

The complaint

Mr F complains that a car that was supplied to him under a hire purchase agreement with Advantage Finance Ltd wasn't of satisfactory quality and was misrepresented to him.

What happened

In December 2021 Mr F used a broker (who I'll call CF) to arrange a hire purchase agreement with Advantage for the supply of a used car. The cash price of the car was £8,190, the car had travelled 91,900 miles and was just under 12 years old at the point of supply.

Within five days of taking delivery of the car Mr F reported several electrical problems, including the rear headlight cluster, rear registration plate light, the fog light, instrument lights, internal socket 12V and the left indicator. He also reported issues with two flat tyres, the left suspension and an issue with the gearbox being stuck in sports mode.

Mr F says the dealership said it replaced the rear tyres, and only changed the headlights before returning the car to him. Mr F said the car was still stuck in sports mode, but the dealership advised this was related to the suspension problem, which it would order the parts for, but it didn't. He says he replaced missing fuses and resolved the other electrical issues. Mr F didn't believe the dealership had replaced the tyres. And in May 2022 the car broke down and needed to be recovered to a third-party garage. The garage diagnosed several faults including the damaged drop link bar cover and leak, battery failure, alternator failure, worn rear tyres, and a failed gearbox controller linked to sport mode issue. Mr F was quoted £3,500 for the repairs.

Mr F contacted Advantage to let it know about the issues he was experiencing. He was also unhappy that he was told the car came with 12-month MOT and a six-month warranty. However, the car only came with six months MOT, and he hadn't received any warranty paperwork. On this basis Mr F says the car was misrepresented to him, he wanted Advantage to honour the six-month warranty, so the faults could be repaired.

Advantage arranged for an independent inspection to be completed. In June 2022 the engineer concluded the faults present were due to wear and tear and didn't consider that the serviceable components which had failed, had done so prematurely. Advantage concluded that there wasn't enough evidence to show the car wasn't of satisfactory quality when it was supplied. It said it couldn't comment on the warranty issue.

Mr F disputed the independent engineers' findings, his comments were passed to the engineer for further response. The engineer didn't change his view. He said the current faults were due to wear and tear, given the age and mileage of the car.

Mr F didn't agree, he brought his complaint to this service. Our Investigator looked into the complaint. He thought the current faults were due to wear and tear of serviceable components, so he didn't think the car wasn't of satisfactory quality when it was supplied. The investigator didn't think there was enough evidence to show the car had been misrepresented to Mr F.

Mr F disagreed. The complaint has been passed to me for a final 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.

Mr F has made lengthy submissions, and I've read 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. And our rules allow me to do this, this reflects our informal, free service as an alternative to the courts.

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. Mr F is unhappy with the dealership's handling of this matter, but I think it would assist if I clarify that I'm unable to consider the actions of the dealership, I can only look at what Advantage did and whether it needs to take any further action to resolve Mr F's complaint.

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

Car's quality

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied to Mr F. And if it wasn't, as the supplier of goods, Advantage is responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability.

The CRA also says that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed that the fault was present when the car was supplied, unless Advantage can show otherwise. So, if I thought the car was faulty when Mr C took possession of it, and this made it not of a satisfactory quality, it'd be fair and reasonable to ask Advantage to put this right.

Mr F experienced issues within days of collecting the car, the dealership says it completed all the repairs, but was waiting for parts for the suspension, however it said it was unable to get in touch with Mr F and he didn't bring his car back for repair. Mr F says only the headlight was repaired and he completed the outstanding electrical repairs himself. We asked for job sheets from the dealership, but these haven't been provided, and Mr F says he wasn't given an invoice or job sheet of the repairs undertaken in January 2022.

In any event, the car appeared to be returned to Mr F in working order, as he continued to use the car, until it broke down in May 2022.

Cars are complicated machines and there are lots of things that can cause one to go wrong within five months of supply. When Mr F took possession of the car, it was nearly 12 years old and had nearly 92,000 miles on the clock, and the price he paid reflected this. And I think a reasonable person would expect an older car with high mileage to be experiencing quite a bit of wear and tear and to consider many components could be reaching the end of their serviceable life. So just because faults occur shortly after supply doesn't mean I can assume it was present at the point of supply. Also, it's not enough simply for a fault to be present.

The car would need to be of unsatisfactory quality because of the fault too, and not just due to normal wear and tear.

As the faults here were reported within six months, it's assumed the faults were present when the car was supplied and Advantage is responsible, unless it can prove otherwise. And I think it has done this; The independent engineer confirmed the sports mode button can't be switched off, the anti-roll bar gaiter was damaged allowing grease to escape, the rear tyres were within the legal limit with 1.6mm remaining, brake discs corroded (but meeting the MOT standards) with a slight oil seepage which is normal for a high mileage car, headlamp upper mount broken, ABS warning light displayed, battery not holding charge and alternator failure.

