

The complaint

Miss S complains about the quality of a car supplied to her by Advantage Finance Ltd ("Advantage Finance").

What happened

Miss S acquired a used car under a 60 month hire purchase agreement with Advantage Finance in July 2022. The car cost £8,115. Under the agreement, Miss S was required to make 59 payments of £243.80, followed by a final payment of £443.80 if she wanted to keep the car. The total amount payable under the agreement was £14,828. At the time the car was supplied to Miss S, it was around eight years old and the reported mileage was 83,363. The car was supplied by a garage I'll refer to as "D".

Miss S said she opted to pay an additional amount for the delivery of the car at an extra cost. She said she was led to believe that the car would arrive on a transport vehicle but instead someone drove it to her house. Miss S said she accepted the car and didn't carry out a test drive. Miss S said less than two months later, the car was leaking a huge amount of oil and coolant. She said D told her the warranty probably wouldn't cover the issues so she could either pay for the car to be recovered to D and pay for repairs or take the car to a local mechanic. Miss S took the car to a local mechanic and the car was repaired.

Following this, Miss S said the car had to be recovered due to a coolant leak. She says a repair garage told her that there were patchworks over the engine. Miss S said she paid for repairs. In January 2024, Miss S said the car was still losing coolant and she was told this was likely a head gasket issue. Miss S complained to the broker of the agreement who told her to contact Advantage Finance. An independent expert was instructed by Advantage Finance to look at the car.

Advantage Finance issued its response to Miss S's complaint in February 2024. It said based on the information provided, there was insufficient evidence to suggest the faults were inherent or developing at the point the car was supplied to Miss S. It said it wouldn't ask D to cover the cost of repairs but it would be happy to set up a reduced payment plan on the agreement. It said it wouldn't charge any arrears charges to Miss S's account.

Unhappy, Miss S referred her complaint to this service. She said her mental health had been hugely affected and she had mobility needs. She said she wanted to end the agreement and for Advantage Finance to repay her the amount she had spent on the car. She also said she wanted it to pay her compensation but she would pay for her use of the car. Miss S also provided further information from the garage that carried out repairs to the car.

Our investigator looked into the complaint and said in relation to the coolant and oil leak, he didn't think the car was of satisfactory quality when it was supplied to Miss S. He said as Miss S had already had the car repaired, Advantage Finance should pay for the cost of those repairs. He said that he didn't think Advantage Finance should pay anything in relation to the head gasket as Miss S had been able to travel over 15,000 miles in the car before the issue manifested. Our investigator said Advantage Finance should pay Miss S £200 for the distress and inconvenience caused.

Advantage Finance agreed.

Miss S disagreed. She said she had evidence that the car was of unsatisfactory quality when it was sold to her, her better option was to go to court, she wasn't offered a test drive, the mileage was incorrect when it was sold to her and she didn't understand how it had passed an MOT. Miss S said Advantage Finance had one chance to repair the car and instead of doing this, it directed her to fix the car herself. So, she said she should be able to reject the car. Miss S also said our investigator didn't comment on the mileage discrepancy.

Our investigator reiterated his view and said that whilst there was a mileage discrepancy, this was nominal and Miss S didn't raise this until 18 months after she had the car. So, he didn't think it changed her decision to enter into the agreement.

As Miss S remains in disagreement, the case has been passed to me to decide.

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.

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Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of 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.

Both parties have provided a good deal of evidence, so I've had to summarise things in this decision. The rules of our service allow me to do this, but I want to assure the parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. However, I'm going to concentrate here on what I consider is key to reaching a fair and reasonable outcome overall.

In this case, both parties agree that in relation to the earlier faults concerning the coolant and the oil leak, the car was of unsatisfactory quality when it was supplied to Miss S. Having reviewed the supporting information on file, I'm satisfied these issues made the car of unsatisfactory quality when it was supplied to Miss S.

What remains outstanding, and what I need to decide in this case, is whether a repair is a fair and reasonable remedy for the issues relating to the coolant and oil leak and also whether the head gasket fault makes the car of unsatisfactory quality. If I think Advantage Finance needs has acted unfairly or unreasonably, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. Advantage Finance is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality. I can only consider the actions of Advantage Finance. Whilst I understand that Miss S is unhappy with D, I can't comment on the way D runs its business.

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Miss S acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods 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.

Oil and coolant leak

All parties are in agreement the oil and coolant leak made the car of unsatisfactory quality. Our investigator recommended that Advantage Finance pay for the cost of repairs. But Miss S says she wants to reject the car instead, as D had one chance to repair the car but insisted Miss S repair the car instead. I've considered carefully what happened.

Miss S says when the initial issue with the oil and coolant leak occurred, she contacted D and had an uneasy conversation with it. She said D told her to take the car to a local garage as the warranty would unlikely cover the issue. I can see that D also sent Miss S a copy of the warranty information the following day. It doesn't appear that Miss S attempted to make a claim on the warranty and it's not clear what was discussed between her and D. But in any event, Miss S took the car to a garage I'll refer to as "F" and repairs were carried out. Following this, I can see a roadside recovery service attended the car for an issue with the heat pipe. Miss S says she had repairs carried out, but no supporting information has been provided to show this. However, these repairs appeared to have successfully fixed the faults.

Having thought about all of this carefully, it's clear there were faults with the car but the faults were repaired. Whilst the faults were repaired by Miss S at her own cost, Advantage Finance has agreed to pay for the cost of repairs. I appreciate Miss S says that D or Advantage Finance should have arranged the repairs as per the CRA. However, Advantage Finance didn't become aware of any issues with the car until January 2024 and by that time Miss S had already had the faults with the coolant leak, oil leak and heat pipe repaired.

