

## The complaint

Mr H complains that a car supplied to him under a hire purchase agreement with Metro Bank PLC trading as RateSetter (“RateSetter”) was of an unsatisfactory quality.

## What happened

I issued a provisional decision on this complaint earlier this month. In that decision I explained why I thought part of the complaint should be upheld, and what RateSetter needed to do to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

*In February 2023, Mr H was supplied with a used car through a hire purchase agreement with RateSetter. The agreement was for £13,489 over 60 months, with monthly repayments of £295.31. Mr H also paid a cash deposit of £10,000. At the time it was sold, the car was just over six years old and had done 31,358 miles.*

*In July 2023, Mr H complained to RateSetter that the car was faulty. He said that over the five months he had owned the car a number of faults had occurred and needed repair. In brief he said that the faults were;*

- *The engine undertray had not been replaced correctly and had missing fittings*
- *A number of fault codes were stored on the car*
- *All four alloy wheels had been refurbished poorly and needed repair*
- *The car battery failed and needed replacement*
- *Some lane assist functions were inoperable. This was due to a faulty sensor, and poor repairs to the front of the car following what appeared to be accident damage.*
- *The rear spoiler was not attached correctly*
- *A headlight mounting was cracked and the whole unit needs replacement.*

*RateSetter told Mr H that the original dealer believed that he had modified the car since it had been supplied to him. Notwithstanding it concluding that these modifications were in breach of his hire purchase agreement, RateSetter said the modifications meant it couldn't be responsible for the faults Mr H had said had occurred. So RateSetter didn't uphold the complaint. Unhappy with that response Mr H brought his complaint to us.*

*Mr H was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. The relevant law – 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 finance used to purchase the car, RateSetter is responsible. What's satisfactory is determined by 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.*

*The CRA also implies that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. So given Mr H complained about the problems to RateSetter around four months after he purchased the car, it would be for RateSetter to establish that any faults were not present at the time of sale.*

*But I think it is important to distinguish between faults that affect the safe and effective operation of the car, and those that might be of a more cosmetic nature. Section 9(4)(b) of the CRA says that where goods are inspected before purchase, then anything that ought to have been reasonably revealed by that examination is not a valid reason for a satisfactory quality complaint. So, if the damage was present when the car was supplied to Mr H, then he accepted this by going ahead with the purchase.*

*It is clear that Mr H is disappointed given that he thinks that the car he purchased appears to have been previously repaired after being damaged in an accident. But I haven't seen anything that makes me think that he was given any assurances, before the car was supplied, that it hadn't ever been repaired. I think that there was some responsibility on Mr H to make his own enquiries about the history of the car. But that doesn't mean it would be reasonable for him to be supplied with a car that was unsafe, or had other repairs that were temporary in nature and would likely fail in the near future, affecting his ability to use the car that he was paying for.*

*There are a number of the problems that Mr H has told us about that I don't think mean the car was of an unsatisfactory quality when it was sold. In some cases it might be reasonable for parts of the car to need replacement – providing that replacement isn't hastened by other underlying faults that cause their failure to be premature. And in other cases the problems Mr H has found are essentially cosmetic. Whilst I accept they might make the car less attractive to him – and cause him some cost to refurbish – I don't think they mean that the quality of the car was not satisfactory. And in any case, those cosmetic issues that Mr H has told us about, would have been something that he might have been able to identify from a thorough inspection of the car before purchase.*

*But there are clearly other aspects of the car, that wouldn't have been easily identified from Mr H's inspection of the car before purchase, and that affect its safe or effective operation. As those faults occurred during the first six months before the car was supplied, I am minded that it is reasonable to conclude they are likely to have been present, or developing, when the car was sold. So I would think it right that RateSetter should repair those items, or where Mr H has already completed the repairs, pay those costs. I will explain more about the items that I think fall under this category in the remainder of this decision.*

*Mr H says that he needed to arrange repairs to the engine undertray less than a month after he was supplied with the car. He has given us an invoice regarding those repairs. But that invoice seems to be largely in relation to a routine service of the car. I cannot, from the information Mr H has provided, easily identify the costs of any repairs that were required to the engine undertray. But for clarity, I do think the cost of any repairs to the undertray would be the responsibility of RateSetter. So, if Mr H is able to provide further information and evidence about the specific costs of any repairs to the engine undertray, I will consider those in any final decision I issue on this complaint*

