

The complaint

Ms Y complains about a car supplied under a hire purchase agreement taken with First Response Finance Ltd.

What happened

In October 2022 Ms Y acquired a used car through a dealer I'll refer to as 'S'. Ms Y paid a deposit of £997.25 and the rest of the cash price of £10,997.25 was funded through a hire purchase agreement taken with First Response. The car had covered around 32,289 miles and was around six years old.

Unfortunately, Ms Y says she noticed various issues with the car. She says it was returned to S for repairs, but the issues continued. At the end of November 2022 the car was looked at by a third party garage. This garage noted issues with:

- Driver's seat belt faulty
- Intermittent issues with headlight
- Rattle from engine on deceleration, potential timing chain issue
- High oil consumption
- Evidence of previous accident damage to offside rear
- Gearstick leather deteriorated
- Brakes making squealing noise

Ms Y complained to First Response. It issued its final response in January 2023. It said, in summary, that the car had been shown to have issues following repairs and so it agreed Ms Y had a right to reject it. First Response explained the car had been collected by S. But it said there was a delay in S confirming it had the car, due to an IT issue.

First Response said Ms Y's hire purchase agreement had been cancelled, that it would pay for the inspection by the third party garage and it offered £150 to reflect the distress caused by the delay from S. It said as Ms Y had used the car, it would retain £408.29 from her repayments, but would refund £233.48.

First response also noted Ms Y had complained about the impact of the situation on her credit record. It explained the agreement would be removed from her credit file within four to six weeks.

First response also explained that if Ms Y wanted further car finance, she should seek this from another provider.

First response later confirmed that S had returned Ms Y's deposit to her.

Ms Y remained unhappy and referred the complaint to our service. She said, in summary, that she should get back all the money she paid towards the car. She said the car shouldn't

have been supplied to her as the seatbelt issue was an MOT fail. She said her credit file was affected by what happened and she couldn't get other finance. Ms Y also said she'd had to get taxis frequently due to the issues with the car and these costs should be refunded.

Ms Y made various complaints about the customer service from First Response, including that during a phone call a member of staff had laughed at her in relation to some health issues, and that First Response wouldn't offer her further finance.

Our investigator issued an opinion and didn't uphold the complaint. She said, in summary, that she agreed the car wasn't of satisfactory quality when it was supplied to Ms Y. But she said as Ms Y had used the car when she had it, no further monthly payments should be returned. She said she didn't think the taxi costs should be refunded as Ms Y was using the car. She said she didn't think the credit report Ms Y had sent showed an issue, as the agreement wouldn't yet show as cancelled. And she said it was up to First Response if it would lend further to Ms Y.

Ms Y was unhappy with this. She made quite extensive comments here, but in summary, she said First Response had lied about refunding her money, it had withheld calls from a subject access request and she was told by First Response to keep driving the car even though it was unsafe. She said First Response should've taken action over the car passing an MOT, that it was unfair to charge for any mileage used, she believed it had edited contact notes to make her look bad, that it should've allowed her to reject the car earlier and that she was unhappy with how it noted some account details.

As Ms Y remained unhappy, the complaint has been passed to me to decide.

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 done so, I think the offer First Response has made to put things right is fair and reasonable. I'll explain why.

Ms Y complains about a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Ms Y's complaint about First Response.

I should begin by explaining to both parties that I am not going to comment on everything Ms Y has raised or all of the information she's provided. Ms Y has made a lot of individual points and has supplied a lot of evidence. I'm going to focus on what I think is the crux of this complaint and the key facts. Where I haven't commented on something, this isn't because I consider it unimportant – this just reflects the informal nature of our service.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – First Response here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

It isn't in dispute here that the car wasn't of satisfactory quality when it was supplied to Ms Y. I say this as all parties are in agreement about this, and the car has now been rejected. So, I won't comment further on this, other than to say I agree here that this was the case. What I need to focus on in my decision is whether, given the car was of unsatisfactory quality, what

First Response has done to put things right is fair and reasonable, or if it needs to do more under the circumstances.

I understand that all parties agree a repair attempt was initially carried out on the car which was unsuccessful. Thinking about Ms Y's rights under the CRA, given the car was still of unsatisfactory quality, it follows that she then had the 'final right to reject'. So I was pleased to see First Response acknowledging and arranging this.

I've considered the delay that occurred here. First Response have acknowledged that there was an issue with S where an IT problem led to a delay in S confirming that it had received Ms Y's car. But, I need to consider the overall situation here. The invoice for the third party garage who confirmed the outstanding issues was from the very end of November, the car was collected about three weeks later, and First Response cancelled the agreement around two weeks after this.

I appreciate there was something of a delay here, but overall I don't think these timescales are particularly unreasonable, and I'm satisfied the £150 offered by First Response to reflect what happened here is fair and reasonable.

