

The complaint

Mr S is unhappy that a car supplied to him under a hire purchase agreement with AutoMoney Limited trading as AutoMoney Motor Finance ('AMF') was of an unsatisfactory quality.

What happened

In June 2023, Mr S was supplied with a used car through a hire purchase agreement with AMF. The agreement was for £22,500 over 60 months; with an initial payment of £688.68, 58 monthly payments of £639.68 and a final payment of £738.68. At the time of supply, the car was around four and a half years old and had done 53,030 miles (according to the MOT record for 16 June 2023).

In July 2023, Mr S complained to AML about issues with the car. During July and August 2023 four sensors and an engine mount were replaced, a chip on the windscreen was repaired, and the rear spoiler was refitted after it came detached. The supplying dealership reimbursed Mr S for the cost of all these repairs.

Mr S was also told the brake pads were lipped and were 20% to 30% worn, and a dashboard warning message came on which said "*Restraint sys. malfunction.*" The supplying dealership didn't agree to replace the brake pads, but Mr S was asked to take the car to a workshop for the warning message to be checked out. However, he wasn't prepared to do this as he wanted to reject the car. AMF didn't agree to allow rejection, so Mr S brought his complaint to the Financial Ombudsman Service for investigation.

It's my understanding that, while this matter has been investigated, Mr S has continued to use the car with the warning message on, and he hasn't taken any action about this. I also understand that Mr S hasn't made any payments to AMF as he still wants to reject the car.

Our investigator said there were faults with the car when it was supplied which made the car of an unsatisfactory quality. However, as these faults had been successfully repaired, this was a fair and reasonable resolution, and Mr S shouldn't be given the right to reject.

The investigator also said that, given the age and mileage of the car, it was reasonable to expect the brake pads to be worn. However, the car passed an MOT before it was supplied to Mr S, and the brake pads weren't flagged as either a failure item or an advisory. As such, the brakes met at least the minimum legal standard at the point of supply (and with only 20% to 30% wear this was well above the minimum legal standard). So, the investigator didn't think AMF needed to do anything about this.

However, the investigator said that Mr S had suffered some trouble and inconvenience with the rear spoiler coming detached while he was driving, and by not being supplied with a courtesy car when the car was being repaired (even though it was always dropped off and returned the same day). As such, the investigator thought AMF should pay Mr S £300 to recognise this.

AMF agreed with the investigator's opinion, but Mr S didn't. He said that the investigator hadn't dealt with the issues that he was told the car had been serviced when it was supplied to him, but a service required warning message was being displayed within a month of him having the car. He also said that the car hadn't come with a second key, and he's concerned that someone else has this key and could steal the car.

The investigator explained that they hadn't seen anything to show the car was supplied with a recent service and given the mileage it's likely a scheduled service was due. However, as Mr S refuses to take the car back to the dealership for the warning messages to be investigated, they didn't think AML needed to do anything more about this.

Mr S still didn't agree with the investigator but said he would keep the car if AML paid for a service and provided him with a second key. Because Mr S 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'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, AMF 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 AMF can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr S to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr S 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 AMF to put this right.

In this instance, it's not disputed there were problems with the car relating to the sensors, engine mount, windscreen, and rear spoiler. 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 conform to contract.*" This is known as the single chance of repair. If the single chance at repair fails, then Mr S has the

right of rejection. However, this doesn't mean that Mr S is required to reject the car, and he can agree an alternative remedy i.e., further repairs to the car.

It's clear that Mr S agreed to further repairs, and these were successful. As such, and while I appreciate this will come as a disappointment to Mr S, he doesn't have the right to reject the car for the faults that have been successfully repaired, and I won't be asking AMF to accept rejection on this basis.

Turning now to the issues that Mr S says remains – the brakes, the warning message, the service, and the second key. Mr S has provided photographic evidence of the “*Restraint sys. malfunction*” warning message, which is accompanied by a graphic that indicates this may relate to the airbags. It's also the case that he's steadfastly refused to have this investigated as he wants to be able to reject the car instead.

As I've explained above, there would need to be a fault that was present or developing at the point of supply for me to be able to direct AMF to take any further action. And, as Mr S refuses to allow the car to be checked out, I cannot say there is a fault that was present or developing at the point of supply. What's more, as Mr S, by his own admission, has continued to drive the car with this warning message present, there is the likelihood that he's potentially caused drive-on damage. Given all this, I can't fairly find that AMF are responsible for this issue, and I won't be asking them to do anything more.

With regards to the brakes, I've seen evidence they are worn and have lipped. But this doesn't mean that the brakes aren't fit for purpose, and the car passing an MOT with no failure or advisory points in July 2023 shows the brakes were fit for purpose. It would be reasonable to expect that a used car of the age and mileage of the one supplied to Mr S would have some form of brake wear, and Mr S has continued to drive the car with no reported issues with the brakes – which in itself would cause additional wear to the brakes. It's also the case that the brakes are a serviceable item that would be expected to need replacement at multiple times during the lifetime of the car. As such, I again can't fairly say this is AMF's responsibility, and I won't be asking them to take any further action.

Mr S has said the car was supplied with a recent service and was advertised as coming with a spare key. However, Mr S hasn't provided a copy of the service book for the car to show what the service history was, nor have I seen a copy of the advert for the car. As such, it may be the case that the car has been serviced, and the service warning light just needs resetting; or that the car was never serviced and it's due a scheduled service based on its age and/or mileage.

AMF have said the car was never advertised as having a spare key, and it's not unusual for a car of this age not to have a spare key, especially where it's had multiple owners. I also don't think that a missed service and/or a missing spare key would make the car not of a satisfactory quality when it was supplied. So, I don't think this is something that AMF need to take any further action about.

However, it is clear Mr S has been inconvenienced by what's happened and having to take the car back for repair on a number of occasions. The investigator had recommended AMF pay him £300 for this inconvenience, which AMF have accepted as fair and reasonable in the circumstances. As this amount is also in line with what I would've directed had no recommendation been made, I see no reason not to adopt this as part of my final decision.

Putting things right

For the reasons stated, AMF should:

- pay Mr S £300 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't initially of a satisfactory quality.

My final decision

I uphold Mr S's complaint about AutoMoney Limited trading as AutoMoney Motor Finance, 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 3 July 2024.

Andrew Burford
Ombudsman