

The complaint

Mr S is unhappy that a car supplied to him under a hire purchase agreement with Stellantis Financial Services UK Limited (Stellantis) was of an unsatisfactory quality.

What happened

In October 2021 Mr S was supplied with a used car through a hire purchase agreement with Stellantis. He paid an advance payment of £7,999 and the agreement was for £24,397 over 48 months; with 47 monthly payments of £181.82 and a final payment of £7,853. At the time of supply, the car was less than one year old, and had done 3,093 miles.

Mr S said that he highlighted issues with the paintwork to the supplying dealer when he viewed the car. He said that he was told the paintwork would be prepared. So on this basis, he said he signed the agreement. He collected the car a few weeks later. He washed the car a few days after and noticed the repairs hadn't been done properly: he said there was an overspray, run marks, and flat paintwork.

He said he took it back to the dealer who referred him to the third-party paint shop who had carried out the repair. He said the paint shop admitted it was a poor quality job but that this was because they said the dealer had asked for quick cheap job.

He said he asked for the paintwork to be repaired and for the roof to be resprayed as that was now peeling. He said the dealer had the car for three months but he was not satisfied with the quality of this repair. He said the dealer told him that was the best he was going to get and he needed to accept the car.

He said he also had problems with a faulty parking sensors and camera. He said the dealer eventually accepted responsibility for those issues.

Stellantis said Mr S complained to them in July 2023. They said he was aware of the issues with the paintwork when he entered into the agreement. They said he had complained that the first repair was not sufficient, but he had still agreed to take the car.

They said that Mr S is seeking to reject the car under the Consumer Rights Act 2015 (CRA) because he feels the car is not of a satisfactory quality. They said that Mr S is not entitled to reject the car because section 9 of the CRA says that faults that are brought to the consumer's attention before the contract is entered into are not covered.

They also said that Mr S complained about the rear sensors and camera in early 2022 after he had a minor collision with a post. They said they accepted the dealer's explanation that this occurred due to Mr S not closing the boot properly which prevents the reverse camera from working.

They said the car had now been fully resprayed, but Mr S was still not happy. They said the respray had been done as a gesture of goodwill and was not an acknowledgement of any fault.

Mr S was unhappy with this response, so he referred his complaint to our service to the Financial Ombudsman Service for investigation.

Our investigator said that Mr S should be allowed to reject the car. He said Stellantis had supplied him with a car that was not of a satisfactory quality, and after three attempts at repair, there were still faults with the paintwork.

Stellantis didn't agree with the investigator's interpretation of the CRA. They said Mr S had entered into the finance agreement with awareness of the existing faults. And because the faults had been drawn to his attention, they said they didn't think there was a breach of the CRA for which they were liable. They said that any arrangement with the dealer to have the paintwork repaired was outside the terms of their hire purchase agreement with Mr S.

Because Stellantis 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. Mr S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr S entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their appearance and finish, and freedom from minor defects.

So, if I thought the car was not of a satisfactory quality when Mr S took possession of it, and that repairs had failed to put things right, it'd be fair and reasonable to ask Stellantis to put this right.

In this instance, it appears there is no dispute there was a problem with the paintwork, nor that this fault was present when the car was supplied to Mr S. I say this because Stellantis has accepted this to be the case in their response to our investigator's view. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision.

Whilst accepting there was a problem with the paintwork, Stellantis say that they are not liable because Mr S was made aware of the issue before he accepted the car. They said:

“Mr S was presented with an Adequate Explanation document at the point of sale, which invited him to contact us with any questions about the agreement before signing. Had he done so, we would have advised him not to enter into the agreement unless he was satisfied with the condition of the vehicle. However, it does not appear that he took the opportunity to do so.

He chose to go ahead with signing the Hire Purchase finance agreement nevertheless, and accepted the vehicle in its existing faulty condition. However, in doing so this fundamentally affected the customer's right to rectification under the Consumer Rights Act 2015, as the implied contractual term requiring goods to be of satisfactory quality when supplied does not cover faults which are specifically drawn to the consumer's attention before the contract is made, or where the consumer examines the goods before the contract is made, which that examination ought to reveal.

