

The complaint

Mrs J complains that a car acquired with finance from First Response Finance Ltd (FR) wasn't of satisfactory quality.

What happened

In January 2021 Mrs J was supplied with a car and entered into a hire purchase agreement with FR. At the point of supply the car was around 4 years old and had covered 31,662 miles.

A few months into the agreement, Mrs J experienced engine failure. The engine was replaced under warranty.

Mrs J says she had only covered around 1000 miles after getting the car back following repairs when the engine failed a second time. She took the car back to the supplying dealer, but it refused to help, and said the issue had been caused by Mrs J using the gearbox to slow down the car, causing the engine to over revv and causing the con rods to go through the engine.

Mrs J arranged an inspection of the car at a third-party garage. The inspection found that the engine failure had been caused by debris in the engine, probably caused by spark plug failure on cylinder 2, and not by driver style.

Mrs J complained to FR and asked it to cover the cost of repairs. FR responded and said it wouldn't accept responsibility for the repairs because it hadn't seen conclusive evidence that the car was faulty at the point of supply. As a gesture of goodwill, FR offered Mrs J the opportunity to scrap the car and pay the scrappage funds to them, in return for which it would write off the remaining balance under the agreement.

Mrs J wasn't happy with the response and complained to this service. She wants a refund of her deposit and all payments she's made under the agreement.

Our investigator upheld the complaint. He said he thought the car was of unsatisfactory quality because Mrs J had experienced engine failure twice in nine months. The investigator said that he hadn't seen any evidence to suggest that the engine failed due to driver style and said that the engine specialists report stated that the engine failure hadn't been caused by driver style.

FR didn't agree. It said it had spoken to the main dealer, who said that based on its inspection of the car, the repairs shouldn't have been covered under the warranty the first time the engine failed. FR also said it doubted the impartiality of the engine specialists report because it had contacted them after it issued its final response to challenge its 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 Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. I would expect a second hand car – such as that supplied to Mrs J – to have a degree of wear and tear and to require repairs more regularly than a brand new car. So, in order to uphold this complaint, I would need to be satisfied that there was an inherent fault with the car, rather than a fault which developed due to general wear and tear.

Under the Consumer Rights Act 2015, where a fault occurs in the first 6 months, there's a presumption that it was present or developing at the point of supply and it's generally up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can reject the car. After 6 months the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality.

The first fault occurred within 6 months of the point of supply. Mrs J had covered around 400 miles since the point of supply when the engine first failed. The supplying dealer replaced the engine under warranty. I haven't seen any evidence to suggest that the supplying dealer suggested that the engine had failed because of driver style prior to the repair. If the supplying dealer had thought that this was the case, I don't think it would have carried out repairs under warranty. I appreciate that the supplying dealer has since stated that the engine failure was caused by driver style and that it doesn't believe it should've carried out the repairs under warranty. However, I haven't seen any engineering evidence to suggest that the engine failure was caused by driver style on either the first or second occasion of engine failure, so I'm not persuaded by the supplying dealer's comments in this respect.

I can see that Mrs J experienced further issues with the engine in September 2021. Since the engine was repaired, Mrs J had only covered around 1400 miles. I've taken the supplying dealer's comments into account but as I've said above, I don't find them to be persuasive. I've also taken the engine specialist's report into consideration. This says the engine failure has been caused by debris in the engine and not by driver style. It says that if the issue had been caused by driver style i.e. over revving or gear mis-shift, all of the cylinders would have been damaged, whereas the damage was only found on one cylinder. The engine specialist concluded that the failure had been caused by spark plug failure.

FR has said that the engine specialist isn't impartial. I haven't seen anything which caused me to suspect this. There's no evidence that the engine specialist isn't independent. Even if the specialist did make contact with FR after FR issued its final decision, I don't think this is enough to persuade me that the report isn't credible as a source of engineering evidence.

Based on what I've seen, I'm satisfied that there was a fault with the car. The supplying dealer had the opportunity to carry out repairs – and did so – but the engine failed a second time only a few months later, so I'm persuaded that the repairs weren't successful. There's no evidence to suggest that the engine failed because of the way Mrs J drive the car. The specialist engine report excludes this as a cause of engine failure and provides a clear explanation as to why this could not be the case. Taking everything into account, I'm of the view that the car had a fault at the point of supply which led to engine failure, and the repairs which were carried out weren't successful which led to the engine failing again. Under the relevant legislation, Mrs J should be allowed to reject the car.

Putting things right

To put things right, FR must allow Mrs J to reject the car. It should refund the deposit and refund all payments made by Mrs J since September 2021, because she hasn't been able to

use the car since this date. FR should also refund Mrs J the cost of the engine specialist report, provided that Mrs J can provide an invoice detailing the cost.

It's clear that Mrs J has been caused a significant degree of distress and inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. I think it's fair to ask FR to pay compensation for the trouble and upset caused to Mrs J.

My final decision

My final decision is that I uphold the complaint. First Response Finance Ltd must:

End the agreement with nothing further to pay

Arrange for the car to be collected at no cost to Mrs J

Refund the deposit of £2000 and pay 8% simple interest from the date of payment to the date of settlement

Refund all payments made by Mrs J since September 2021

Refund the cost of the specialist report

Pay £150 compensation for distress and inconvenience

Remove any adverse information from Mrs J's credit file in relation to the agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 4 April 2022.

Emma Davy
Ombudsman