

The complaint

Ms K complains that a used car she acquired under a hire purchase agreement (HPA) from Advantage Finance Ltd (“Advantage”) is of unsatisfactory quality.

Ms K is represented by a third party but I’ll refer to everything that’s been said on her behalf as if she said it herself, to keep things simple.

What happened

Ms K took out the HPA on 31 August 2022 and took delivery of the vehicle a few days later. The car broke down on 8 March 2023. Ms K had it checked by a third party garage (that I’ll call T) near the end of that month. T identified problems with the clutch, exhaust manifold, both suspension lower arms, road springs, driveshaft joint gaiters and two tyres. T thought all of these issues would have been present when the car was supplied to Ms K - as she’d only driven it 700 miles by that stage.

Ms K complained to Advantage at the end of March 2023. Advantage contacted the credit broker and the supplying dealer (who I’ll refer to as D). The car was returned to D for an inspection in early May. D thought Ms K had damaged the vehicle and didn’t accept liability.

An independent expert was instructed and he provided a report on the car’s condition in early June 2023. He identified historical damage to body work (such as wheel trims and the front bumper) which he thought had “clearly occurred prior to date of sale”. He found no evidence that Ms K had damaged the vehicle. He concluded that the clutch had failed and considered this was likely due to wear and tear but, given the low mileage covered by Ms K since supply, the car was not sold in a durable condition.

In light of the expert’s conclusions, Advantage upheld Ms K’s complaint. It said D would repair the clutch and offered to reduce three monthly finance payments. Ms K thought the repair offer was, essentially, too little, too late – given everything she’d been through already and the repairs offered didn’t resolve the additional issues identified by T. She wanted to reject the car and receive a refund and compensation.

Ms K referred the matter to our service and one of our investigators reviewed the evidence. He recommends the complaint should be upheld. He’s satisfied the car was likely of unsatisfactory quality at the point of supply. He thinks the repairs offered are a fair remedy but Advantage should also refund £80 Ms K paid T to inspect and pay her £150 compensation for distress and inconvenience. As Ms K was unable to use the car from 8 March 2023 and she refused the repair offer on 29 June 2023, the investigator recommends she should have any monthly payments made between these dates only refunded (for loss of use) and Advantage should also pay interest on any refunds and remove any adverse information from her credit file.

Ms K disagreed and asked for an ombudsman to review the matter. She says (in summary) Advantage didn’t agree to repair all of the faults present and, in any event, she’d been deprived of her car for about four months meaning she (and a family member) had already experienced significant stress and inconvenience. She needed the car to take an older

relative to hospital and she had to use public transport or rely on others to provide alternative transport. In addition, she had meet monthly insurance and finance payments (which, combined, cost over £200 a month) for a car she couldn't use - and she incurred legal fees of nearly £500. Ms K thinks she should have been allowed to exercise her final right to reject the car - under the Consumer Rights Act 2015 (CRA) - and she's entitled to bigger refund and compensation in the region of £1,000 for distress and inconvenience.

Having considered the available evidence, I was minded to uphold this complaint but my reasons weren't quite the same as the investigator's and I was minded to reach a different outcome overall. I thought it was fair to give the parties the chance to see my provisional findings - and respond if they wanted to - before I made my final decision. I issued a provisional decision on 15 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. 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.

Advantage supplied this vehicle under a under a HPA. This is a regulated consumer credit agreement and our service is able to consider complaints arising from it. As the vehicle supplier under this type of agreement Advantage was obliged (under the CRA) to ensure that the car was of satisfactory quality when Ms K got it.

The quality of goods includes appearance and finish, freedom from minor defects, fitness for purpose and durability and the standard that's considered "satisfactory" will vary depending on individual circumstances. In the case of a used car, it's generally reasonable to take the price, age and mileage at the point of supply into account.

This car was around 10 years old with over 82,000 miles on the clock and cost around £3,000 at the point of supply and, under the terms of the HPA, Ms K agreed to pay back over £5,500 at around £110 a month. I consider a reasonable person would accept it's likely a car of this price, age and mileage would have some parts that were worn and need replacing or repairing sooner or later - which is reflected in the lower price paid compared to the price of a brand new vehicle. I think Ms K also had a reasonable expectation that the car would be reasonably durable however, taking its age and mileage into account.

Satisfactory quality

Ms K had this car for over six months and driven about 700 miles when it broke down in March 2023. There seems to be no dispute as to the cause of the breakdown. Both T and the independent expert found the clutch failed and this issue is likely to have been present when the car was supplied - given the limited mileage covered by Mrs K. The expert concluded that this means the car was insufficiently durable and I'm minded to agree. From the evidence I've seen, I'm satisfied it was of unsatisfactory quality when it was supplied.

Advantage considers it has already offered Ms K a reasonable remedy in the form of clutch repairs but she says that's not fair - because the offer was not only made too late but the repairs wouldn't resolve all of the faults identified by T.

Did the car have faults present in addition to the defective clutch?