The engineer said the brakes and suspension ball joint would have been in a similar condition at the point of supply and wouldn't be considered as premature wear given the car's age and high mileage. He concluded the battery had come to the end of its service life and said the alternator failure would have been sudden and not present at the point of sale. The engineer concluded that the multiple electrical issues, including the ABS light and the sports mode button functioning were caused by the alternator, by faulty charging or by the faulty battery.

In summary the independent engineer said;

"To simplify, the vehicle has 90,000 miles of wear present and any necessary repairs classed as routine maintenance and not considered premature maintenance and therefore not the responsibility of the sales agent to replace."

Based on the independent engineers' findings Advantage said it wasn't responsible for any outstanding repairs.

Mr F tells us he is an experienced engineer, and he disputes the findings of the independent engineer. Mr F says the sports mode issue was present in January 2022 and he doesn't think this is connected to the alternator or charging problem, but rather says this is caused by the gearbox control ECU fault, which he says the garage confirmed.

In response to Mr F's comments the engineer said; *"Having purchased a 12-year-old vehicle with 92,000 miles at the point of sale, he must have realistic expectations that such a vehicle would require on-going maintenance & component replacement due to in-service wear & tear. The issues identified by our engineer quite clearly fall within this category"*.

Whilst I appreciate Mr F's strength of feeling here, the independent engineer is an expert and is independent of both Advantage and Mr F. And I'm satisfied that it's reasonable to rely on the engineers' conclusions – that the electrical issues, including the fault with the sports mode button is due to the failure of the alternator/ battery charging issues. And the faults identified relate to ongoing maintenance and serviceable components which require replacement, due to normal wear and tear.

Mr F hasn't provided anything, such as a report from a garage, to confirm the sports mode function issue is related to a gearbox control ECU fault and not related to the alternator/ battery, charging system. And in the absence of anything to the contrary, I think it's more likely than not that those outstanding faults are due to wear and tear of serviceable components. In the circumstances, I don't think the outstanding faults mean the car was of unsatisfactory quality when it was supplied to Mr F. And whilst I sympathise with Mr F's situation, I don't have any grounds to direct Advantage to cover the cost of repairing the outstanding issues.

Misrepresentation

Mr F says that the CF advisor told him over the phone that the car would come with a 12-month MOT and six months warranty. But it turned out the car only came with six months MOT, and he hasn't received any warranty paperwork. Mr F says he wouldn't have entered the agreement for the car if he'd known there was only a six-months MOT and no warranty.

To make a finding of misrepresentation here I would need to be satisfied that a false statement was made to Mr F and that false statement was a key factor in inducing Mr F into entering the agreement for the car.

I'm unable to confirm what Mr F was told during his calls with CF, so I've looked at the emails between CF and Mr F. On 31 December 2021 I can see that CF said the car came with six-months MOT but that the dealer has said they could do another one. In response Mr F said he'd be happy if a 12-month MOT could be done. From the emails, it appears that Mr F was told a 12-month MOT *might* be possible, but I haven't seen anything to confirm this was guaranteed. So, I'm not persuaded a false statement was made about the MOT. Even if I were to accept Mr F had been promised a 12-months MOT, I'm not satisfied that the length of the MOT was a key factor in Mr F entering the agreement. So, I can't fairly say the MOT length was misrepresented to Mr F.

Having looked at the emails between CF and Mr F during the sales process, I've only seen one reference to a three-month warranty, I've not found anything to support what Mr F says he was told about a six-months-warranty. So, I don't think there is enough evidence to say a false statement was made about a six-month warranty being provided.

Even if I were to accept that a false statement was made about the car coming with a three-month warranty, I'm not persuaded Mr F would not have entered the agreement if he was made aware he wouldn't be getting a warranty. I say this because I think that if the warranty was a key factor in entering the agreement, I would expect to see evidence that Mr F was following this up shortly after sale, given it was important to him, but I've not seen anything to evidence he did this. In the circumstances, I don't think I can fairly say the three-month warranty was misrepresented, so I don't have grounds to ask Advantage to honour a warranty or pay for the repairs.

I appreciate this decision will probably come as a disappointment to Mr F, but this is the final stage of our process. He has indicated that he intends to pursue this matter through the courts. Mr F is of course free to reject this decision and pursue this matter by alternative means – should he wish to do so.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 22 March 2023.

Karen Dennis
Ombudsman