DRN-4784477

The complaint

Ms K is unhappy that a car supplied to her under a hire purchase agreement with First Response Finance Ltd was of an unsatisfactory quality.

What happened

In November 2022, Ms K was supplied with a used car through a hire purchase agreement with First Response. She paid a £1,289 deposit and the agreement was for £8,100 over 54 months; with monthly payments of £254.33. At the time of supply, the car was almost nine years old, and had done 87,500 miles (according to the MOT record for 13 October 2022).

Ms K initially contacted First Response in April 2023, requesting details of the car's warranty. However, as First Response hadn't supplied or financed this, they referred her to the supplying dealership. Ms K contacted First Response again in December 2023 with regards to issues with the transmission. She also arranged for the car to be inspected by an independent engineer, at a cost of £195.

The car was inspected on 14 December 2023, at which point it had done 98,438 miles. While the engineer said there was an issue with the Dual Mass Flywheel that had resulted from normal in-service wear and tear, they also said *"given the condition of welding on the underside of the vehicle, the structural integrity has been compromised, along with damage to the subframe."*

The engineer also said *"the level of damage to the vehicle subframe and chassis is considerable and has an aged appearance of and therefore is not a recent occurrence, leading us to the conclusion that the damage to the chassis is prior to point of sale … the vehicle is unfit for regular use on the public highway."* Finally the engineer concluded that *"the vehicle was not sold in a durable or suitable condition."*

The dealership didn't agree to Ms K rejecting the car, as she'd had it for more than 12-months. First Response didn't provide a response to the complaint, so Ms K brought it to the Financial Ombudsman Service for investigation.

The car was inspected again, by a different independent engineer, on 11 March 2024. At the time of this inspection the mileage was still showing as 98,438. The second engineer said *"the nearside front area of the vehicle has been in an accident [and there are] unsatisfactory repairs."* The second engineer also said that, while *"the damage to the nearside front area does look aged"* given that the car had done 10,000 miles while it was in Ms K's possession *"we are unsure whether this was done before the sale of the car to the current customer"*

Our investigator said that the issues with the transmission were caused by wear and tear, so First Response weren't responsible for this. With regards to the accident damage, the MOT record showed advisories for a deformed vehicle structure on 6 October 2021 and on 13 October 2022 (both before the car was supplied to Ms K). So, the investigator thought that a repair had been attempted, and completed to an unsatisfactory standard, before the car was supplied to Ms K.

This investigator said the issues with the car made it of an unsatisfactory quality when supplied. So, they thought First Response should allow Ms K to return the car, refund her deposit, the cost of the first engineer's report, all payments she'd made since stopping using the car in December 2023, as well as pay her an additional £150 for the distress and inconvenience caused.

First Response didn't agree with the investigator's opinion as they didn't think the second engineer's report said the structural integrity of the car had been compromised, nor that it wasn't fit for purpose at the point of supply. Ms K provided evidence of the storage charges for the car since December 2023, which she said she had been assured would be covered, as well as the costs of a replacement battery and an MOT and service. She also said First Response had now defaulted the agreement.

While the investigator was satisfied that both engineer's reports showed there was structural damage to the car, they revised their opinion to say that First Response should also refund Ms K with the costs of the new battery and service completed in November 2023, as she had not had the benefit of these given that she was told the car shouldn't be driven due to pre-existing damage shortly afterwards.

However, the investigator said that First Response weren't responsible for the storage charges as Ms K could've mitigated these by having the car moved to her home address or another secure location. But, as it was the broker who had assured Ms K these charges would be covered, the investigator said that Ms K should raise this directly with them.

Ms K agreed with the investigator's revised opinion, apart from the storage charges which she thought First Response should be liable for. First Response still didn't agree with the investigator, and they thought it was unfair they were now also being asked to refund the service charges. So, they asked that this matter be passed to an ombudsman 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.

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. Ms K 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 confirm 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. So, if I thought the car was faulty when Ms K 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.
Having reviewed the evidence in this matter, I'm satisfied the crux of the issue is whether the car supplied to Ms K was of an unsatisfactory quality given the previous damage and repair. And what's key to determining this are the two independent engineer's reports and the car's MOT history.

I've seen a copy of the report dated 14 December 2023, which was instructed and paid for by Ms K. I've noted the engineer has confirmed that their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon. As I've already stated above, the engineer found that there was badly repaired structural damage to the car, as well as the existing structural integrity being compromised. The engineer also concluded that this was present when the car was supplied to Ms K.

I've also seen a copy of the second engineer's report dated 11 March 2024, which was instructed and paid for by the finance broker. The second engineer has also confirmed that their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm also satisfied this report is reasonable to rely upon.

First Response believe this report shows that there is no current structural damage to the car and, even if there was, that it wasn't present when the car was supplied to Ms K. However, I disagree with this conclusion. I say this because the second engineer has specifically referred to the following as being present on the car at the time of inspection:

- an unsatisfactory repair of a plate welded to the nearside front inner wheel arch;
- damage to a sub-frame leg where it meets the chassis just in front of the steering rack;
- a supporting bracket for the wing/bumper on the nearside front area behind the headlight was bent and damaged;
- the impact bar behind the bumper on the nearside front was bent and damaged;
- the nearside front door hinges had tool marks and were bent around the hinges; and
- the panel alignment around the nearside front area between the bonnet, wing, nearside front door, and front bumper were unevenly aligned.

The second engineer also referred to the possibility that whatever caused the damage to the car may have, in turn, damaged the gearbox and led to its eventual failure.

