

The complaint

Mr B is unhappy that a car supplied to him under a hire purchase agreement with First Response Finance Limited (First Response) was of an unsatisfactory quality.

When I refer to what Mr B has said and what First Response have said, it should also be taken to include things said on their behalf.

What happened

On 3 March 2023 Mr B was supplied with a used car through a hire purchase agreement with First Response. The retail price of the car was £7,499 with Mr B paying 49 payments of £245.10. At the time of supply the car was approximately nine years old and had covered 66,000 miles according to the invoice.

Mr B is complaining that on 2 November 2023 he experienced issues with the car which resulted in the car requiring a replacement clutch and extensive work on the gearbox. An invoice dated 10 January 2024 shows this work being carried out at an independent garage and costing £1,740. Mr B states that at the time of the failure the car had travelled approximately 3,400 miles from the date of supply.

From evidence supplied by First Response it appears that Mr B first contacted them on 28 November to complain about the car. First Response set out that given the age of the car and time elapsed since supply Mr B would have to show that the fault was there at supply. To do this they would need to speak to the repairing garage. As an alternative they offered an interest free loan equivalent to 75% of the repair cost to help get the car back on the road. According to their records Mr B contacted them shortly after to agree to the latter option.

A further complaint was lodged by Mr B with First Response on 12 January 2024 about the same issue and seeking compensation. They wrote to him on the 17 January 2024 informing him that they would not uphold his complaint as he had chosen an interest free loan as a resolution when he first complained.

Mr B then complained to us seeking compensation of £435 he paid to the garage, a sum of £1,305 being removed from his loan (representing the amount added to the loan to cover 75% of the repair costs) and compensation for not being able to use the car for 10 weeks.

Our investigator stated that they had to take into account the fact that the car was nine years old and travelled 66,000 miles at the time of supply, and it was a further eight months before the issue with the clutch came to light. Given the age and the length of time before the fault appeared they considered that the repair work required was reasonable wear and tear. The car was therefore of satisfactory quality and First Response was not obligated to do anymore in relation to Mr B's complaint.

Mr B didn't agree with the investigator and contacted them on 23 February 2024 citing that as clutch/gearbox issues were common on the make of car, it was not of satisfactory quality. The investigator explained that we could not accept internet forums as evidence and we

would require something more substantial, such as a statement from a VAT registered garage. Mr B was then given some time to get evidence from the garage that undertook the repairs.

On 8 April Mr B contacted us to say that the garage was not prepared to get involved in any legal case. He again cited the number of cases about similar issues with the make of the car as evidence that his car was not of satisfactory quality. On 9 April 2024 the investigator wrote to Mr B to inform him that they did not class this as new evidence so would not be reopening their investigation. Therefore, the original decision not to uphold the complaint stood. Mr B did not agree with this conclusion, citing both the amount of evidence that this was a known fault with his model car and the invoice from the garage. He contended that this showed that the car was not of satisfactory quality at the time of supply.

Because Mr B didn't agree and asked an ombudsman to review his complaint 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.

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 B 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.

Before I explain why I've reached my decision, I think it's important for me to set out exactly what I've been able to consider here, and how.

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 is 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. Where goods are second hand, as in this case, due regard must be had to the price, age and any description applied to the car.

So, if I thought the car was faulty when Mr B 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.

As stated earlier the age, mileage and price of any vehicle has to be taken into account when deciding what is satisfactory quality. Cars also have an element of fair wear and tear that needs to be taken into account when coming to any decision. In addition to this I need to consider that Mr B had eight months of usage of the car between the date of supply and the clutch failing.

With any failure occurring more than six months after the date of supply the onus is on Mr B to show that the fault was present at the time of supply and the car did not conform to the contract at the point of supply. Mr B provided evidence from internet forums/other users which he said supported his claim the fault with the car was inherent and therefore likely present at the point of supply. While this is relevant evidence it does not tell me the fault that he experienced with his specific car is the same as that experienced by the other users. So, on its own I do not find it to be compelling evidence.

Whilst Mr B has had the car repaired, the garage itself has provided no evidence that the fault was there at the time of supply. It is of course possible the clutch was nearing the end of its life when the car was supplied - it is a serviceable part after all and subject to wear and tear. However, Mr B had the car a further eight months and travelled 3,400 miles before the clutch failed. So, it seems unlikely to me the car was of unsatisfactory quality when it was supplied, and Mr B has not provided evidence that persuades me otherwise.

I've also considered the durability of the car. The mileage on the car when the clutch failed was at the lower end of when one might reasonably anticipate this to happen. However I don't find it was so soon that I'd consider the car was not durable, especially given its age.

Whilst I can empathise with Mr B I feel that the faults he has experienced with the car are commensurate with a car of the age, mileage and price at the time of supply.

I therefore find that there is insufficient evidence to uphold Mr B's complaint. In which case it is open to him to pursue the matter by other means should he wish to do so.

My final decision

My decision is that I do not uphold this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 October 2024.

Leon Livermore
Ombudsman