

The complaint

Miss K is unhappy that a car supplied to her under a hire purchase agreement with CA Auto Finance UK Ltd trading as FCA Automotive Services UK ('FCA') was of an unsatisfactory quality.

What happened

In December 2022, Miss K was supplied with a used car through a hire purchase agreement with FCA. She paid a £7,000 deposit and the agreement was for £14,000 over 48 months, with 47 monthly payments of £351.40 and a final payment of £361.40. At the time of supply, the car was around two and a half years old and had done around 19,500 miles.

Miss K has explained that, when she first visited the supplying dealership in November 2022, she was interested in an older car of the same make and model as the one she was supplied. She inspected and test drove the older car and applied for finance, through the dealership, to allow her to purchase this car. However, a few days later, the dealership contacted Miss K and advised her the older car had been sold, and she was offered a newer car instead – the one she eventually financed through FCA.

Miss K has said the dealership never made this newer car available for her to inspect or test drive, and she's provided copies of messages from the dealer explaining the car was delayed coming to them and wasn't available. Miss K says the car was eventually delivered to her on 22 December 2022, at the end of the day and in poor light conditions. As such she was unable to properly inspect the car.

Miss K has said that, when she had a chance to inspect the car the following day, in the light, she noticed poor quality paintwork on the nearside rear door – something she *"turned a blind eye to"* as it was a used car. In January 2023, Miss K also noted marks on the roof, which in hindsight she now believes related to when the windscreen had been replaced. She's also provided a photo dated 24 January 2023 showing this.

In April 2023, after a period of hot weather, Miss K noticed bumps and marks in the paintwork on the roof. She raised this with the dealership, who didn't respond. So, she had the car independently inspected. This inspection took place on 30 May 2023, and the report of this inspection is dated 5 June 2023.

The independent inspector said that the roof to the car had a previous poor repair, and there were cracks to the body filler at the front edge of the roof. An examination of the roof found *"a heavy application of filler"* with an uneven and excessively thick layer of paint over the roof and roof members. The examination also showed that the windscreen had cracked, that the bonnet had been replaced with a used part, that only two body panels didn't show any evidence of refinishing, and that the front wings had tooling marks and body panels were misaligned.

The inspector also said that vinyl wrapping had been applied to the bumpers, and trim to some body panels, all of which were of a poor standard with adhesion issues and air bubbles. They concluded that the car had previously been involved in an accident, that the

repair work had been done to a poor standard, and that the *“high strength steel front roof crossmember remains in a damaged state and is not providing the rigidity intended by the manufacturer. Therefore, the structural integrity of the vehicle could have been compromised.”*

The inspector said that, due to the poor quality of the repairs, that this wouldn't have been through an insurance claim and *“the quality of the repairs may not have been apparent to the untrained eye. But the quality & manner to which they have been carried out would call into doubt the merchantable quality of the vehicle in its entirety and is of unsatisfactory quality, unfit for purpose or not as described at the point of purchase.”*

Miss K complained to FCA, but they didn't uphold her complaint. They said the photographs and pre-handover checklist provided by the dealership show the car wasn't damaged at the point of supply, and Miss K hasn't provided any evidence to show that it was.

Miss K wasn't happy with what'd happened, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator was satisfied there was damage to the car. They thought that, given Miss K's testimony and the fact she obtained an independent report at her own costs, it was more likely than not that the damage to the car was present when the car was supplied. As such, they thought Miss K should be allowed to reject the car.

As Miss K was still driving the car, despite her safety concerns, as this was necessary for her to get to work, that FCA should also refund 20% of the payments she'd made since the issues with the car were identified in May 2023. The investigator also said FCA should refund Miss K's inspection and add-on enhancement costs and pay her an additional £250 for the distress and inconvenience she'd suffered.

Miss K accepted the investigator's opinion and provided additional photographic evidence of further cracks that had appeared on the windscreen.

FCA didn't agree with the investigator's opinion. They said Miss K had both inspected and test driven the car before it was supplied to her, and that the pre-delivery checklist didn't show any indications of damage to the car. They said the independent inspector hadn't confirmed when the damage had taken place, and that Miss K had been in possession of the car for five months before raising any issues – more than enough time to notice any imperfections or to have been involved in an accident and had the car repaired.

Because FCA didn't agree, this matter has been passed to me to make 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss K was supplied with a car under a hire

purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, FCA are 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. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies 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 the fault was present when the car was supplied, unless FCA can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Miss K to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss K took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask FCA to put this right.

