

The complaint

Mr B complains about a used car he acquired through a hire purchase agreement with First Response Finance Ltd. Mr B is unhappy that he has experienced issues with the car shortly after taking possession of it. Mr B believes the car was not of satisfactory quality when it was supplied to him and would like the car repaired, or the opportunity to hand the car back and get a refund of what he has paid.

What happened

On 23 December 2021 Mr B acquired a used car, using finance arranged by First Response Finance Ltd. The price of the car was £14,916 and was to be repaid by 61 monthly repayments of £316.57. The car was a well-known brand and model, over seven and a half years old and had travelled 105,000 miles (according to the point of sale documents). Mr B says that although the finance agreement was signed on 23 December 2021, he took delivery of the car on 30 December 2021.

Mr B says he experienced issues with the car shortly after taking possession of it and these initial issues related to a loss of engine coolant and defective air conditioning. Further issues have arisen, and Mr B has more recently been required to pay over £300 for replacement rear shock absorbers.

The car has been inspected by several different parties and it has been identified that there does not appear to be an external coolant leak. It is accepted that there may be an internal coolant leak, but the cause or location of any leak has not been identified.

Having complained to First Response Finance Ltd and being unhappy with its response, Mr B referred his complaint to our service. It was considered by one of our investigators who, in summary, recommended First Response Finance Ltd carry out repairs to the vehicle. The parties did appear to initially accept this recommendation but after further discussions an agreeable resolution between the parties could not be obtained. As no agreement has been reached, the complaint was referred to me so that a final decision can be issued.

I issued a provisional decision to both parties on 16 February 2023 and my provisional findings were as follows.

What I've provisionally 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 cases when it is not clear what happened or where the evidence is incomplete or inconclusive, I base my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence.

It is also important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. I'm very aware that I have summarised in much less detail what has been submitted by the parties in this complaint. In deciding this

complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr B or First Response Finance Ltd but reflects the informal nature of our service, its remit and my role in it.

Mr B acquired the used car through a hire purchase agreement with First Response Finance Ltd. The credit agreement with First Response Finance Ltd is a regulated consumer credit agreement and because of that our service is able to consider complaints about the agreement. As the provider of the credit agreement First Response Finance Ltd is also the supplier of the car to Mr B. As the supplier of the car First Response Finance Ltd is responsible for the quality of the car and the Consumer Rights Act implies terms into the credit agreement requiring the car to be of satisfactory quality.

Exactly what is satisfactory quality will depend on the specific circumstances of any given case. In this instance, where the complaint relates to a car, I think it reasonable that when considering whether the car is of satisfactory quality the car's age and mileage at the time it was supplied are all key considerations. The requirement on First Response Finance Ltd is to ensure the car was of satisfactory quality at the time it was supplied. So First Response Finance Ltd would not be responsible for any wear and tear items that develop over time and might reasonably be expected on a used car with this age and mileage.

The car that Mr B acquired cost £14,916, was around seven and a half years old and had travelled 105,000 miles. When considering a car of this age and mileage it would in my view not be unreasonable to expect it to be showing signs of wear and tear and not be in the same 'as new' condition that it would have been in when first manufactured. This will be in relation to the mechanical components and its cosmetic appearance. I accept that the cost of the car was not insignificant, but the price Mr B paid for the car was considerably cheaper than the cost of the car new, and this is to take into account the general condition, mileage and wear and tear the car had experienced since first being manufactured.

Although I would expect a car of this age and mileage to show signs of wear and tear and require some general maintenance and upkeep, it would not however be reasonable to supply the car to Mr B with existing defects that go beyond fair wear and tear, unless these were clearly pointed out before agreeing to acquire the car.

Mr B says that he started to experience issues with the car shortly after acquiring it. I note in some of Mr B's initial correspondence with our service he states, "Two months after purchasing a used car within a 3 month warranty, it started to develop issues, engine management light and coolant and air conditioning stopped working." I also note that initial emails Mr B had with the dealership related to the vehicle registration documents and it appears that it was only in the email of 11 March 2022 that Mr B mentioned issues or problems with the actual car, rather than paperwork.

While I appreciate the issues appear to have been raised around 10 weeks after Mr B took possession of the car, this does suggest that the issues had only just developed. Mr B refers to the air conditioning having stopped working, which again suggests that it was previously working. The engine management light would not have been previously illuminated as Mr B would have previously raised it when it first came on.

Had there been issues with the air conditioning and the engine management light at the time Mr B acquired the car I think it would be reasonable to assume these issues would have been immediately, or almost immediately, apparent. The fact that the issues became apparent around 10 weeks after Mr B acquired the car suggests that they were not present when the car was supplied to Mr B.

