoice from UK Ltd after she had received her car back in October 2015 to demonstrate what work had been done, that the invoice for \$3895.74 was first supplied in October 2015 even though it contains the handwritten date 10.12.2014. UK Ltd have provided no evidence such as suppliers' invoices for parts to show that the parts charged for, have in fact been fitted.

[17] Given the extraordinary circumstances of this case, I accept on the available evidence that EP's car was returned to her with the original problem still existing and that therefore UK Ltd has not performed the service with reasonable care and skill, if indeed it has been performed at all.

*Was any failure a failure of substantial character (section 36, CGA)?*

[18] I find both failures of guarantee to be failures of substantial character as I am persuaded that the service provided by UK Ltd would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure, both in terms of the length of time EP's car was in UK Ltd's possession and the states of the vehicle, mechanically and cosmetically, on its return.

*What remedy is available to EP?*

[19] I find that EP is able to claim both the reduction in value of the service and any losses resulting from the failure under section 32(b) and (c) of the CGA. Based on all of the above findings, I conclude that EP has received no value from UK Ltd's service and I therefore find that the appropriate reduction in value is a full refund of all monies paid to UK Ltd and non-liability for the remaining balance invoiced.

[20] EP has shown that she made three payments totalling \$3225.00 to UK Ltd. The last of these was made in December 2014 and I therefore award that amount in full as well as interest on that amount for 15 months at the judicature rate (I do not include the 9 months between EP receiving her car back and lodging a claim), being \$201.56.

[21] EP has also claimed for towing costs, registration and insurance costs as well as the cost to remedy the cosmetic issues evident in the photographs she provided. She has not provided evidence of these costs but as it is agreed by both parties present that her vehicle was towed from their yard to her house, I set a nominal amount of \$200.00 for towing and accept that registration continued to be paid and was of no benefit to EP because of the extraordinarily long period for which UK Ltd retained her car – I also set a nominal amount of \$200.00 towards registration. Both these losses were losses resulting from UK Ltd's failure of guarantee.

[22] However, EP has claimed only \$4000.00 and as that needs to include non-liability for the balance of the \$3895.74 invoiced by UK Ltd, being \$670.74, the maximum payable to her (excluding judicature interest) is \$4000.00 minus \$670.74, being \$3329.26. The total reduction in value and consequential losses are therefore reduced to that maximum of \$3329.26 and judicature interest as per finding 20 is added for a total payable by UK Ltd of \$3530.82.

[23] In addition to that EP is not liable to pay the balance on the invoice of \$670.74.