

The complaint

Miss T complains that a used car supplied by Advantage Finance Limited under a hire purchase agreement (HPA) is of unsatisfactory quality.

What happened

Miss T acquired this car in June 2022. She reported problems to the supplying dealer (who I'll refer to as E) shortly after and the car was checked by a third party garage (that I'll call N) in September 2022. N found front discs, the offside steering rack and nearside wishbone needed replacing and the car wasn't picking up speed due to a possible clutch issue or low gearbox oil. E agreed to have these faults fixed and another TPG (that I'll call C) carried out repairs (costing around £600) in December 2022.

Miss T contacted E again in early January 2023 to say the gearbox still wasn't right. E agreed to sort this out but nothing happened for several months and Miss T took the car to a main dealer for the brand (that I'll call B) for a vehicle health check (VHC). B found faults with the gearbox and brakes, the off-side front bottom arm bush was failing, the nearside front ball joint had excessive play, as did the offside track rod and the front bumper was not aligned or secure.

Miss T complained to Advantage who contacted E and the broker that arranged the finance. They didn't assist, in light of the time that had passed since supply and Advantage, acknowledging there was evidence the car had faults present, instructed an independent expert to inspect. He provided a report in August 2023.

The expert agreed there were faults present but concluded these were likely wear and tear related. He didn't test drive the car - as it had an unroadworthy tyre – so he couldn't check the gearbox (a type known as a continuous variable transmission (CVT)) and brakes. He thought stored fault codes suggested that the transmission gears are slipping which is caused by drive belts (within the transmission) stretching to the point they need replacing. Considering the car's age and mileage, he concluded that the CVT had reached the end of its in-service life during the time Miss T had the car - given she was able to travel over 10,000 miles after supply - and the failure of this part wasn't premature.

Advantage didn't uphold Miss T's complaint and she referred the matter to our service. One of our investigators reviewed the evidence and he wasn't persuaded there's enough to find the car was of unsatisfactory quality when it was supplied. He acknowledged Miss T raised several issues with E early on but he didn't think the faults found then were sufficiently detailed to connect them to current faults and he considered the relevant repairs were likely successful. The investigator thought the VHC in June 2023 was the first evidence of current issues. He acknowledged B found the gearbox is over revving and there was a judder on braking but he thought this was probably wear and tear related – given the distance Miss T was able to travel, B says the problem will have progressed over time and taking the expert's conclusions into account. He didn't recommend Advantage should have to do anything further.

Miss T disagreed and asked for an ombudsman to review the matter. In summary, she said

messages and voicemails she exchanged with E over several months after supply show that there were issues with the gearbox from the outset. She feels misled by E who, she says, persuaded her to accept repairs (such as changing the gearbox oil only in December 2022) that didn't resolve the underlying problem within the CVT. And E then delayed for months by telling her the gearbox was covered under a warranty provided by a third party who'd worked on it previously but there was some dispute over whether this was for six or twelve months.

Having considered the available evidence, I was minded to uphold this complaint so I thought it was fair to give the parties the chance to see my provisional findings - and make further submissions if they wanted to - before I made my final decision. I issued a provisional decision on 2 May 2024. I've set out below (in italics) what I decided provisionally - and why. This forms part of my final decision.

My provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In considering what's fair and reasonable, I need to have regard to relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the time. And, where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Miss T brings this complaint about Advantage to our service because, having supplied the car to her under a HPA, Advantage was obliged (under the Consumer Rights Act 2015 (CRA)) to ensure (amongst other things) that the car was of satisfactory quality at the point of supply.

The CRA says the quality of goods includes things like fitness for purpose, freedom from minor defects and durability. The level of quality that's considered to be "satisfactory" will vary depending on circumstances. In the case of a used vehicle it's generally reasonable to take the age, cost and mileage at the point of supply into account. The car Miss T got here was around eight years old and it had about 67,000 miles on the clock. The purchase price was nearly £9,000. Miss T paid a cash deposit of £250 and, under the terms of the HPA, she agreed to repay over £17,000 (including interest) over five years at about £290 a month. I think a reasonable person would accept that a car of this age and mileage, at the point of supply, wouldn't meet the same standards as a brand new car - as some parts were likely to be worn and need replacing from time to time. But, I think Miss T had a reasonable expectation that the car would be fairly durable, taking its age and mileage into account.

