

The complaint

Mr R complains about the quality of a car he has been financing through an agreement with Lendable Ltd, trading as Autolend.

What happened

I've previously issued a couple of provisional decisions on this complaint. The most recent provisional decision was issued in July 2023 and an extract from that decision is set out below.

What happened

I issued my provisional decision on this complaint in June of this year. An extract from that provisional decision is set out below.

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

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Autolend, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr R. The car here was about seven years old and had already completed almost 89,000 miles. So, I don't think a reasonable person would expect it to be fault free as would perhaps be the case with a brand new car.

Mr R complained about an oil leak as soon as he collected the car. He's explained that the dealership convinced him that fault was quite trivial, and he was therefore prepared to authorise the repair and proceed with the deal. The repair to the crankshaft seal was therefore, completed in August 2022, only a couple of weeks after the car had been supplied to Mr R.

The relevant legislation allows the business one opportunity to fix a fault present when the car is supplied. I therefore think Autolend had that opportunity in August 2022. The business doesn't get one chance to repair each different fault, simply one chance to repair the car. So, if subsequent faults are identified that make the car of unsatisfactory quality we would usually tell the business to reject the car and end the finance agreement.

A few months after the crankshaft seal was replaced, in October 2022, a third party garage identified issues with a loose and leaking sump plug, a rattle from the flywheel which the dealership have suggested may mean the flywheel needs replacing, and a blocked heater matrix which means the air conditioning and heating doesn't work.

There were also issues with loose engine mounting bolts and a potential clutch problem. I don't think those issues have been corroborated by the dealership. I'll not consider those matters any further at this stage as I think the other issues are sufficient to persuade me this car was not supplied in a satisfactory condition and should now be rejected.

Whilst I accept that a car of this age and mileage may be experiencing quite significant wear and tear or suffer breakdowns more frequently than a new car, perhaps because components are coming to the end of their life. I don't think the issues Mr R has now identified could fairly be considered normal wear and tear. He had only completed 1,409 miles by the time the problems were identified, and I think it's therefore likely they were issues that were developing at the point of supply. I don't think a reasonable person would think those issues suggested the car was supplied in a satisfactory condition. And when I consider that, I take into account that the relevant legislation asks us to think about whether goods have been durable. I don't think the number of faults this car has experienced in such a short space of time would make it durable.

I can see Mr R has complained that the car was also misrepresented to him as it was advertised with a full service history, but he hasn't been supplied with evidence of that. I can't see that Autolend have been asked to look at that issue, and we wouldn't usually consider a complaint before the business had. I don't think the outcome of that complaint point really matters as the redress I'm suggesting would, in these circumstances, be likely to be similar.

Putting things right

Autolend should collect the car at no cost to Mr R and they should end the finance agreement.

They'll need to refund any deposit Mr R has paid and, as he's been deprived of that money, they will need to add interest to that refund.

The relevant legislation allows the business to retain some of the finance instalments it's been paid in respect of the use the consumer has had from the car. In September 2022 Mr R stopped using the vehicle when he says, and the dealership's recorded mileage confirms, he had completed 1,409 miles. I've seen an email from Mr R that he sent on 13 October 2022. He explains that he'd only been able to use the car for four of the last ten weeks. Whilst that may be the case, I think the mileage he completed in that time was more than average and, on balance, I'm expecting to tell Autolend to return all but two of the monthly finance instalments Mr R has paid. They will need to add interest to that refund.

Mr R has had to commission a report on the car's condition in order to support his claim. I think that cost (£69.60) has been incurred as a consequence of the car being of unsatisfactory quality. I've also seen invoices for the diagnostics completed by the dealership in November 2022, the inspection of the heater and flywheel issues also completed by the dealer in January 2023, and the crankshaft seal replacement completed in August 2022 at a cost of £143.99. If any of these costs were paid by Mr R I think they were paid as a consequence of the car's failings. Autolend should therefore refund the expenses on provision of proof of payment if Mr R can provide that.

