

Complaint

Miss T has complained about the quality of a car that First Response Limited ("First Response") supplied to her through a hire-purchase agreement.

Background

In December 2023, First Response provided Miss T with finance for a used car. The car was just over seven years old and the agreement suggests that it had completed 37,897 miles at the time of the sale.

This car was a replacement car for a previous car which Miss T had purchased in September 2023. As I understand it, when Miss T returned the previous vehicle to the supplying dealer the amount she received for it was less than that amount required to settle the finance. This meant that Miss T had to pay an additional cash amount of £1,052.89 to settle the outstanding finance agreement.

The cash price of the replacement vehicle was £10,000.00. Miss T didn't pay a deposit (for this vehicle) and applied for finance to cover the entire amount of the purchase price. First Response accepted Miss T's application and entered into a 61-month hire-purchase agreement with her. The total amount to be repaid of £17,134.90 was due to be repaid in 61 monthly payments of £280.90.

It's fair to say that Miss T tried to exit the agreement on more than one occasion. Miss T initially contacted First Response, on 22 December 2023, which was 13 days after the funds were paid to the supplying dealer, stating that she wished to withdraw from the agreement. First Response told Miss T that she had the right to withdraw from the credit agreement provided that she repaid the amount it paid to the supplying dealer. Miss T declined this option saying she didn't have the funds available.

Miss T called First Response again a few days later asking for clarification on her right to withdraw and this was provided to her. At this point Miss T agreed to speak to the supplying dealer to see if it would take the car back and then return the funds First Response had paid it, in order for the agreement to be settled.

A couple of days later the supplying dealer requested a settlement figure for the agreement. The notes of this call suggest that the supplying dealer stated that Miss T said that she didn't like the car she had chosen and it was looking to see what it could do to help settle the finance. I understand that a settlement figure was provided to the supplying dealer at this stage.

The following day Miss T got in contact to say that she wanted to return the car because it wasn't fit for purpose. Miss T said that driving the car was impacting her hearing implants. As the supplying dealer wasn't prepared to take the car back, Miss T complained to First Response.

First Response didn't uphold Miss T's complaint. It didn't think that there was anything wrong with the car and therefore disagreed that it had supplied her with a car that wasn't fit for

purpose, or wasn't of satisfactory quality. Miss T remained dissatisfied and referred her complaint to our service.

Miss T's complaint was subsequently reviewed by one of our investigators. She was satisfied that the car First Response supplied to Miss T was of satisfactory quality and she didn't think that the complaint should be upheld. Miss T disagreed with our investigator's view and asked for her complaint to be passed to an ombudsman for a final decision. So the complaint has been passed to me to decide.

My findings

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

I'm satisfied that what I firstly need to decide in this case is whether the car supplied to Miss T was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for First Response to do to put things right.

Having carefully considered matters, I'm satisfied that the vehicle First Response supplied to Miss T was of satisfactory quality. And I'm therefore not upholding Miss T's complaint. I'll explain why in a little more detail.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, First Response purchased the vehicle from the dealership Miss T visited.

Miss T then hired the vehicle from First Response and paid a monthly amount to it in return. First Response remained the legal owner of the vehicle under the agreement until Miss T's loan was repaid.

This arrangement resulted in First Response being the supplier of Miss T's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Miss T's agreement with First Response. Under a hire-purchase agreement, there are implied conditions that the goods supplied, amongst other things, will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory, amongst other things, includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

I've read and considered everything provided. I accept and acknowledge that Miss T has provided a number of submissions. It's fair to say that both parties have significantly differing views on whether the car supplied to Miss T was fit for purpose.

Before I go any further, I think it would be helpful for me to set out that while I've not referred to each individual submission that Miss T has made, it's not because I've failed to take her concerns on board. It's simply that I've focused on what I'm satisfied I need to decide in order to reach what I think is the right outcome here. Our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

Is or was there a fault with the vehicle and was it fit for purpose?

Before I go on to consider whether the vehicle supplied was fit for purpose, I think it's worth me starting by confirming that I've not been provided with anything at all – such as a report or a diagnostic check – confirming that a fault, of any description, has formally been identified with the car that Miss T was supplied in December 2023. I've not been provided with anything to indicate that the car couldn't be used for its general purpose of being driven as a mode of transport. So I've not been persuaded that the car supplied wasn't fit for its general purpose.

Nonetheless, Miss T has said that the car wasn't suitable for her because it interfered with her hearing implants. Therefore, she's effectively argued that the car wasn't fit for the specific purpose she acquired it for.

I've considered what Miss T has said. However, I've not seen anything to indicate that Miss T informed the supplying dealer about her hearing implants, or that it was possible that her driving a car would interfere with them. So I don't think that the supplying dealer was in a position to know that the car had to be fit for a specific purpose – in other words, that it knew it needed to deliver a car that was not going to interfere with Miss T's hearing implants.

Furthermore, Miss T not only test drove the vehicle prior to agreeing to acquire it, she had also had possession of and used the car for almost three weeks before raising any issues in relation to the car interfering with her hearing implants. Indeed, it's also worth noting that Miss T's initial concern when contacting First Response was that she may have paid too much for the car and this appears to be the reason why she wanted to withdraw from the agreement.