What went wrong and when

There appears to be no dispute that this car had significant faults present when it was inspected by B and the expert in the summer of 2023. I think the crux of the matter (on the specific facts here) are whether the problems with the CVT are likely to have been present when the car was supplied. I say this because Miss T told us she had problems with the gearbox within weeks of supply and she contacted E who agreed to fix this. She says E told her the issue was one of two things – gearbox oil needed to be topped up/changed or something had gone wrong internally - and E wanted to try topping up the oil first, as this was the least expensive option.

I find what Miss E says to be credible and supported by the following:-

- contemporaneous notes in Advantage's contact records that confirm she raised quality issues during a welcome call in July 2022;*

- *the findings at N's inspection in September 2022 – which confirm there were concerns about the gearbox at that stage;*
- *it looks as if E accepted responsibility for the faults N identified and agreed to pay for repairs to the gearbox (amongst other things) in December 2022;*
- *Miss T sent E a what's app message on 3 January 2023 where she says "...it's still not driving properly gear wise....we just had to sit and let the car roll until the revs came down enough for me to press the gas. I don't think it was the fluid that was the problem".*

I'm satisfied, on balance, that E accepted liability for the gearbox issues at the time and agreed to pay for relevant repairs but the gearbox repairs undertaken in December 2022 didn't work.

I've seen a series of what's app exchanges between Miss T and E over the next few months which, read together, suggest that E agreed to resolve the ongoing problems with the gearbox. E messaged Miss T on 24 April 2023, for example, to say it was looking into a guarantee but the provider said this was for six months only whereas E disputed that believing it was 12 months. For the avoidance of any doubt, I think it's unlikely this refers to the work done by C as those repairs were carried out less than six months previously. I consider it's more likely the disputed guarantee related to work E had done to the gearbox before the car was supplied to Miss T.

It was nearly six months before Miss T took the car to B and contacted Advantage. She says this is because E assured her repeatedly during this time that the gearbox would be fixed and she has voice messages from E which confirm this. She tried to supply these messages to our service but we were unable to open the files - due possibly to the app's encryption. I find Miss T's evidence to be credible overall. I think she's been fairly consistent throughout and, where possible, she's supplied paperwork to support what she says happened - ranging from what's app text messages with E to diagnostics and invoices from three TPGs – N, C and B. I have no reason to doubt what she says. I'm also aware that Miss T was seriously ill around this time and I find it understandable that sorting out the problems with her car (which was still running) probably wasn't a priority. I think she likely allowed more time than she perhaps otherwise would for E to resolve the matter.

I'm satisfied when B saw the car in June 2023 it found (among other things) the gearbox was over-revving. I think this sounds similar to the difficulties Miss T described in her message to E in early January 2023. According to contact notes Advantage supplied, when Miss T got in touch in early August 2023, she put someone from B on the phone who told Advantage that the faults found were likely present before Miss T got the car. I've also seen an email from B that confirms this view in writing – B acknowledges wear and tear can be affected by many things but considers faults found here are unlikely to have happened during Miss T's use of the vehicle.

I realise this conclusion is at odds with those of the independent expert. I accept the expert has relevant qualifications and experience but, as far as I can see, he hasn't seen all of the evidence (such as the what's app exchanges between Miss T and E). I'm satisfied that B possesses a level of specialist expertise as well and, as a main dealer for the brand, I'd reasonably expect B to have a good awareness of what's normal wear and tear for this particular component. I'm also mindful that B was able to carry out a more detailed inspection than the expert.

Weighing up all of the available evidence, I think it's more likely than not E had work done to the gearbox before this car was supplied to Miss T which was unsuccessful resulting in the gearbox problems Miss T reported early on - and these got worse over the time she had the car. On balance, I'm minded to find this means the car was not sufficiently durable and it was

of unsatisfactory quality at the outset.