Mr R has also explained that he's continued to insure and tax the car whilst his complaint has been ongoing and despite not driving the car since September 2022. It's not fair for him to have been doing so whilst he's not had use of the car so Autolend should provide a pro-rata refund of those expenses for the time Mr R has been paying tax and insurance but hasn't been using the car. I think that was from, and including, October 2022. Autolend

should add interest to the refund.

I understand that Mr R has had to use taxis and public transport whilst his car was unavailable to him. I'm not expecting to tell Autolend to refund those expenses as I'm asking them to refund the finance instalments that were paid when Mr R wasn't using the car and in those circumstances he wasn't, or isn't, out of pocket.

Mr R has been inconvenienced by these issues. He's had to take the car back to the dealership and obtain a third party diagnostic report. He's also had to escalate his complaint to this Service when I think it could have been resolved earlier. Whilst I can see that Autolend have responded quite quickly and comprehensively to Mr R's concerns and that they've clearly been chasing the dealership for a rapid response, I don't think their final response to Mr R was fair. In that final response they approved rejection of the car (although they later changed their mind) but they asked Mr R to continue paying for the car even though it was off the road, until they got their money back from the dealership. Whether Autolend were able to get their money back should have been of little concern to Mr R. His claim was with Autolend, and I think he could therefore have expected to be given his money back without delay. I think that inconvenienced Mr R and, taking all of that information into account I'm expecting to tell Autolend to pay him £400 in compensation.

My provisional decision

For the reasons I've given above, I'm expecting to uphold this complaint and to tell Lendable Ltd to:

- Allow Mr R to reject the car and end the finance agreement.*
- Collect the car at no cost to Mr R.*
- Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.*
- Refund all finance instalments except two, in respect of loss of use. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- Refund the cost of any diagnostics or repairs Mr R can demonstrate he paid for. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- Pay Mr R £400 to compensate him for the distress and inconvenience he's Experienced.*
- Provide a pro-rata refund of road tax and insurance on provision of proof of payment from Mr R and for the period from October 2022 until the complaint is settled. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- Remove any adverse reports they may have made to Mr R's credit file in relation to this issue.*

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

Further comments and evidence

Autolend provided a detailed response to my provisional decision. It isn't practical to repeat everything they said, but I have read the document and given due consideration to the points raised.

In summary Autolend agreed that there had been an oil leak when the car was supplied, and that Mr R had sanctioned the repair. They explained that seals don't last forever and that this one was nearing the end of its serviceable life. They said the dealership hadn't been able to

corroborate there were any faults with the coolant system, the heating and air conditioning, and the clutch. They said that "if there was an issue or an issue developing was narrowed down to be a blocked heater matrix. A heater matrix is also something that is subject to wear and tear." Autolend also noted that there wasn't a leak in the sump but that the sump plug had been loosened. They noted there was an issue with a loose tensioner pulley but explained that was likely down to normal wear and tear on a car of this age and mileage. They suggested Mr R would have noticed that when topping up his oil up and they said, "The only items that seem to be faulty are items that you would expect to become faulty or worn after a period of time."

Autolend also explained that Mr R settled the finance and sold the car in March 2023 and that they therefore couldn't comply with my provisional decision to allow Mr R to reject the car and to collect it.

Mr R provided no further comments or evidence.

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.

I explained in my provisional decision that, "I don't think the issues Mr R has now identified could fairly be considered normal wear and tear. He had only completed 1,409 miles by the time the problems were identified, and I think it's therefore likely they were issues that were developing at the point of supply. I don't think a reasonable person would think those issues suggested the car was supplied in a satisfactory condition. And when I consider that, I take into account that the relevant legislation asks us to think about whether goods have been durable. I don't think the number of faults this car has experienced in such a short space of time would make it durable."

While Autolend dispute some of the issues identified by the third party garage it seems they accept there was a blocked heater matrix, a loose sump plug, an oil leak due to a faulty crankshaft seal, and a rattle that was caused by a loose pulley and that the dealership have suggested may mean the flywheel needs replacing. It seems likely to me that if the heater matrix was blocked there would be issues with the air conditioning and heating in the car too. As Mr R completed such limited mileage in the car before those issues were identified I don't think it would be fair to suggest the car was durable and I still therefore think this car was of unsatisfactory quality.