It's been confirmed that S has returned Ms Y's deposit to her. Again, I appreciate there was a bit of a delay here, but the key point is that Ms Y has got this back. So I don't think First Response needs to take any further action.

Ms Y feels strongly that all of the repayments she made towards the agreement should be returned to her. But I don't agree this should be the case. I say this as the CRA explains:

"If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered"

First response explained Ms Y paid a total of £641.77 towards the agreement. From this it refunded Ms Y £233.48. This means First Response reimbursed Ms Y around 36% of the payments she made.

I've thought about the use of the car Ms Y had. She says she didn't feel safe using it and so took taxis instead of driving – which she's shown receipts she says were for. But, looking at the mileage of the car, this was around 32,289 when Ms Y acquired it and around 36,071 when it was returned. Even accepting what Ms Y said about 600 miles being used by a garage, this means she covered around 3,182 miles, which is well over 1,000 a month for the time she had the car. So, I'm satisfied she had fair usage of it. It follows I'm satisfied First Response shouldn't be responsible for the cost of the taxis during this period.

Thinking about the issues with the car Ms Y had, I'm satisfied it's fair to say that, while she did have use of the car, this usage was impaired. But, considering what's fair and reasonable, I'm satisfied the amount First Response reimbursed to Ms Y here fairly reflects this.

Ms Y is unhappy as she says she was told by First Response that she should keep driving the car even though it was unsafe. First Response says it never told Ms Y this. However, I don't need to make a finding about what happened here.

I know Ms Y feels strongly that the car was unsafe which could've caused an accident or injury, and that she could've been stopped by the Police. But, thankfully, as far as I know, Ms Y had no accidents or incidents when she drove the car. First Response are responsible for

what *did* happen – not what *might* have happened. So, whatever Ms Y was told, it doesn't need to take any action on this point.

Ms Y is also upset about what happened when the redress for the usage was paid. She feels strongly that First Response lied to her about this. But again, I don't think I need to make a finding on what likely happened here. The key point is that I'm satisfied this was paid to Ms Y and, whatever happened, any delay wasn't substantial enough to persuade me any further action is needed.

First response said it would cancel Ms Y's agreement and remove it from her credit file, which is what I'd expect to see under the circumstances. Ms Y felt First Response had negatively impacted her credit file when she complained. I've reviewed the screenshot of part of Ms Y's credit report that she sent in about this. But this specifically says information hasn't been updated since prior to when First Response said the agreement was cancelled. First Response has confirmed it has updated Ms Y's credit file, and I haven't seen enough to make me think this isn't the case.

So, thinking about this, in terms of the car being of unsatisfactory quality, I'm satisfied First Response has met Ms Y's rights under the CRA. And I'm satisfied its offer to put things right is fair and reasonable under the circumstances.

Ms Y has also raised some additional points which I'll comment on below.

Ms Y says when she made First Response aware of the issue with the car, during a phone call a staff member laughed at the situation and at some health conditions she mentioned.

I've listened to what I believe is the call in question here. I will say that I do think this call sounds somewhat unprofessional – I say this as music can be heard in the background and the agent's voice appears not to be isolated – meaning other conversations that were taking place can be heard. First Response has explained there was an issue with the agent's headset so it was letting in external noise – which seems a reasonable version of events – and it's confirmed this has now been resolved.

While laughter can be heard during this call, I'm satisfied this wasn't the agent Ms Y was speaking to and was overheard from a different conversation. It follows I don't think what Ms Y said is correct here and First Response doesn't need to take any further action.

Ms Y also says that there is another phone call that took place, that has been withheld from a subject access request, where a different staff member mocked her health conditions. But I've not seen enough evidence to persuade me it's most likely this is the case.

I know Ms Y is unhappy that First Response have explained she should seek car finance from another business if she wants to take out another agreement. But First Response doesn't have to provide Ms Y with further borrowing if it chooses not to.

I want to reassure Ms Y that I've carefully considered all of the other points she raised. But these do not change my opinion on the complaint.

My final decision

First Response Finance Ltd have already upheld this complaint and has made an offer to put things right.

The car has now been returned to S, First Response Finance Ltd has allowed Ms Y to reject it and the finance agreement has been ended. In addition it has already reimbursed Ms Y

£233.48 for the usage of the car and her deposit has been returned to her from S. First Response Finance Ltd has confirmed the agreement has been removed from Ms Y's credit file.

First Response Finance Ltd has also offered Ms Y £150 to reflect what happened, but I'm not certain if this has been paid to her or not.

My decision is that this offer is fair and reasonable under all of the circumstances of this complaint.

So, I instruct First Response Finance Ltd, if it hasn't already done so, to pay Ms Y £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 10 July 2023.

John Bower
Ombudsman