DRN-3628522

The complaint

Ms M complains about a car Arval UK Limited supplied to her under a consumer hire agreement. She says the car was not of satisfactory quality and is unhappy with the way Arval dealt with matters.

What happened

Ms M entered into a personal contract hire agreement with Arval. Under the agreement Arval supplied a car to Ms M over an initial four-year term. As an initial payment Ms M paid £1,063.12 – the equivalent of three months' hire.

Unfortunately, a few months after Ms M took delivery she started experiencing problems with the car. As a diesel-powered vehicle, the car required AdBlue to reduce exhaust emissions. But Ms M found the car was requiring AdBlue much more frequently than the manufacturer indicated. She experienced problems including an incident when the car wouldn't start while she was away on holiday.

Ms M took the car to a dealership several times, who in addition to repeatedly topping up the AdBlue identified a problem with the car's sensors and a blocked diesel particulate filter ("DPF"). Although the dealership rectified the faults without charge, Ms M continued to get warning messages and raised matters with Arval.

Arval responded to Ms M to say it had liaised with the dealership and concluded that the increased AdBlue use was down to a build-up of soot in the DPF due to low mileage. It said this was inherent in the design of the car rather than being a defect. Ms M wasn't happy with Arval's stance and asked us to review the situation. She said she hired another car with the same specification in January 2020 and hadn't had the same problems even though she used that car less.

Our investigator noted the dealership's reports and the rate at which the AdBlue top-ups were required. He felt Ms M's use of the car wasn't indicative of particularly low mileage; she'd done a little under 1,000 miles per month. According to the manufacturer, the car model typically uses around 1 litre per 1,000 miles. The investigator felt the rate of AdBlue use couldn't be explained by Arval's suggestion of low mileage, and that it hadn't provided sufficient technical evidence to support its position. He considered the problems were more likely indicative of a fault with the car, which was supplied new to Ms M. The investigator felt it didn't meet the satisfactory quality threshold under the Consumer Rights Act 2015 ("CRA").

The investigator noted while Ms M's use of the car had been impaired by the problems, she'd clearly been able to make use of it. He proposed a resolution intended to reflect the difficulties she'd experienced as well as that impaired use. The investigator suggested Ms M should be entitled to terminate the hire agreement and reject the car, with a pro-rata refund of her initial payment as well as £250 for her distress and inconvenience.

Arval didn't agree that the car failed to meet the satisfactory quality standard. But in order to bring matters to a close, it said it would make the proposed credits and allow Ms M to return

the car at no additional cost to her, subject to any applicable charges for excess mileage or undue wear and tear provided for under the hire agreement.

Ms M said she couldn't accept the resolution proposal as returning the car would leave her without the use of a suitable vehicle due to a shortage of available alternatives. She said she could only agree if Arval was able to provide a replacement car, but that as this wasn't possible she would be willing to consider compensation instead.

As the investigator was unable to resolve matters, the complaint was passed to me for review and determination.

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 recently issued a provisional decision setting out the events leading up to this complaint, and how I thought best to resolve it. I said:

> *"It's not in dispute here that Ms M experienced problems with the car. And it's clear that those problems have led to her experiencing distress and inconvenience, and that her use of the car has to some extent been impaired. What's less clear is whether those problems arose due to an inherent fault with the vehicle, or were due to the way Ms M was using the car in the initial months.*
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> *In terms of satisfactory quality, the CRA effectively gives a six-month window in which it's presumed that any faults amounting to a breach of contract were present at point of supply. This is a rebuttable presumption if the supplier can show the goods did conform to contract when supplied. Although Ms M first took the car to the dealer outside this six-month period, the nature of the fault described (and supported by the dealer's records) indicates the problems had started within that time.*
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> *It's possible Arval might be able to support its position that the problems Ms M has experienced are consistent with a blocked DPF and the use she made of the car during the period in question. Against that, Ms M has pointed to the other car she hired that had covered lower mileage but didn't manifest such problems. The only way to establish this beyond question would be to obtain a specialist report identifying the problem and underlying cause. This would probably be needed should the matter progress to legal action; the current evidence isn't sufficiently persuasive either way.*
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> *However, I don't think in this particular situation it's necessary to reach a conclusion on whether there's been a breach of the CRA, or the remedies that legislation might afford. Any right Ms M might have had to reject or require a replacement vehicle would also take into account use that she made of the car both up to and after she reported the problems. Based on what Ms M has said, that could mean a claim under the CRA, even if successful, might not result in a significantly different financial position from the one she currently finds herself in.*
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> *Further, Ms M has continued to make use of the car. She's recently told us that she's covered around 30,000 miles in the vehicle since taking delivery. That might be less than she might have anticipated, but the term of hire includes periods during which the UK was subject to lockdown restrictions and this is likely to have curtailed use. It's not entirely clear whether she continues to experience the problems she reported earlier in the term, but the overall mileage suggests to me that the issue of impaired use might be historic rather than current.*

Taking all of this into account, I find I'm currently leaning towards an alternative solution as suggested by Ms M, whereby the hire contract continues in line with the agreement between the parties, but that Arval makes a compensation payment to her to reflect the distress and inconvenience and impaired use she experienced that caused her to report the problems in the first place. Noting Arval has expressed a willingness to bring matters to a close and that Ms M has herself identified the problems she'd face in returning the car without a suitable replacement being available, I think this presents a workable resolution to the dispute without the need for a formal finding over the car's condition at point of supply.

I'm conscious our investigator proposed a partial refund of the deposit and an amount in respect of Ms M's distress and inconvenience. I think it would be simpler all round for me to suggest that to resolve the dispute and enable the parties to move forward, Arval makes a one-off payment of £600 to Ms M by way of compensation."

I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

response to my provisional decision

Ms M accepted my proposed conclusions. Arval said it was also agreeable to paying Ms M £600 on the basis that this extinguishes her current claim and the proposal to reject the car. Arval has confirmed it will continue to support Ms M should any further faults arrive.

As this is essentially what I proposed in my provisional decision and reflects the approach Arval would be expected to take should any further problems arise with the car, I'm satisfied that the resolution I proposed remains a fair and reasonable way to bring the dispute to an end.

My final decision

My final decision, therefore, is that in full and final settlement of this complaint Arval UK Limited pays Ms M £600. It should do so no more than 28 days after it receives her acceptance of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 31 August 2022.

Niall Taylor
Ombudsman