In relation to D, there's no supporting information to confirm what was discussed by Miss S and D at the time the faults occurred. But in any event, Miss S mitigated her loss and got the car repaired. As she had the car repaired and has since been able to travel substantial mileage in the car, I don't consider it fair or reasonable that she now be able to reject the car for faults that have been repaired successfully.

Having said this, I can see that Miss S was caused distress and inconvenience as a result of the issues with the car. I can see that the car broke down and was recovered by a roadside recovery company and Miss S has detailed the impact to her health. I'm sorry to hear of the impact to Miss S. I think Advantage Finance should pay Miss S £200 for any distress and inconvenience caused.

Head gasket

I've seen a copy of the independent engineer's – who I'll refer to as "M" - report from January 2024. The mileage of the car is listed at 99,026. M said the fluid levels were checked and the engine oil was confirmed as correct. M noted the coolant level was below the minimum mark and no fault codes were recorded on the electronic control unit. M said there was evidence of emulsified oil present inside the engine cooling system and the engine was unable to be started as it would crank but not fire. M went on to conclude that the issue with the emulsified oil had been going on for some time, but it was likely that the issue occurred after inception as the car passed an MOT after the date of sale. M said that having to replace the cylinder head gasket on a car that has covered more than 100,000 miles is classed as general wear and tear and not the responsibility of the sales agent.

I've looked at a copy of the MOT's that were carried out on the car. Prior to the car being acquired by Miss S, the car had an MOT carried out in May 2022 with no advisories. In May 2023, the car had an MOT carried out and it failed due to the offside headlamp. There was no report of any oil leaks, coolant loss or any sludge being found in the coolant tank. The mileage at the time was 92,301 miles.

Our investigator contacted F and it said the issue with the head gasket wasn't linked to the repairs it carried out in September 2022. It said if there was any suggestion of a head gasket

fault at the time, Miss S wouldn't have been able to drive in excess of 15,000 miles as the engine would have overheated and failed.

So, whilst I agree that there is a fault with the head gasket, I'm not persuaded that this fault makes the car of unsatisfactory quality and neither do I think it is connected to the previous faults. I understand that Miss S disagrees strongly with this, but the supporting information doesn't suggest this.

Miss S acquired a used car that cost around £8,115 and it was eight years old at the time of supply. If Miss S had acquired the car new, it would have cost her around £23,000. I also need to take into account that Miss S was able to travel more than 15,000 miles between the coolant issues and when the fault with the head gasket occurred. I think it's unlikely, as F has said, that Miss S would have been able to use the car for this number of miles and for around 14 months, before any issues occurred. I think it's more likely than not that the issues would have occurred a lot sooner had there been a problem with the head gasket prior to September 2022.

So given the age and mileage of the car at the time the fault with the head gasket occurred, I'm satisfied that it's more likely than not that the fault occurred due to wear and tear. I consider that the issue developed and deteriorated after Miss S was supplied the car. And so, it follows that I think the car was of satisfactory quality when it was supplied to Miss S.

Did Advantage Finance act unfairly or unreasonably in any other way?

Miss S says that the advertised mileage of the car was different to the mileage of the car when she received it. I can see that the invoice for the car lists the mileage as 83,363. However, Miss S hasn't provided any supporting information to show what the mileage was recorded at on the date it was received by her. She says the car was driven to her instead of being delivered. I accept that the mileage was possibly higher when it was delivered to Miss S. But in the absence of what that was, I don't think it would have been much more than what Miss S was led to believe it would be and neither do I think it would have impacted Miss S's decision to acquire the car, as the mileage was already over 83,000 at the time the car was supplied to her. I note that Miss S didn't complain about the mileage discrepancy until she had had the car for more than around 18 months.

I've also considered that the invoice of the car doesn't include a price for delivery. Miss S says she paid an additional amount to have the car delivered to her. She said she thought the car would be delivered on a delivery vehicle, but it was driven to her. I can't see that Miss S paid an additional amount for the delivery and neither has any supporting information been provided to show that D agreed to deliver the car on a vehicle rather than drive the car to Miss S. In light of all this, I don't think Advantage Finance has acted unfairly or unreasonably in any other way.

I appreciate this is likely to come as a disappointment to Miss S and I'm sorry to hear about how she has been affected by the fault with the car. But overall, I think Advantage Finance's agreement to pay for the initial repairs is fair and reasonable in the circumstances. So I don't require Advantage Finance to do anything further to put things right.

Having said this, I will take the opportunity to remind Advantage Finance that it should treat Miss S with forbearance and due consideration if she is experiencing any financial difficulty.

My final decision

I uphold Miss S's complaint. Advantage Finance Ltd should do the following to put things right:

- refund Miss S for the repairs carried out by F on 8 September 2022 and following the 24 September 2022 breakdown respectively, upon Miss S providing Advantage Finance with VAT registered invoices with a breakdown of the costs of the relevant repairs. Miss S should provide Advantage Finance Ltd with the invoices within a

month of accepting this final decision;

- pay Miss S 8% yearly simple interest on all refunded amounts from the date of payment until the date of settlement*; and
- pay Miss S £200 for any distress and inconvenience caused**.

*If Advantage Finance Ltd considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss S how much it's taken off. It should also give Miss S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

**If Advantage Finance Ltd does not pay this £200 compensation for inconvenience and distress within 28 days of the date on which we tell it Miss S accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 November 2024.

Sonia Ahmed
Ombudsman