

The complaint

Mr A complains that a car he acquired through a Hire Purchase Agreement (HPA) with First Response Finance Limited (FRF) wasn't fit for purpose. He would like to reject the car or to split the cost of the repair with FRF paying 80% of the repair cost and Mr A the remainder .

What happened

Mr A said he took out his HPA at the end of March 2022. This was for a 4-year-old car with 138,000 miles on the clock. He says in June 2022 a routine service identified a gearbox fault and advised further inspection of the gearbox and chains. He says the car broke down in August 2022 at which point he complained to FRF. Mr A said he has provided various reports which confirm an issue with the timing chain which had broken.

FRF said that Mr A took out an agreement for a used car with significant mileage therefore couldn't expect it to be the same standard as a new model. It felt the mileage was above average for the age of the car. It acknowledged the report Mr A supplied indicated, from the car's first service, that the gearbox and chains needed further inspection but noted that Mr A didn't advise First Response of this. Nor did he arrange the suggested inspection but instead carried on using the car driving a further 4000 miles until August 2022 when the car broke down.

FRF commissioned an independent report with ACE which concluded that the timing chain issue arose post sale and wasn't an unexpected issue for a car of this mileage and age. It pointed out Mr A had an active warranty that might help with the cost and it offered to loan Mr A funds on an interest free basis to cover any repair costs.

I issued a provisional decision in which I found:-

- Mr A took out an agreement in March 2022 for a used car with significant mileage at the point of sale. A routine service in June 2022 identified a gearbox fault and recommended further inspection of the gearbox and chains. Mr A didn't follow through on these recommendations neither did he advise FRF of an issue with the car at this point.
- I was surprised Mr A continued to use his car driving a further 4000 miles until the car broke down in August 2022 , rather than seeking the further suggested inspection.
- The June service also identified some issues such as the need for new brake and disc pads which I considered to be normal wear and tear and not issues that FRF would be responsible for, given Mr A had use of the car for at least two months by the time these issues were identified. However, this report also confirmed a noise from the engine and said the gearbox needed removing for further inspection. A report in August 2022 drew the same conclusion on the need for further inspection
- FRF then arranged an independent inspection which is what I would have expected it to do given the break down occurred within six months of Mr A having the car when we usually say it's the business responsibility to see if there are any point-of-sale issues for which it is responsible.

- The independent inspection took place in August 2022. The inspection report, which I read, concluded the timing issue arose post sale and wasn't an unexpected issue given the age and mileage of the car.
- Mr A also had the car further inspected in December 2022 ; I believe at his own cost . That concluded that the timing chain issue was present at the point of sale.
- Taking all this information into account I was persuaded that it was more likely than not that the timing chain was failing at the point of sale.
- However, I was persuaded by FRF's argument that had Mr A raised this issue with FRF at that time or sought , as advised, a further inspection that any problem with the timing chain could have been resolved at that point. Instead Mr A continued to drive a further 4000 miles until the car broke down. I thought in doing so the repair costs would be significantly higher than if he had dealt with the issue when it first arose in June 2022. And it was likely that because of Mr A's actions that repair costs would include some consequential damage that I didn't think it was reasonable for FRF to cover.
- I didn't think it was fair to allow Mr A to reject the car because I thought he significantly contributed to the problem by continuing to drive the car. But I did think FRF had some responsibility for the timing chain issue
- FRF had indicated it would be willing to contribute to the cost of repair which I thought was appropriate. So, we asked FRF what it was willing to contribute. It offered £1250 but on the basis Mr A made good his finance agreement, as I understood he had stopped making payments.
- I thought the sum FRF offered was fair. But I didn't think it was fair to make it conditional on Mr A making good his finance agreement. If Mr A hasn't made payments that's a separate issue for FRF to deal with in its usual way. However, if Mr A is behind with his payments I thought it was reasonable for the £1250 to be taken off what he owed, if he is up to date with his payments then the £1250 should be paid direct to him.

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.

Both Mr A and BMF have responded to my provisional decision.

BMF confirmed receipt of the provisional decision, it neither accepted nor rejected it , but stated it has no further comments to make for me to consider.

Mr A didn't accept my provisional decision which I do understand as I appreciate it would have come as a disappointment to him.

Mr A made a number of comments which I would like to reassure him that I have carefully considered.

I do appreciate the challenging personal circumstances Mr A has shared with us, but I have no evidence that FRF deliberately delayed dealing with Mr A's complaint leading to some of his personal and financial issues. As the issues arose within six months of Mr A getting the car it was FRF's responsibility to investigate but It's not unusual for a business to ask for some initial evidence of what the fault is before arranging an independent inspection

If Mr A finds himself in financial difficulty in meeting his payments that isn't grounds for me to uphold his complaint in the way he would like by allowing him to reject the car and cancel his finance agreement. But Mr A can discuss his financial situation with FRF. We do expect businesses to deal positively and sympathetically with consumers who have financial problems - that doesn't mean we expect them to write off agreements, but FRF might be able to agree a repayment plan that meets its and Mr A's needs. I would urge Mr A, or a representative for Mr A to discuss this with FRF.

Mr A has raised some other issues for example a discrepancy in mileage figures of 695 miles on the invoice for the car. I was aware of this when I considered Mr A's complaint, but I didn't and don't think it's relevant to the fact there was an issue with the timing chain.

Mr A has also listed work needing to be carried out on the car and also referred to excessive oil consumption. This information was available to me when I made my provisional decision. I am still of the view that the list of work identified in June 2022 included some items such as replacement disc and brake pad and a blocked filter are items which would usually be considered as wear and tear items for which the consumer not the business would be responsible.

Other items included worn engine mounts and the need for a replacement diesel particulate filter and Nox sensor. The list also significantly included the removal of the gearbox for inspection.

However, Mr A didn't arrange a further inspection as advised, neither did he raise potential issues with the car at that time. Had he done so I think FRF would have investigated and, if appropriate, resolved these. I am still of the view that in not doing this Mr A made any issues with the car worse by continuing to drive it, particularly as I understand he didn't have any of the suggested repair work carried out.

I appreciate Mr A has told us he didn't know at the time of the first service he could raise a complaint or ask to reject the car. But I don't think it's unreasonable that so soon after getting the car that he might have looked into what his options were for raising his concerns. And whilst I appreciate Mr A's points that he didn't have the funds to cover the work he has told us was needed I think it was reasonable to at least follow the advice for a further inspection. I am still of the view that in continuing to use the car knowing there were some potential issues with it only made matters worse.

I can't comment on Mr A surmising about the lack of maintenance by the previous owner of the car as I have no objective information to consider in that regard.

I have carefully considered all the points that Mr A has raised but unfortunately I don't feel I have any grounds to change my original findings. I do think there was a point-of-sale issue with the timing chain for which FRF is responsible. But I think Mr A's continued use of the car despite being advised to have a further inspection would have made any issues worse, would likely have led to consequential damage and to more significant repair costs. I think FRF's offer to contribute £1250 to the cost of repairs is reasonable.

My final decision

My final decision is that I uphold this complaint.

In full and final settlement First Response Finance Limited should:-

- if Mr A is behind with his monthly payments reduce the amount he owes by £1250

- if Mr A is up to date with his monthly payments pay him £1250 as a contribution towards the repair of the timing chain

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 June 2023.

Bridget Makins
Ombudsman