I think it is important to again note that the car Mr B acquired was over seven and a half years old and had already travelled 105,000 miles. This is considerable mileage and a car of this age and mileage is unfortunately very likely to start to develop issues and problems. I'm not currently persuaded that these issues render the car not of satisfactory quality, when considering the requirements of the Consumer Rights Act. Because of this, First Response Finance Ltd would not be responsible for any costs associated with their repair.

Mr B has also complained about a loss of coolant and the need to top up the coolant level of the car periodically. As with the issues above, this does not appear to have been raised immediately after acquiring the car and from the evidence presented, appears again to have been raised around 10 weeks after Mr B got the car.

I accept that it is possible that there was an issue causing a loss of coolant when the car was supplied to Mr B, but this took some weeks to become apparent because of the slow nature of the coolant loss. But it is also possible that there was no coolant leak at the time Mr B acquired the car and it was just unfortunate that the considerable mileage of the car caused a coolant leak shortly after Mr B got the car. The issue in this case is that there is a lack of evidence to indicate what is actually causing the loss of coolant.

The car has been inspected by different parties, with conclusions being that there is no external coolant leak visible. It is possible the leak is internal, hence not being visible externally. But an internal leak has not actually been identified, although I accept it is likely considering what Mr B has said about the need to top up the coolant periodically. I note the third party report setting out the results of the inspection on 14 June 2022 refers to no visible sign of coolant loss, overheating or adverse white smoke from the exhaust after a road test. It goes on to state,

'At the time of inspection, we could not identify evidence of any coolant loss, however the coolant level was slightly low, the owner states that the [sic] having to top [sic] the coolant level regularly, which would suggest vehicle owner is maintaining the vehicle as per the manufacturer's instructions in the handbook...

Regarding the coolant loss at this point cannot identify the source of the coolant loss, therefore the vehicle will require further investigation under workshop control conditions, with one possible cause being a leak from the EGR valve cooler, which cannot be viewed until the engine covers are removed.

If this is loss. This would be classed as long-term in-service general wear and tear; however, the vehicle owner has been having ongoing issues with the cooling system shortly after the date of sale would lead us to conclusion that the sales agent should be responsible for the necessary repair costs on the grounds of durability.'

The inspector is unable to identify the cause of the leak without further inspection and strip down of the engine, which to my knowledge has not taken place. The inspector states that if there is coolant loss this would be classed as a long-term in-service general wear and tear issue. This is because of the 110,718 miles the car had travelled at that stage, which is a considerable amount of miles.

I appreciate the inspector notes the sales agent should be responsible for any repair costs because of the issues being apparent 'shortly after the date of sale'. But as I have highlighted above, it appears to have been around 10 weeks before the issue with the coolant loss was actually raised. And this is not clear evidence in my view that the car was supplied with a coolant loss issue being present at that time.

Even if the car was supplied with the coolant loss present at the time, any loss of coolant

appears to be slight. This is evidenced by the fact Mr B was not aware of any loss for around 10 weeks. And it is also worth noting that the car has now travelled approximately 10,000 miles since Mr B acquired it. While I do not doubt Mr B has been required to periodically top up the coolant, this does not appear to have prevented him from using the car and there have been no signs of the engine overheating or suffering any other significant problems one might associate with a loss of coolant.

When acquiring a car that has significant mileage, in particular in excess of 100,000 miles, it would not be unreasonable in my view to have to pay more close attention to the oil and coolant levels of the car. It is quite likely that a car such as this, which was over seven and half years old and had travelled more than 105,000 miles when Mr B acquired it, would require more periodic attention to the coolant and oil levels. This is arguably supported by the engineer's statement where they note Mr B has been topping up the coolant 'as per the manufacturer's instructions in the handbook'.

Having carefully considered the evidence that has been presented in relation to the coolant loss, I am not persuaded that there is sufficient evidence to demonstrate the car was supplied to Mr B with a coolant loss issue. And, even if I was persuaded the car was supplied with a coolant loss issue, considering the broader circumstances of the case, in particular the age and mileage of the car, I do not consider the car was not of satisfactory quality.

Finally, I note that Mr B has paid £317.36 to replace two shock absorbers on the car. But for similar reasons to those set out above, I'm not satisfied that the car was not of satisfactory quality in relation to this issue. Having to replace the shock absorbers after the car had travelled 114,138, which is approximately 9,000 miles since Mr B acquired it, would be unfortunate but perhaps not unexpected considering the distance the car had now travelled. I again can appreciate that Mr B will be unhappy about having issues with the car, but this is not a new car and was aged with considerable mileage. The running costs and repair costs of a car of this age and mileage would likely be higher than a younger and lower mileage car.

