

The complaint

Mr M complains about a car supplied to him on finance by 247 Money Group Limited ('MG').

What happened

The background facts are well known to the parties here so I won't be outlining these in detail – instead I will summarise matters and focus on giving reasons for my decision.

Mr M was supplied a car on hire purchase by MG. However, he is unhappy with its quality – in particular an issue with the car losing power. He wants to reject it.

Mr M complained to MG which initially responded to say that a repair was an option but there was a lack of evidence showing what the problem is.

Our investigator upheld the complaint and considered it fair and reasonable for MG to take back the car, end the finance agreement and pay compensation to Mr M.

MG agreed with the outcome but Mr M did not. In summary he says that:

- the car had a sharp edge on the steering wheel that caused injury;
- he lost his job as he didn't have a car and was late for work due to relying on public transport; and
- MG did not support him when things went wrong with the car.

Since the investigator's view things have moved on – Mr M has claimed he paid a deposit for the car that he is due back and he has also informed this service that MG has now taken the car back and ended the agreement.

I issued a provisional decision on this case which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Although the parties have produced a lot of information I have focused on the evidence I consider central to this complaint. This is not intended as a discourtesy but reflects my role resolving disputes informally.

I have considered relevant law and good practice when coming to my decision here. Mr M has recently raised some materials about the FCA Consumer Duty. While this will be relevant to MG going forward it doesn't relate to Mr M's complaint because it wasn't in force at the time of the acts he is complaining about (the supply of the car and the subsequent response of MG to the quality issues identified). That is not to say Mr M would not have expected MG to have treated him fairly in accordance with the FCA Consumer Credit sourcebook ('CONC') in any event.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. MG is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 ('CRA') is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The CRA says the quality of goods are 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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

MG supplied Mr M with a second-hand car in August 2022. Here I note the car had travelled around 49,800 miles at the point of supply and was several years old. So it is fair to say that the reasonable person would accept that it is likely to require more repairs and maintenance than a newer, less road worn car. The price agreed for the car was £12,399 which would be much less than the new price but is not an insignificant amount of money for a car.

While the car is second-hand there is still a reasonable expectation around quality and durability particularly with major components like the engine. From what I understand MG agree that the car was not of satisfactory quality at the time of sale and agreed to take it back.

As MG has agreed to take the car back I do not consider it necessary to analyse at length whether the car was of satisfactory quality when supplied. In brief, I agree this does not appear to be an unreasonable conclusion in the circumstances. I can see the car was having issues with occasional loss of power (seemingly related to the engine management) very soon after supply. Mr M has provided credible evidence of the engine management lights and issues he was having within the first 3 months of having the car including a description of when the car (apparently first) went into limp mode on 5 November 2022 and showed a warning on the dash saying 'Engine Fault: Repair Needed'. It appears Mr M also first reported an issue with warning lights on the dashboard to the dealer within the first few weeks of supply too. So overall it appears the goods were not of satisfactory quality due to a very early issue with what appears to be the engine.

What is left to decide here is appropriate redress. There is a question as to whether repair would have been a fair remedy. However, there is an argument as to whether rejection was more appropriate. I note when the power loss issue occurred on the highway in November 2022 this was in the context of a previous warning light being identified in the first 30 days of ownership. I can see Mr M arranged a diagnostic at the time (which he says the dealer requested). When the engine issues developed further rather than offer to take the car in it appears the dealer asked for Mr M to be put to further inconvenience in arranging another diagnostic report and visit third party garages. In any event, I note repair is not possible now in any case because the car has been taken back and agreement ended. So I have considered what is fair redress now in light of what is effectively the remedy of rejection.

As MG has confirmed the car has been taken back and the agreement ended I will not be directing MG to do this. I also note that MG has confirmed there is no adverse information on

Mr M's credit file as a result of the agreement so I won't be making any direction on this either.

I note Mr M has said he paid the dealer a deposit and traded in a part exchange car. It appears he did, however, I note the evidence shows this was used to pay off negative equity he owed on a previous finance agreement – so I don't think Mr M is owed anything back in that respect. In fact it appears that any deposit and part exchange value did not fully cover the previous finance agreement so the new finance agreement actually covered £12,990 for the cash price of the supplied car and an additional amount of £649 for the remaining negative equity. Meaning the total balance financed was £13,639. I have taken this into account in my redress below.

Mr M's usage of the car was impaired by the issues with it losing power. I think he should be compensated for this. However, I am not entirely persuaded he stopped using the car completely when the problems came to a head in November 2022 - as of June 2023 he had travelled around 10,500 miles since it was acquired, with around 3,000 miles travelled since the significant power issues were identified in November 2022. Because of this I can't fairly say Mr M is entitled to all his payments back from this time onward.