In this instance, it's not disputed there is a problem with the car, or that this is likely caused by poor accident damage repair. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what still is in dispute – if the damage to the car was most likely present when the car was supplied to Miss K.

I've seen a copy of the independent engineer's report, dated 5 June 2024. The key findings of this report are detailed above, so I won't repeat them here. However, the engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

Miss K was in possession of the car for less than six months before she raised the issue of the accident damage. As I've already stated, the CRA therefore implies that this damage was present when the car was supplied, unless FCA can show differently.

The independent inspector's report clearly states the expert opinion that *"the quality & manner to which [the repairs] have been carried out would call into doubt the merchantable quality of the vehicle in its entirety and [the car] is of unsatisfactory quality, unfit for purpose or not as described at the point of purchase."* Despite having had plenty of opportunity to do so, FCA haven't obtained any report from another independent engineer to counter this finding. Instead, they've relied on the evidence supplied by the dealership.

I've seen a copy of the pre-handover checklist completed by the dealership, and this doesn't detail any issues with the car. There are also three photographs of the car, all taken from a distance of a few meters. The car is wet in these photographs, so it's difficult to identify any obvious problems. However, these appear to show bubbling in the vinyl wrapping on the bottom right of the front bumper.

I've also seen a copy of the original advert for the car, but the photograph is too low resolution, and again taken from a distance, to be able to identify any damage to the car. However, I noticed this shows the car only had one previous owner, while Miss K has supplied evidence that it had actually had three.

When considering this matter, I've also taken into consideration the 24 January 2024 photograph of the damage to the roof/windscreen, and the text message evidence that implies that the car wasn't made available for a test drive or inspection before supply.

The dealership has said the car had one previous owner, and that Miss K had inspected and driven the car before supply. However, the evidence I've seen shows both of these not to be the case. This calls into doubt the rest of the evidence supplied by the dealership, particularly the pre-handover checklist.

What's more, given the January 2024 photo evidence, if the car were to have been damaged in Miss K's possession, the damage and repairs would have all needed to take place between 22 December 2022 and 24 January 2023. And I don't find that likely due to the short timeframe.

As such, and taking everything into consideration, I'm satisfied the damage to the car most likely took place before it was supplied to Miss K. So, I think FCA need to do something to put things right.

Putting things right

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.*" This is known as the single chance of repair.

However, section 23(2) of the CRA states:

*If the consumer requires the trader to repair or replace the goods, the trader must –
(a) do so within a reasonable time and without significant inconvenience to the consumer*

Given the time that has passed, it's arguable that any attempt to repair the car would now fail to comply with Section 23(2)(a) of the CRA. What's more, given the likely extent of damage to the car, it may be uneconomic to repair. As such, in these circumstances, I'm satisfied that Miss K should be able to reject the car.

Miss K has been able to use the car while it's been in her possession. However, given the issues with the car, especially the safety concerns that have meant Miss K has limited her journeys, I'm also satisfied that Miss K's usage and enjoyment of the car has been impaired. Because of this, I also think it's fair that FCA refund some of the payments Miss K made. And I think 20% of the payments made fairly reflects the impaired use caused by the car not being of a satisfactory quality.

Miss K has provided evidence of the costs she's incurred in the enhancements she had done to the car at the point of supply, and the cost of having the car inspected. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that FCA reimburse / pay these costs.

Finally, it's clear that Miss K has been inconvenienced by what's happened. So, I think FCA should compensate her for this. The investigator had recommended FCA pay her £250, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, FCA should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Miss K;

- remove any adverse entries relating to this agreement from Miss K's credit file;
- refund the deposit Miss K paid (if any part of this deposit is made up of funds paid through a dealer contribution, FCA is entitled to retain that proportion of the deposit);
- refund 20% of the payments Miss K has paid since 26 May 2023, when she became aware of the issues with the car;
- upon receipt of proof of payment, reimburse Miss K with the £300 she paid for the pre-sale enhancements to the car, and the cost of the independent inspector's report;
- apply 8% simple yearly interest on the refunds, calculated from the date Miss K made the payment to the date of the refund[†]; and
- pay Miss K an additional £250 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires FCA to take off tax from this interest, FCA must give Miss K a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss K's complaint about CA Auto Finance UK Ltd trading as FCA Automotive Services UK. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 27 June 2024.

Andrew Burford
Ombudsman