I wasn't aware that Mr R had sold the car and settled the agreement. That means that the redress I'd proposed in my provisional decision can't be carried out as there's no car to collect or agreement to end. I've therefore thought about what that redress should now look like.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to tell Lendable Ltd to:

- Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund all finance instalments except two, in respect of loss of use. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund the cost of any diagnostics or repairs Mr R can demonstrate he paid for. Add 8% simple interest* per year from the date of payment to the date of settlement.

- *Pay Mr R £400 to compensate him for the distress and inconvenience he's experienced;*
- *Provide a pro-rata refund of road tax and insurance on provision of proof of payment from Mr R and for the period from October 2022 until the complaint is settled. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Remove any adverse reports they may have made to Mr R's credit file in relation to this issue.*

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

Further comments after my second provisional decision

Mr R didn't think the compensation I had suggested was sufficient. He also explained that he'd had to sell the car at a price below the settlement figure offered by Autolend and had therefore had to borrow money to settle the account. He set out his losses and suggested a settlement between £2,718.60 and £3,318.60 would be more appropriate.

Autolend provided a further, detailed response, I've read it all but will refer to what I feel are the most pertinent points. Autolend didn't agree with my summary of what they'd had to say about my initial provisional decision. They provided further information on why a heater matrix may become blocked. They suggested it didn't make the vehicle of unsatisfactory quality and that a heater matrix could become blocked in *"as little as 400 miles"*. They didn't think it was fair to suggest a loose sump plug rendered the vehicle of unsatisfactory quality as it was simply a failure to tighten it. They also thought it was likely the air conditioning had been working fine as Mr R hadn't mentioned it during the very hot summer weather. They said there was no evidence the tensioner pulley was faulty or worn and that the dealership had only said further inspection was required. They provided their view that a tensioner fault was a wear and tear issue. Autolend explained that whilst the dealership had suggested there was a *"potential"* faulty flywheel this wasn't the case and *"has now been concluded as not the flywheel but potentially a worn tensioner pulley, if anything."*

Autolend said that *"Just because Mr R had one repair previously doesn't mean other issues that arise make the vehicle unsatisfactory or faulty."* They said they had no evidence of a fault with the car and they referred me to previous decisions from this Service on wear and tear cases, and to some decisions of the Motor Ombudsman that they also believed were relevant.

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.

Autolend are right to suggest that just because the car had been previously repaired it doesn't mean that other issues that arise would necessarily make it of unsatisfactory quality. That's because subsequent issues may be related to wear and tear, or may not have been developing at the inception of the deal. But, as I've explained *"the relevant legislation asks us to think about whether goods have been durable."* And I don't think the number of faults this car has experienced in such a short space of time could fairly be considered to make it durable.

The dealership's own review of the issues Mr R referred to them said *"we have narrowed it (the rattle) down to one of the tensioner pulleys"* and that *"further diagnosis will be required to determine which pulley is faulty (my emphasis)"*. The report also confirms there is a

blocked heater matrix. So, I don't agree with Autolend that there is no evidence of a fault. I also think it's likely a blocked heater matrix would cause issues with the air conditioning.

Mr R had only completed 1,409 miles in the car by the time the additional faults were identified and, together with the original crankshaft seal leak, I'm persuaded that means this car wasn't durable and that Autolend need to put things right.

It was Mr R's decision to sell the car and not to wait for this decision, so I don't think it would be fair to hold Autolend responsible for any losses he may have incurred as a consequence of the sale. Having reviewed the redress I suggested in my latest provisional decision I am not minded to change it. I think the compensation for distress and inconvenience is in line with our published guidance on those types of payment.

Putting things right

My most recent provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint and tell Lendable Ltd to:

- Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund all finance instalments except two, in respect of loss of use. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund the cost of any diagnostics or repairs Mr R can demonstrate he paid for. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Pay Mr R £400 to compensate him for the distress and inconvenience he's experienced;
- Provide a pro-rata refund of road tax and insurance on provision of proof of payment from Mr R and for the period from October 2022 until the complaint is settled. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to Mr R's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 11 September 2023.

Phillip McMahon
Ombudsman