

The complaint

Mr C complains about the quality of a car he has been financing through an agreement with FCE Bank Plc ("FCE").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my 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.

I know it will disappoint FCE, but I agree with the investigator's opinion. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr C acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

complaints about the dealership's service

The relevant legislation says the dealership are acting as agents of FCE when negotiating the finance agreement. But FCE aren't responsible for the dealership's service standard. If Mr C wants to complain about that he'll need to direct his complaint to the dealership.

the quality of the car

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then FCE, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances

In a case like this which involves a car the other relevant circumstances would likely include things like the age, mileage and price at the time the car was supplied to Mr C. This was a new car so I would not expect it to have anything wrong with it.

The relevant legislation says that if a fault occurs on a car within the first six months it is to

be assumed it was present when the car was supplied, unless the business can show otherwise.

Mr C didn't take receipt of his new car until 31 July 2017. In January 2018, within six months, he reported a problem with his Ad Blue Service warning light. The dealership diagnosed an electrical problem and said a new wiring loom and fuse box would need to be fitted. The wiring loom needed to be fitted by a third party and Mr C has provided evidence that when he realised this he asked to reject the car.

The relevant legislation allows the business one opportunity to repair any fault that is present or developing when the car is supplied. I'm persuaded the business had that opportunity when they repaired the headlights on Mr C's car in November 2018. I'm also persuaded that the wiring loom problem was developing at the point of supply so, as the business had already exhausted their one opportunity to repair the car, Mr C could have rejected it in March 2018 when that fault was reported. But as he clearly accepted a repair to the wiring loom I don't think the business were wrong not to reject the car at that point.

But the relevant legislation says that any repair needs to be done in a reasonable timeframe. Mr C was waiting for a repair from early March 2018 until early July 2018 and I don't think that is a reasonable timeframe. I'm persuaded that the business should have allowed Mr C to reject the car when I think the evidence suggested he asked to in July 2018. Mr C made this request to the dealership when it became apparent a full repair hadn't been completed and the wiring loom fix was still outstanding. I'm not persuaded he would have agreed to send the car to have the wiring loom repaired if the dealership had explained his rights to rejection. It seems he only conceded because he thought he had no other option.

And, even if I'm wrong about that, I still think FCE should allow Mr C to reject the car. He's explained that the LED lights still don't work on his conversion kit. That conversion kit was financed through his agreement with FCE and I think they are responsible for its quality. Whilst the LED lights appear to have worked initially they failed as a result of a repair that the dealership were completing to the wiring loom. And, as the wiring loom is a fault that I'm persuaded was developing at the point of supply, it would seem reasonable to consider that a failed repair. In those circumstances FCE should also allow the car to be rejected.

Putting things right

FCE should take the car back and end the finance agreement with Mr C. They should refund any deposit Mr C has paid and they'll need to add 8% interest to that refund as Mr C has been deprived of that money whilst funding an unsatisfactory vehicle.

Mr C was without his car for four and a half months whilst the wiring loom/fuse box issue was being resolved. It's not fair for him to be paying for a car he wasn't able to drive so FCE should refund the finance instalments he paid during that period (£2040.48) and they should add 8% interest to that refund as Mr C has been deprived of the money.

I think Mr C has never had full use of the car he was financing. He's been plagued by problems which I think can almost all be fairly related to issues on supply or issues with failed repairs. In those circumstances the investigator suggested FCE should also refund 10% of the finance instalments he's paid. I think that's a little excessive given that Mr C could still drive the car. But I note the investigator did not ask the business to pay any compensation for the distress and inconvenience that Mr C has clearly experienced. Overall, taking the loss of use and distress and inconvenience compensation into account, I think a refund of 10% of instalments would adequately compensate Mr C for both issues.

My final decision

For the reasons I've given above I uphold this complaint and tell FCE Bank Plc to:

- end the agreement and allow Mr C to reject the car;
- collect the car at no cost to Mr C;
- refund any deposit and add 8% simple interest per year from the date of payment to the date of settlement;
- refund £2040.48 for the time the car was out of Mr C's possession and being repaired and add 8% simple interest per year from the date of payment to the date of settlement;
- refund 10% of the remaining finance instalments in respect of the loss of use Mr C has experienced from the car and the distress and inconvenience he's suffered;
- remove any adverse reports they may have made to Mr C's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 March 2021.

Phillip McMahon
Ombudsman