However, I think it is clear Mr M's use of the car has been impaired by the issue. He has described how the car lost power on the highway in November 2022 which scared him as he said it almost caused a collision. I note since then Mr M has produced evidence of continued error messages related to the engine management even if the car was somewhat drivable. He has also described how he has had to use public transport to get to work.

The investigator has suggested Mr M is refunded 20% of his payments since the issues with loss of power in November 2022 which appears to be when the problems first had a notable impact on his use of the car. Working out Mr M's impaired use is not a science here but I think the impairment is more significant than 20%. Mr M did travel about 3,000 miles after November 2022 to when he gave a more recent odometer reading but that was over 7 months - which appears below average. Furthermore, he has described how he wasn't always able to use the car. And it appears even when he was using it there were understandable nerves about the ongoing issues. So I think Mr M should fairly get back 40% of the payments he made from 5 November 2022 onwards.

However, I think it also reasonable that MG deduct the following from any redress of monthly payments due back to Mr M:

- any arrears of the months the car was in his possession before it was returned to MG (if any); and*
- the £649 which MG paid towards his old finance agreement.*

Mr M has explained that he lost his job and attributes this to problems with the car. I am sorry to hear about this but I have considered the question of causation here in determining what is fair to hold MG responsible for. Overall, I think:

- what Mr M is claiming is too remote a consequence to be a reasonable loss;*
- in any event Mr M could have reasonably mitigated the situation to help him arrive on time to work; and*
- in any event I think that there are likely to be other variables at play that make it difficult to conclude that Mr M lost his job solely because of the actions of MG in supplying a car that was not of satisfactory quality.*

Despite this I can see Mr M has been caused avoidable distress and inconvenience by what occurred here. There is an argument that he could have mitigated the situation to a degree as from what I can see he was offered some assistance later on and the prospect of repairs. But then I also note that at an early stage the onus appeared to be on him to get further diagnostics which would have been frustrating. Overall, I think it fair that MG pay Mr M £200 compensation to reflect the distress and inconvenience he had in trying to get a resolution here.

Mr M has said he paid out to fix certain defects but he hasn't persuasively evidenced this. I note that he appears to have commissioned a £40 diagnostic report in September 2022 but I understand the dealer paid for that one so I won't be making a direction in that respect.

Mr M says his wife cut her hands on sharp edges on the steering wheel. I am sorry to hear this but there isn't a lot of information that persuasively shows the steering wheel was sold in a dangerous condition. Furthermore, and in any event I can't make awards in respect of third parties here – it is Mr M which is the eligible complainant. Mr M appears more recently to have indicated he cut his hands on the steering wheel – but overall there isn't enough for me to say it is fair that he is compensated for this by MG.

My provisional decision

I uphold this complaint and direct 247 Money Group Limited trading as 247 Money to:

- refund Mr M 40% of the monthly payments he made covering the period from 5 November 2022 until when the car was taken back this year (after deducting any arrears he owes for this period and the £649 it paid toward his previous finance agreement);*
- add out of pocket interest to the refunds calculated at 8% simple yearly from the date of payment to the date of settlement; and*
- pay Mr M £200 in compensation for the distress and inconvenience caused by the issues with the car.*

If MG considers it necessary to deduct tax from my interest award it should provide Mr M with a certificate of tax deduction.

I asked the parties for their comments. MG did not comment.

Mr M agrees with the decision but maintains that he is owed money back from his cash contribution to the purchase. He says that he paid £999 in cash in several separate payments.

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.

I note that Mr M has maintained that he put cash and a car towards the deposit and is owed money for that. However, MG has provided information that is persuasive in showing that he had a significant amount outstanding on his previous finance (£4,722.37) that this all went to pay for as £672.87 cash and a part exchange valued at £3,400 (with the remainder put on

the finance). Mr M said he actually contributed £999 in this case – but I don't find the invoice with the annotations he has submitted to be persuasive evidence of this. So I am not minded to alter my redress here.

Overall, the parties have not given me reason to change my provisional findings so my final decision is the same as said findings (as copied above).

Putting things right

MG should put things right as detailed below for the reasons as set out here and incorporating my provisional findings.

My final decision

I uphold this complaint and direct 247 Money Group Limited trading as 247 Money to:

- refund Mr M 40% of the monthly payments he made covering the period from 5 November 2022 until when the car was taken back this year (after deducting any arrears he owes for this period and the £649 it paid toward his previous finance agreement);
- add out of pocket interest to the refunds calculated at 8% simple yearly from the date of payment to the date of settlement; and
- pay Mr M £200 in compensation for the distress and inconvenience caused by the issues with the car.

If MG considers it necessary to deduct tax from my interest award it should provide Mr M with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 January 2024.

Mark Lancod
Ombudsman