So, based on both reports, I'm satisfied that there was both badly repaired and unrepaired accident damage to the car. Both engineers also said that the damage and repairs were aged. The first engineer was satisfied this had happened before the car was supplied to Ms K, whereas the second engineer was unable to conclude when this likely happened. But, crucially, the second engineer didn't say this damage had happened *after* the car was supplied to Ms K.

The MOT history for the car shows that the car passed MOT tests on 6 October 2021 and on 13 October 2022, both with an advisory for structural damage. Both of these MOT tests took place before the car was supplied to Ms K. However, this advisory wasn't present when the car passed an MOT on 25 October 2023, after it had been supplied to Ms K. Based on this evidence, I'm satisfied it's more likely than not that the car suffered the initial accident damage before 6 October 2021, more than a year before it was supplied to Ms K. What's

more, the car was repaired to a standard just enough for it to not have any MOT advisory for structural damage at some point between 13 October 2022 and 25 October 2023.

As it's clear from the evidence that the accident damage happened well before the car was supplied to Ms K, I think it's unlikely that she would've had this repaired without first raising a complaint with First Response. Instead, I think it's more likely than not that the repairs were done by the supplying dealership at some point between the MOT test on 13 October 2022, and when the car was supplied to Ms K on 30 November 2022. However, as both independent engineers have pointed out, the quality of repairs was both unsatisfactory and had failed to repair all of the structural damage to the car.

This now brings me to the question of whether the damage to the car as detailed above made it of an unsatisfactory quality when it was supplied to Ms K. The first engineer definitely thought so, and said as much in their report, also stating that the car shouldn't be driven. The second engineer didn't make any specific comment about this, but I need to consider they were inspecting the car as a non-runner. As such, I wouldn't necessarily expect this to be mentioned. Finally, although First Response believe the second engineer's lack of comments mean the car was of a satisfactory quality at the point of supply, they haven't sought any confirmation of this, nor have they supplied anything from the engineer stating the car was of a satisfactory quality.

Given the above, I'm satisfied that, on the balance of probabilities, the car wasn't of a satisfactory quality when it was supplied to Ms K. As such, First Response need to do something to put things right.

Putting 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 confirm to contract."* This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for First Response – the first attempted repair is the single chance at repair. It's clear from the evidence that First Response haven't had this single chance at repair.

However, section 23(2) of the CRA states:

> *If the consumer requires the trader to repair or replace the goods, the trader must –*
> *(a) do so within a reasonable time and without significant inconvenience to the consumer*

Given that First Response have been in possession of two independent reports that state there is damage to the car which was most likely present when the car was supplied to Ms K, and they haven't taken any steps to repair the car in almost a year, it's arguable they have failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Ms K should be able to reject the car.

Regardless of the damage to the car, Ms K was able to use it from November 2022 to December 2023, during which time she covered more than 10,000 miles. Because of this, I think it's only fair that she pays for this usage. So, I won't be asking First Response to refund any of the payments she's made during this period. However, as the evidence shows that Ms K stopped using the car on 7 December 2023, any payments she has made after this date should be refunded, as Ms K was paying for goods she was unable to use.

Ms K has provided evidence of the cost she's incurred in having the car inspected in December 2023. Whilst this was done by a qualified independent engineer whose duty was to the courts, this report was rejected by First Response, and a further report obtained which confirmed the same issues. As such, I think First Response should reimburse Ms K the costs of this report.

Ms K also paid for the car to be serviced, and a new battery fitted, in November 2023. Given that she was told the car was undrivable on 7 December 2023, she has had no benefit from this. However, on taking back the car, First Response will benefit from this as the car will be sold with a new battery and recent service, so increasing its saleability and/or sale price. I think its therefore only fair that First Response also reimburse Ms K for this.

Turning to the storage costs, I won't be asking First Response to reimburse this. Ms K has an obligation to mitigate any losses, and in an email dated 11 April 2024 she confirmed that she could've moved the car to her property, albeit at a towing cost (which I would have been asking First Response to reimburse had Ms K chosen this course of action). Instead, Ms K chose to keep the car at a location where storage costs were being charged. I appreciate she received an assurance from the finance broker that they would cover this cost, but this was not an offer made by or on behalf of First Response. As such, I think it's only fair that Ms K liaise with the broker about these charges.

Finally, I think Ms K should be compensated for the distress and inconvenience she was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended First Response pay Ms K an additional £150, to recognise the distress and inconvenience she was caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Ms K would've felt by finding out the car she was supplied with had unrepaired structural damage. And I think it also fairly reflects the fact that Ms K was inconvenienced by what happened and by not having access to a car she was relying on. So, this is a payment I'm directing First Response to make

Therefore, First Response should (if they haven't already):

- end the agreement with no further monthly payments to pay;
- collect the car at no collection cost to Ms K;
- remove any adverse entries relating to this agreement from Ms K's credit file;
- refund the deposit Ms K 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);
- refund the equivalent of the payments Ms K paid from 7 December 2023 to when the agreement ends;
- Upon proof of payment, reimburse Ms K the cost of the new battery and service in November 2023, and the cost of the independent inspection in December 2023;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Ms K made the payments to the date of the refund[†]; and
- pay Ms K an additional £150 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (First Response must pay this compensation within 28 days of the date on which we tell

them Ms K accepts my final decision. If they pay later than this date, First Response must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment†).

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

My final decision

For the reasons explained, I uphold Ms K'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 Ms K to accept or reject my decision before 5 February 2025.

Andrew Burford
Ombudsman