

The complaint

Mr W is unhappy that a car supplied to him under a hire purchase agreement with First Response Finance Ltd was of an unsatisfactory quality.

Mr W has been represented during the claim and complaint process by Mr C. For ease of reference, I will refer to any comments made, or any action taken, by either Mr W or Mr C as “Mr W” throughout the decision.

What happened

In February 2023, Mr W was supplied with a used car through a hire purchase agreement with First Response. He paid a £1,000 deposit and the agreement was for £7,059 over 61 months, with monthly payments of £191.68. At the time of supply, the car was around eight and a half years old and had done 59,000 miles (according to the hire purchase agreement – the latest MOT was nine months earlier and showed the car had done 52,901 miles).

The car broke down on 18 May 2023, and the attending mechanic said the issue with the car was a failed timing chain. The mileage at the time of this breakdown isn’t detailed on the breakdown report, although I have noted that the publicly available MOT record shows a mileage of 66,826 miles on 9 May 2023 – just over a week before the breakdown. Due to the nature of the breakdown the car was undrivable, and Mr W had to have it recovered.

Because the supplying dealership had ceased trading, Mr W complained to First Response about the breakdown. The car was taken to a local garage who inspected it on 26 May 2023. The garage confirmed the timing chain had failed, and also confirmed the mileage as 67,218 miles. This means that Mr W had done around 8,000 miles between supply and breakdown.

First Response have said the garage informed them the failure of the timing chain was not as a result of wear and tear, and the make and model of car supplied to Mr W is known for this issue. However, First Response also say they were told this wouldn’t have been something that was present or developing at the point of supply.

Given this, First Response didn’t think they were responsible for the fault with the car. However, they offered to contribute £1,000 towards the repair costs, and fund up to £1,150 of the remaining costs through an interest free loan, which would be added to the end of the existing agreement and the monthly payments would continue past the original term until the repair costs were repaid.

Mr W wasn’t happy with this offer, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator was satisfied there was a fault with the car but didn’t think any reasonable person would expect a timing chain to fail after around 67,000 miles. So, she said the car wasn’t sufficiently durable and this made it of an unsatisfactory quality when supplied. As such, the investigator said that First Response should be responsible for repairing the car. The investigator also thought that First Response should refund all the payments Mr W has

paid from October 2023 until the car is repaired, as well as paying him an additional £200 for the distress and inconvenience he'd suffered.

First Response didn't agree with the investigator. They didn't agree that a reasonable person would expect a timing chain to last more than 67,000 miles as *"this contradicts the advice in the vehicle manufacturer's hand book. There is an expectation of a vehicle owner to maintain it by replacing these chains at the manufacturer suggested intervals."* First Response also said that, because Mr W had done more than the average mileage of 1,000 miles a month while the car was in his possession, he was at a greater risk the car may need repair and/or maintenance. And they didn't think that it was fair they were held responsible for the consequential damage caused by the timing chain failure, as there was no proof the car was sold in a faulty condition.

The investigator explained that the manufacturer's guidelines for replacement at 56,000 miles related to a timing belt, not a timing chain, and there were no manufacturer's guidelines as to when a timing chain should be replaced. And she thought a reasonable person would expect this to last at least 80,000 miles.

First Response responded by saying that timing chains weren't expected to last the lifetime of the vehicle, and it was unfair to say they were liable for any car where the timing chain failed before 80,000 miles. They also said that, had the timing chain failed after seven months instead of less than six, then we would be taking a different approach. They thought Mr W had had fair use of the car, and therefore their offer was fair.

Mr W also didn't agree with the investigator. He said he'd been without the car for an extended period, which had caused him financial and mental health difficulties. He said that he didn't want the car back, even if it was repaired, and wanted to be able to reject it instead.

I issued a provisional decision on 13 March 2024, where I explained my intention to uphold the complaint. In that decision I said:

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 W 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, First Response 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 First Response can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr W to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr W 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 First Response to put this right.

In this instance, it's not disputed that the timing chain failed, or that this resulted in the car being undrivable from 18 May 2023. As such, I'm satisfied that I don't need to consider this within my decision. Instead, I'll focus on what is in dispute – whether this made the car of an unsatisfactory quality when it was supplied and, if it was, what I think First Response should reasonably do to put things right.

As I've said above, as the fault occurred within six months of the car being supplied to Mr W, the CRA implies it's for First Response to show that the fault wasn't present or developing at the point of supply. While First Response have told us this was the case, as this is what the garage who confirmed the timing chain failure said, they haven't provided any evidence of this i.e., a report from the garage stating this was the case. As such, I'm not satisfied that First Response have shown the fault wasn't present or developing when the car was supplied to Mr W.

But, even if I'm wrong about this, I still need to consider whether the car was sufficiently durable. The other statement First Response say the garage said was that the timing chain didn't fail due to in-service wear and tear. As there are no recommended manufacturer's guidelines for when a timing chain should be replaced, it's reasonable for me to conclude that Mr W didn't fail to replace it when he should've done. And I'm satisfied that the usual expected lifespan of a timing chain is 80,000 to 120,000 miles.

So, if I were to accept what First Response said the garage told them, then although the fault with the timing chain wasn't present or developing at the point of supply, it still failed due to non-wear and tear reasons, so wasn't sufficiently durable. But, if I don't accept what First Response have said the garage said, as they haven't been able to evidence this, then it's still the case the timing chain failed before any reasonable person would expect (even given the age and mileage of the car), so it wasn't sufficiently durable.