Putting things right

For the reasons set out above, I'm satisfied this car had significant gearbox problems within weeks of supply and the repairs in December 2022 didn't work. Under the CRA a consumer has the final right to reject goods where they still don't conform to the contract after one repair or replacement and any repairs should be carried out in a reasonable time and without significant inconvenience to the consumer. I think Miss T had waited long enough for the CVT to be fixed by August 2023. I'm satisfied she'd also experienced significant inconvenience by that stage and I'm minded to find it would have been reasonable to allow her to reject the car.

I understand Miss T has already handed the car back to Advantage under a process known as voluntary surrender. So, I've thought about what else (if anything) Advantage should do to put things right – in order to (as far as it's reasonably possible) put Miss T back in the position she would have been in if she hadn't been supplied with this faulty car.

In general, when goods are rejected and returned to a lender by reason of unsatisfactory quality, we'd expect the finance agreement to end and be recorded as settled in the consumer's credit file. The consumer would also usually receive a refund of any deposit paid and be reimbursed for any reasonable out of pocket expenses - and we'd award compensation for any lost or impaired use and relevant distress and inconvenience.

In view of my provisional findings above, I'm minded to find it fair that Advantage should ensure this HPA is reported as settled on Miss T's credit record and remove any adverse information recorded about the agreement. Advantage should also refund the deposit paid which, according to the finance agreement, was £250.

It looks as if E refunded the cost of the inspections and repairs undertaken in 2022 by N and C. If I'm wrong about that and Miss T is out of pocket regarding these expenses she should let us know in response to this provisional decision.

Miss T has supplied evidence that shows she paid £237.60 for B's inspections in June 2023 plus £20 towards the cost of a courtesy car provided at that time. I'm satisfied she wouldn't have incurred these expenses if she hadn't been supplied with this faulty car and I'm minded to find it fair that Advantage should refund these costs as well.

I think it's right that Miss T should pay for the use she had of the car. As far as I can see, it wasn't off the road for any significant period of time before June 2023 so I can't fairly require Advantage to refund monthly payments for that period on the current evidence. Miss T appears to have been supplied with a courtesy vehicle in June 2023 (that she paid £20 towards the cost of as referred to above) so she seems to have been kept mobile then.

It's not clear to me what happened after B's inspection. It looks as if the mileage on collection (earlier this year) had increased from the miles recorded at the expert's inspection in August 2023, so Miss T appears to have had the use of the car after that. It follows I don't currently have enough evidence to reasonably require Advantage to provide a refund for loss of use. If Miss T disagrees about that, it's open to her to make further submissions (by the date below) before I make my final decision.

I'm satisfied that being supplied with this faulty car probably caused Miss T to experience significant distress and inconvenience. She had to take the car back and forth for repairs and investigations involving third parties, for example, as well as numerous contacts with E and Advantage. Taking everything I've seen so far into account, I think it's fair that Advantage

should pay Miss T £300 for her associated distress and inconvenience.

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.

I invited the parties to consider my provisional findings and let me have any comments or evidence (that I hadn't seen before) by 17 May 2024. I said I'd review all the evidence available after that and reach my final decision.

Both parties have now responded. Advantage has nothing further to add and Miss T accepts my provisional decision. I see no reasonable grounds to depart from my provisional conclusions in the circumstances. I remain of the view it is fair and reasonable for Advantage to take the steps below to put things right.

My final decision

For the reasons given above, my decision is I uphold this complaint and require Advantage Finance Limited to:-

1. end the HPA (if it hasn't ended already) and record the agreement as settled on Miss T's credit file;
2. refund the deposit paid of £250 plus an additional £257.60 - for diagnostic checks and the cost of a rental car in June 2023 as detailed above;
3. pay interest on the above refunds at 8% simple a year, from the date of payment to the date of settlement;
4. remove any adverse information recorded about the HPA from Miss T's credit file: and
5. pay Miss T £300 compensation for her associated distress and inconvenience.

If Advantage does not pay the £300 compensation for inconvenience and distress within 28 days of the date on which we tell it that Miss T 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.

If Advantage considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss T how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 12 June 2024.

Claire Jackson
Ombudsman