It does not therefore appear from our interpretation of the legislation that there has been a breach of the CRA for which we would be liable as the supplier of the vehicle, either to rectify the fault or to take back the goods.”

I disagree with their interpretation of the events prior to Mr S acquiring the car, and the subsequent outcome they've reached.

I think it's clear from Mr S's testimony, and that of the supplying dealer, that Mr S pointed out the faulty paintwork, and the dealer agreed to repair it. I don't agree that Mr S accepted the car *“in its existing faulty condition”*. He asked for a repair and the dealer agreed to do this. The work was completed and Mr S took possession of the car a few weeks later. So I think it's more likely than not that Mr S signed the consumer credit agreement on the basis that the car that is the subject of this agreement would have been repaired and would have been of satisfactory quality when he received it.

Stellantis also allege that Mr S was likely to be in breach of the agreement by accepting a car that was faulty, and not raising this in their adequate explanations process. I don't accept this allegation. Neither do I accept their comment that any arrangement between Mr S and the supplying dealer *“stood outside the terms of his Hire Purchase agreement with us”*. Stellantis were required to supply Mr S with a car that was of a satisfactory quality. I'm satisfied that their agent, the supplying dealer, agreed to carry out the necessary repairs, and Mr S agreed to enter into the hire purchase agreement on that basis.

I think it's unfair and not reasonable for Stellantis to seek to avoid their responsibilities in this way. This was a nearly new car, so it was reasonable that Mr S expected the finish to be without blemish. All parties have accepted that the issues with the paintwork made the car not of a satisfactory quality at the time of supply. I think the testimony from Mr S and the dealer is clear that Mr S was not accepting the car with the existing faults. For Stellantis to suggest otherwise is, I believe, unreasonable.

The remedy in these circumstances would be a single chance of repair. *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.”*

In this instance there have been several attempts at repair, including a full respray. I've seen a note from the supplying dealer that acknowledges there were still issues with the paintwork, even after the full respray. So because this impacted on the appearance and finish of the car, I'm satisfied the car was still not of a satisfactory quality, even after the full respray.

The CRA is clear that, if the single chance at repair fails, as was the case here, then the customer has the right of rejection.

I've also considered Mr S's complaint about a fault with the reversing camera and sensors. There is a lack of evidence that explains the fault. Mr S refers to the camera and sensors failing only when he had an accident in February 2022. With no other evidence or information, I'm satisfied with the dealer's explanation that the sensors more likely than not failed due to the boot not being properly closed, rather than any fault.

Putting things right

Mr S has been able to use the car while it's been in his possession. And for the lengthy periods it was being repaired, he was provided with a courtesy car to keep him mobile. I know he feels it wasn't of the same standard as the car he was paying for, but I'm satisfied it was sufficient to keep him mobile without significantly impairing his usage of the car. Because of this, I think it's only fair that he pays for this usage. So, I won't be asking Stellantis to refund any of the payments he's made.

It's clear that Mr S has become increasingly frustrated with how long it took to attempt to resolve the issues with the paintwork, with the most recent attempted repair taking more than two months – and still the car was not of a satisfactory quality. That must have been extremely disappointing. So, I think Stellantis should pay him £250 in compensation to reflect the distress and inconvenience caused.

Therefore, Stellantis should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr S;
- remove any adverse entries relating to this agreement from Mr S's credit file;
- refund the £7,999 deposit Mr S paid (if any part of this deposit is made up of funds paid through a dealer contribution, Stellantis is entitled to retain that proportion of the deposit);
- apply 8% simple yearly interest on the refunds, calculated from the date Mr S made the payment to the date of the refund[†]; and
- pay Mr S an additional £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If Stellantis considers that tax should be deducted from the interest element of my award, they should provide Mr S with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

My final decision

For the reasons explained, I uphold Mr S's complaint about Stellantis Financial Services UK Limited and they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 September 2024.

Gordon Ramsay
Ombudsman