

The complaint

Mr S complains that First Response Finance Ltd ("FRF") refused to cover the cost of repairs to a second hand car he acquired. The finance agreement was in joint names with Mrs S, but in this decision I will refer to Mr S as the acquirer.

What happened

In November 2021 Mr S acquired a second hand car costing £10,590 funded a deposit of £90 and a hire purchase agreement of £10,500. The car was almost eight years old and had covered some 120,000 miles.

In February 2022, Mr S complained to FRF about several issues: the bonnet vibrating, tyre and tracking issues, the clutch and flywheel, the timing chain, paintwork, and the tailgate not opening properly.

FRF agreed to fund an inspection of the car by a garage of Mr S's choice. The car was inspected and the inspector found age related blemishes and superficial scratches, the lower arm rear bushes were worn causing the tyres to wear quicker and a slight judder when pressing the clutch which would require further investigation. But the inspector felt it was likely the clutch and flywheel needed replacing. He also confirmed that the engine had high mileage related noises and would benefit from a timing chain replacement as the car still had the original. In relation to the tailgate, he confirmed it didn't fully open and said the hinge had detached from the boot lid. The car had covered 123,907 miles at this point.

FRF agreed to cover the cost of replacement tyres and repairs to the lower arm bushes, clutch and flywheel, but it didn't accept that it was responsible for replacing the timing chain as whilst it was noisy it hadn't broken and the damage was due to wear and tear. FRF agreed to lend Mr S the money to have this replaced at the same time the other repairs were carried out.

The issue with the tailgate remained in dispute and so FRF asked Mr S to take the car to a body shop to provide further information. The report shows that there had been some damage to the car which had affected the tailgate. It suggested it needed to be replaced.

FRF did not agree to cover the cost of this repair as Mr S had told it that he was aware of issue when he acquired the car. Mr S didn't think this was a fair and said that the tailgate did operate, but not to the full height. Subsequently he has told this service that it closes when the car is parked on a slope making it dangerous.

FRF has told this service that it spoke to the body shop and it provided an estimate of £1,300 to repair the tailgate using a second hand one. Mr S would like it repaired using new parts. He would also like FRF to cover the cost of the timing chain. FRF said there was no record of the car being in an accident when it carried out a HPI check before offer the finance.

Mr S brought his complaint to this service where it was considered by one of our investigators. She made further enquiries and FRF offered to contribute £1,000 to the cost of

repairing the tailgate. It had already spent over £3,000 on covering other repairs and it had been told verbally by the body shop that the cost would be less than the handwritten £2,000 estimate it had given to Mr S.

Our investigator didn't recommend the complaint be upheld and she said the £1,000 offer was fair. Mr S didn't agree and sent videos of the tailgate. He said it was dangerous.

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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. FRF is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

The car was elderly and had covered a significant mileage and so it is to be expected that it will have suffered wear and tear. As such I cannot require FRF to cover the cost of items which have succumbed to wear and tear and so I consider its response to the timing chain repair to have been in accordance with consumer law and a reasonable response. The reality is that when one buys an elderly car there are likely to be issues. I also note that in the first few months Mr S had been able to cover over 3,000 miles. This doesn't indicate it was unfit for purpose.

On the matter of the tailgate I consider the offer of £1,000 is fair. FRF says that Mr S told it that he was aware the tailgate was damaged, but I don't believe he appreciated the cost of repairing it. This view is reinforced by the fact Mr S took a mechanic friend with him at the time of sale. I have noted the photos of the car and it is obvious that there had been a repair so it is highly unlikely Mr S and his mechanic did not see this. However, Mr S decided to continue with the purchase.

I have also noted the manuscript note with business card attached which estimates the costs of repair using second hand parts would be £2,000. This is noticeably more than FRF were told and I can understand its reluctance to offer more than it has. Given the age of the car and the mileage I do not think it necessary that new parts be used and so it remains open to Mr S to accept a contribution of £1,000 towards the repair.

Putting things right

FRF should cover part of the cost of repairing the tailgate.

My final decision

First Response Finance Ltd has already made an offer to pay £1,000 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that First Response Finance Ltd should pay £1,000 subject to it seeing an invoice for the work carried out on the tailgate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 23 December 2022.

Ivor Graham
Ombudsman