In reaching my conclusions on whether the car was fit for Miss T's specific purpose, I'm mindful that Miss T hasn't provided us with any supporting evidence from a doctor or any other medical professional to corroborate what she's said about this specific car interfering with her hearing implants. In these circumstances, as well as Miss T deciding to acquire the car after a test driving it and her not raising any concerns about the car interfering with her hearing implants until three weeks after it was supplied, I simply don't have sufficient evidence to be persuaded that the car wasn't fit for purpose at the time it was supplied.

As this is the case, I'm satisfied that the car First Response supplied to Miss T wasn't faulty and that it was fit for purpose. This means that I'm also satisfied that the car Miss T was supplied with in December 2023 was of satisfactory quality and that First Response didn't unfairly refuse to accept Miss T's rejection of it.

Did First Response unfairly refuse to allow Miss T to withdraw from her agreement?

For the sake of completeness, I've also considered whether First Response unfairly refused Miss T to withdraw from her agreement when she got in contact about doing so. There is no dispute that Miss T contacted First Response on the thirteenth day after the hire purchase agreement went live. Given Miss T had 14 days to withdraw from the agreement, there is therefore no dispute that at the time Miss T contacted First Response, she was still within time to withdraw from the credit agreement.

As I understand it, Miss T was told that her right of withdrawal applied to the hire purchase agreement rather than the car. So Miss T was told that she could withdraw from the agreement as long as she returned the funds that had been paid to the supplying dealer, prior to her taking delivery of the vehicle.

As the funds had already been paid, the right of withdrawal applied to the credit agreement (rather than the agreement to acquire the car) and Miss T didn't suggest that there was

anything wrong with the car at this stage. So I don't think that the information First Response provided Miss T with at this stage was incorrect.

Furthermore, as Miss T confirmed that she didn't have the funds to repay it the amount that it paid to the supplying dealer, on 9 December 2023, and she therefore didn't want to withdraw from the agreement in that way, I don't think that it was unfair or unreasonable for it to refer Miss T back to the supplying dealer. After all, if the supplying dealer was prepared to take the car back (which some dealers do agree to do) and settle the finance, this would have allowed Miss T to exit the agreement she made to acquire the car and this was what Miss T really wanted to do.

In these circumstances, I'm satisfied that First Response didn't act unfairly or unreasonably towards Miss T when she said that she wanted to withdraw from her agreement.

Miss T's September 2023 agreement

I appreciate that Miss T feels that she has lost out because she paid a deposit, which she's not been refunded, when entering into the first hire-purchase agreement that she did with First Response in September 2023. I can understand why Miss T may be unhappy that she wasn't refunded any of the deposit that she paid when entering into her first agreement. Particularly given what has since happened with the replacement agreement she entered into in December 2023.

However, there is no dispute that there was no fault with car First Response supplied in September 2023 and Miss T hasn't ever said that this car interfered with her hearing implants, in the way that she's said the December 2023 car did. As I understand it, after a couple of months of using the car (supplied in September 2023) Miss T decided that she wanted a car that used less fuel. This is the reason why she entered into a new agreement with First Response in December 2023.

At this point, I think it's worth me explaining that the earlier a customer exits an agreement (after the withdrawal period has passed) the more it is likely to cost them to do so. This is because a higher proportion of the earlier payments goes towards paying the interest that accrues as the balance is highest at the start of the loan. This is felt more acutely on higher interest agreements such as Miss T's one here.

Furthermore, a car is always likely to depreciate once it is sold. This combination of factors mean that it more expensive to exit an agreement very early into the term. Nonetheless, Miss T will have been aware of the additional costs she'd have to pay in order to change her car in December 2023 after she'd only acquired her previous one in September 2023.

I say this because Miss T had to make a cash payment of £1,052.89 to cover the shortfall between what she received when the car was returned and the amount that was needed to settle the finance. Miss T was also aware that she wasn't getting any of the deposit that she paid in September 2023 back either.

While I appreciate that Miss T is now unhappy with this deal and I accept that things probably seem worse as she's unhappy with the car she acquired in December 2023, as she decided to proceed with settling the September 2023 agreement on the terms that she did, I can only assume that she was happy to do so.

Furthermore, as I've not seen anything to indicate that there was a fault with the car supplied in September 2023 car and Miss T paid what she did simply because she wanted a different car, I don't think that First Response acted unfairly or unreasonable in relation to this. So while I accept that in hindsight the deal is expensive and can understand Miss T may regret

things, I don't think that First Response did anything wrong. And as this is the case, I don't think that it would be fair and reasonable for me to uphold the complaint on this basis either.

Overall and having considered everything, I'm not upholding Miss T's complaint. I appreciate that this is likely to be very disappointing for Miss T – particularly as she feels strongly about this matter. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

Although I'm not upholding Miss T's complaint, I'd nonetheless like to remind First Response of its obligation to exercise forbearance and due consideration – particularly in light of what Miss T now says about her ability to make payments to the balance that remains on the December 2023 agreement after she surrendered custody of the car. I would also encourage Miss T to get in contact with and co-operate with any steps that may be needed to review what, if anything, she might be able to repay going forward.

For example, by completing any income and expenditure forms sent. I don't think that it is unreasonable to expect her to complete and return such documentation to First Response. Furthermore, if Miss T feels that she's been treated unfairly by First Response as part of any forbearance process, she may - subject to any other jurisdiction concerns – be able to refer any further complaint about this matter to us.

My final decision

For the reasons I've explained, I'm not upholding Miss T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 2 January 2025.

Jeshen Narayanan
Ombudsman