I'm satisfied that T identified several issues in March 2023, not just the clutch failure. These included problems with the exhaust manifold, suspension lower arms, road springs and the driveshaft cv joint gaiter. T considers all of these would have been present at the point of supply.

I can see the expert wasn't able to see a problem with the exhaust manifold when he inspected and he didn't reach any conclusions about the other faults identified by T. Our investigator asked if the expert could comment further and he said he was unable to evaluate the performance of the suspension - or provide an opinion as to whether the additional issues identified by T would have been present at the point of supply - as he couldn't road test the vehicle.

I'm satisfied that T inspected the car shortly after it broke down and it seems to be an independent third party garage. I'm not persuaded that I can reasonably ignore T's findings in this situation. I have nothing from the expert to contradict what T says and I note the expert states specifically in his report that he found no evidence of any error or abuse on Ms K's part.

I realise this was an older vehicle, with over 80,000 miles on the clock when Ms K got it. Even taking that into account however, I don't think a reasonable person would expect to experience the additional issues identified by T within 700 miles. Weighing up all of the available evidence, I think it's more likely than not this vehicle had additional faults present – over and above the clutch problems. I'm satisfied, on balance, that these are likely to have been present at the point of supply.

It follows, I don't think Advantage's offer was reasonable as it didn't include all of the car's inherent faults – or explain why these were excluded. If Advantage had any doubts about liability for the additional issues, it could have looked into things further - and minimised any additional upset and inconvenience to Ms K by arranging a courtesy vehicle whilst any further investigations were undertaken. Instead Advantage seems to have taken the view that Ms K simply wasn't entitled to any further remedy, aside from the clutch repair, because she'd raised her complaint more than six months after supply. I don't think that was reasonable in these particular circumstances.

Putting things right

Broadly speaking, the CRA allows for a price reduction or a final right to reject goods if there's been one repair or replacement already and there's still a problem - or repair or replacement is impossible or disproportionate or the consumer asked for a repair (or replacement) but the trader hasn't done so in a reasonable time and without significant inconvenience to the consumer.

I can see Ms K's representative wrote to Advantage on 31 March 2023 asking for the car to be collected and repaired within 14 days, in order to minimise any inconvenience. I think that suggests she would have accepted suitable repairs at that stage if they had been offered within a reasonable time - but this didn't happen. I don't think it's reasonable to expect Ms K to wait any longer for the matter to be resolved and I'm minded to find Advantage should take the car back and provide a refund and compensation.

According to the HPA, no deposit was paid here. It looks as if Ms K paid T £80 to inspect the car in March 2023. I'm satisfied she wouldn't have incurred this cost if the car hadn't been of unsatisfactory quality and it's fair Advantage should refund this cost (on proof of payment).

I've gone on to consider the use Ms K had of the car. I'm satisfied she's been unable to use it since the breakdown in March 2023. I'm inclined to find Advantage should refund all

monthly payments made from 8 March 2023 to reflect that loss of use.

I'm satisfied it's likely Ms K experienced distress and inconvenience as a result of being supplied with this faulty car – she had to take it for investigations and contact various parties to try and sort things out. I find it fair that Advantage should pay her £150 compensation for this. I note Ms K refers to inconvenience experienced by another family member as well, but I'm unable to reasonably require Advantage to compensate third parties in this situation.

Ms K also seeks to recover her insurance costs and legal fees from Advantage. I'm not persuaded that's reasonable. Ms K would have been required to have insurance in place under the terms of the HPA which includes cover for theft (and the like). I think she had some benefit from that, even when she was unable to drive the car. And I'm not presently persuaded that Advantage should have to refund the cost of insurance.

This service provides informal dispute resolution as an alternative to the courts and legal representation isn't usually needed. I'm satisfied this was a relatively straight forward complaint and I don't think it would have been too difficult for Ms K to represent herself. She was, of course, entitled to appoint legal representatives, if she wanted to, but I can't fairly find Advantage should reimburse those costs in these circumstances.

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 what I'd said and let me have any further comments or evidence that I hadn't seen before by 29 May 2024. Both parties have now responded. Ms K has accepted my provisional findings and Advantage hasn't raised any objections or made any new submissions.

I see no reasonable grounds to depart from my provisional conclusions in the circumstances. For the reasons given above, I remain of the view this car was of unsatisfactory quality when it was supplied and I find it is fair and reasonable for Advantage to take the steps below to put things right.

My final decision

My decision is I uphold this complaint and require Advantage Finance Ltd to do the following to put things right:-

1. end the HPA, take the car back at no additional cost to Ms K and record the finance agreement as settled on her credit file;
2. refund the £80 fee for T's inspection (on proof of payment);
3. refund each monthly finance payment made from 8 March 2023 for loss of use;
4. pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement;
5. pay Ms K an additional £150 compensation for her distress and inconvenience; and
6. remove any adverse information reported about the HPA from her credit file.

If Advantage does not pay the £150 compensation for inconvenience and distress within 28 days of the date on which we tell it that Ms K 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 Ms K 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 Ms K to accept or reject my decision before 13 June 2024.

Claire Jackson
Ombudsman