My provisional decision

Having considered all that has been presented from the parties in this complaint, my provisional decision is that I do not uphold Mr B's complaint and make no award or direction against First Response Finance Ltd.

Mr B responded to my provisional decision and in summary, said that he accepts the car was 7 years old and had travelled 105,000 miles when he got it, but it was sold on the understanding that any faults or issues would be rectified prior to delivery.

He says that as it was during the winter months, he wouldn't have been using the air conditioning, so wouldn't be able to check if it worked. The issues were reported within the 3 month warranty period and he believes it should be the responsibility of the dealer to prove the car was not faulty, rather than he has to prove it was faulty when it was supplied.

Mr B questions the competency of the vehicle inspector and refers to the vehicle manufacturer indicating coolant loss over a four to six month period would be expected to be 0.2%.

Mr B also refers to the absence of any reference in the provisional decision to First Response Finance Ltd wanting to collect the car without his consent and then threatening to charge an aborted cancellation charge.

Our service did not receive a response from First Response Finance Ltd.

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.

Having reconsidered all of the previous submissions and those additional comments from Mr B, I have come to the same overall conclusions as set out in my provisional decision for broadly the same reasons.

Mr B believes it should not be for him to prove the faults or issues were present when he acquired the car and it should be for the supplier to demonstrate the faults were not present at the point of supply. While I can understand his view on this, this is not however the requirement in the Consumer Rights Act. As set out in my provisional decision, goods must be of satisfactory quality when supplied and when considering satisfactory quality it is reasonable to consider the age and mileage of the car. The legislation does not dictate that the supplier has to demonstrate there were no issues or faults with the item being supplied. In cases where brand new goods are supplied it is somewhat easier when considering faults that occur within a short period of supply, as one would not expect new goods to fail so soon after supply. But again, the issue here is that the car was not new, was over 7 years old and had considerable mileage.

As previously explained, it would not be reasonable to expect a car of this age and mileage to be in the same condition as when supplied new from the manufacturer and this is reflected in the price of the car being considerably cheaper when compared to new.

From the evidence presented there is still not sufficient evidence for me to conclude that the car was suffering from coolant loss when supplied and that coolant loss was excessive when considering the age and mileage of the car. I have noted what Mr B has said about the manufacturer referring to expected coolant loss of 0.2%, but I have not seen supporting evidence of this, or that it specifically applies to a car of this age and mileage.

Mr B has questioned the competency of the vehicle inspector, but even if I were to accept this, there is still no alternative supporting evidence or opinion that demonstrates the car was not of satisfactory quality when it was supplied to him.

Mr B refers to the car being supplied during the winter months and that he wouldn't have therefore used the air conditioning to find out it was not working. A car's air conditioning is used to cool the car's interior in the summer, but it is also often used in the colder months to help demist the inside of the windscreen. I also again refer to Mr B's previous comments about the air conditioning no longer working, which suggests it was previously working and had more recently stopped. I am still not persuaded from the evidence presented that the air conditioning was defective when the car was supplied.

I had previously noted Mr B's comments about the car being supplied with a three month warranty and that he had contacted the dealership within the three month period. The complaint that I have considered here is against First Response Finance Ltd as it is the supplier of the car through the hire purchase agreement and as such, it is responsible for the quality of the car when supplied. First Response Finance Ltd did not however provide the warranty and it is not responsible for any claims made under the warranty. I am therefore unable to consider why the warranty did not cover the issues when Mr B raised them with the dealership. This is a separate issue to the one which I am considering here.

Mr B has again referred to First Response Finance Ltd wanting to collect the vehicle without his consent and that it then sought to apply an aborted collection charge. Despite not referring to this in my provisional decision it was something that I previously considered. There has been a great deal of communication between all the parties in this complaint in an attempt to conclude matters and I think it more likely than not that the attempts to collect the car were to try and get it repaired. I accept that things could have been handled better on occasions, but Mr B has not been required to pay an aborted collection charge. I don't consider First Response Finance Ltd acted so unreasonably here that it would warrant an award against them.

I again appreciate Mr B will be unhappy with my findings, but for the same reasons as previously explained, I am not persuaded there are sufficient grounds to uphold his complaint.

My final decision

My final decision is that I do not uphold Mr B's complaint against First Response Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 March 2023.

Mark Hollands
Ombudsman