As such, I'm satisfied the car wasn't of a satisfactory quality when it was supplied to Mr W, as it wasn't sufficiently durable. For clarity, this is based on the overall age and mileage of the car at the point of failure and isn't affected by either the amount of miles Mr W was able to travel before the car failed, or the month in which it failed – my conclusion would be the same had the failure happened after seven months. As every case is determined on its own merits, while this doesn't mean that First Response are automatically liable for any timing chain that fails at less than 80,000 miles, in this instance it does mean that they need to do something to put 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 conform to contract." This is known as the single chance of repair. In this instance, First Response haven't been given the opportunity to repair the car, so they should therefore be given this. Only if this repair fails would Mr W then have the right to reject.

The car has been off the road and undrivable since 18 May 2023 and, since this date, Mr W hasn't been supplied with a courtesy car. As such, he was paying for goods he was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as First Response failed to keep Mr W mobile; I'm satisfied they should refund the payments he's made.

In their opinion, the investigator said that Mr W should be refunded the payments he's made since October 2023. However, I disagree with this as the car hasn't been able to be driven since 18 May 2023, not October 2023. As such, I'm satisfied that Mr W should be refunded all the payments he's made since the breakdown.

Finally, it's clear that Mr W has been significantly inconvenienced by what's happened, and I've no doubt that he's suffered from stress, anxiety, and financial pressures as a result. The investigator had recommended First Response pay him £200, 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 decision.

Therefore, I intend to say that First Response should:

- *arrange to repair the car at no cost to Mr W and without any undue delay;*
- *remove any adverse entries relating to this agreement from Mr W's credit file;*
- *refund all the payments Mr W has paid since 18 May 2023 to the date of repair;*
- *apply 8% simple yearly interest on the refund, calculated from the date Mr W made the payments to the date of the refund[†]; and*
- *pay Mr W an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

However, if First Response believe the car is uneconomical to repair, they are able to waive their right to repair under the CRA, and instead they should:

- *end the agreement with nothing further to pay;*
- *collect the car at no cost to Mr W;*
- *refund the deposit Mr W paid (if any part of this deposit is made up of funds paid through a dealer contribution, First Response is entitled to retain that proportion of the deposit);*
- *remove any adverse entries relating to this agreement from Mr W's credit file;*
- *refund all the payments Mr W has paid since 18 May 2023 to the date the agreement is ended;*
- *apply 8% simple yearly interest on the refunds, calculated from the date Mr W made the payments to the date of the refund[†]; and*
- *pay Mr W an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

[†]If HM Revenue & Customs requires First Response to take off tax from this interest, First Response must give Mr W a certificate showing how much tax they've taken off if he asks for one.

Responses

Mr W accepted my provisional view. However, he said that he would like some guarantee on the condition of the car once the repairs have been done i.e., that it was in the same condition as it was left, with no major dents, scratches, or other damage. As such, he said that he would like to have the car independently inspected before it was returned to him, which he accepts would be at his cost.

Mr W also said that the car should be returned to him in a roadworthy condition, so an MOT should be carried out, which First Response should be liable for – it's only because they didn't accept liability for the timing chain fault that the existing MOT has expired.

First Response said they thought my provisional view was “*vastly unfair*” as Mr W hasn't made any payments since May 2023, and they had nothing further to add.

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.

Mr W's comments are noted. And I'd like to reassure him that section 24(5) of the CRA, quoted above, gives him additional protection if the repairs are unsuccessful. While it's Mr W's choice to obtain a report from an independent engineer, if there has been any additional damage to the car that's not related to the failure of the timing chain, this will need to be raised as a separate complaint to First Response and isn't something I'll be accounting for in my final decision.

With regards to the MOT, had the timing chain not failed then Mr W would be responsible for obtaining this, and for getting any work done so the car can meet the minimum MOT standards. Once the repairs to the timing chain have taken place, the issues with the car that First Response are liable for will have been dealt with. And I don't think it's fair for them to be responsible for any wear and tear on other components that may result in an MOT failure or advisory, especially given the mileage Mr W did in the car while it was in his possession. As such, I won't be asking First Response to obtain an MOT, or to do any additional work on the car to get it to a minimum MOT standard.

First Response's comments have also been noted. While they consider this to be unfair, for the reasons explained in my provisional view, they are liable for the repairs to the car under the CRA. As such, I won't be changing my view on this point.

First Response have also said that Mr W hasn't made any payments to the agreement since May 2023. While they haven't provided anything to show me this is the case i.e., a Statement of Account, I explained that it was my intention to ask them to only refund anything Mr W has paid since May 2023. As such, if no payments have been made, then no refund will be due.

So, for the reasons given, I intend to adopt my provisional view as my final decision. And First Response must do something to put things right.

Putting things right

First Response should:

- arrange to repair the car at no cost to Mr W and without any undue delay;
- remove any adverse entries relating to this agreement from Mr W's credit file;
- refund any payments Mr W has paid since 18 May 2023 to the date of repair;
- apply 8% simple yearly interest on the refund, calculated from the date Mr W made the payments to the date of the refund[†]; and
- pay Mr W an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

However, if First Response believe the car is uneconomical to repair, they are able to waive their right to repair under the CRA, and instead they should:

- end the agreement with nothing further to pay;
- collect the car at no cost to Mr W;
- refund the deposit Mr W paid (if any part of this deposit is made up of funds paid through a dealer contribution, First Response is entitled to retain that proportion of the deposit);
- remove any adverse entries relating to this agreement from Mr W's credit file;
- refund any payments Mr W has paid since 18 May 2023 to the date the agreement is ended;

- apply 8% simple yearly interest on the refunds, calculated from the date Mr W made the payments to the date of the refund[†]; and
- pay Mr W an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires First Response to take off tax from this interest, First Response must give Mr W a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr W's complaint about First Response Finance Ltd. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 April 2024.

Andrew Burford
Ombudsman