*In June 2023 Mr H's car reported a fault with the lane assistance function. A garage identified that problem as arising from a damaged radar sensor. Mr H has shown us photographs of the sensor that appears to have been poorly reattached before he was supplied the car. And the work performed by the garage also identified damage to the front bumper bracket, radiator cowlings, and the wiring harness for the sensor. I think it fair to conclude that those items were damaged before the car was supplied to Mr H, and so the costs of that repair should be refunded by RateSetter to Mr H.*

*Mr H has also said that the front near side headlight is damaged. And he has provided an estimate for its repair. I am satisfied that the problems with the headlight were identified within a month of the car being supplied. And it seems the issue – with a damaged fixing bracket – would be compatible with the other problems that Mr H has found with the front end of the car. So I also think RateSetter should be responsible for the costs of this repair. In response to this provisional decision I would ask Mr H to update me on the status of that repair. If it has been completed he should provide a written invoice. Or otherwise I will ask RateSetter to arrange for that repair to be undertaken.*

*But otherwise I'm not persuaded that the remaining repairs that Mr H has arranged have been to correct items that were not of a satisfactory quality when they were sold. Specifically, those items that I do not think RateSetter need to pay for are;*

- *Resetting of any fault codes*
- *Replacement of battery*
- *Refurbishment or replacement of front trim items such as bumper and grill*
- *Refurbishment of alloy wheels*
- *Repainting of front bumper*
- *Reattachment of rear spoiler.*

*There is no doubt that the repeated repairs will have caused some inconvenience to Mr H, not least because his car will have been off the road whilst the repairs were being completed. So I think that RateSetter should pay some further compensation of £100 to Mr H in that regard.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. RateSetter has said that it accepts my provisional findings. Mr H has provided some further comments. Although I am only summarising here what Mr H has said, I want to reassure him that I have read, and carefully considered, his entire response.

Mr H says that RateSetter has provided no information about the modifications it alleges he has made to the car. He thinks that the compensation of £100 I have proposed for his inconvenience is insufficient - Mr H says he needs the car for his work, and it spent a considerable time off the road. Mr H says that he hasn't yet repaired the damaged headlight. He has provided a new estimate, but has asked that he be allowed to arrange the repairs

and be reimbursed to reduce any inconvenience he is caused. Mr H asks that I reconsider my findings about the failed battery. He says that the time the car spent off the road whilst being repaired is likely to have contributed to its failure. But Mr H says that he is unable to provide any more information about the repairs to the engine undertray so accepts that I won't be able to direct any compensation for that item.

### **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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr H and by RateSetter. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

It seems to me that many of my provisional findings have been accepted by both parties. So I don't intend to go over those matters again in this decision. There are three matters that remain unresolved that I need to consider here – the replacement of the battery, the repairs to the headlight, and compensation for the inconvenience suffered by Mr H.

I first want to touch on the matter of the modifications that RateSetter said had been made to the car. I've not seen anything to make me think that any or the problems I am dealing with here were caused by something that Mr H had done to the car. So I'm not going to explore in any further detail whether or not changes have been made, or whether, as RateSetter says, Mr H might have breached his hire purchase agreement by making those changes.

I have thought carefully about the battery replacement that Mr H says he needed to undertake. At the time the battery was replaced, Mr H had been using the car for more than two months, and had covered almost 3,000 miles. Whilst I accept that some of that time Mr H's car might have been undergoing some repairs and so been off the road, I'm not persuaded that it is likely a fault with the battery that was present when the car was supplied wouldn't have needed to be corrected before then. Over time any battery can fail. I'm not persuaded that the replacement of the battery should be the responsibility of RateSetter.

I accept that the replacement of the headlight will cause some inconvenience to Mr H. But I'm not persuaded that his inconvenience will be much less if RateSetter arranges the repairs. I think that it would be reasonable to allow the firm to make use of any trade discounts it has available from preferred repairers. But, as I will confirm in my directions below, I think it reasonable that RateSetter ensures that the repairs are carried out at a time and location reasonably convenient to Mr H, and that he is kept mobile whilst his car is off the road.

When I completed my provisional findings, I thought carefully about the inconvenience Mr H had been caused, and took account of our normal approach in assessing appropriate compensation. Any payment I direct isn't intended to allow Mr H to recover any direct costs he has incurred. And, I am mindful that RateSetter was not given any opportunity when the faults first arose to provide alternative transportation for Mr H. So I remain satisfied that a payment of £100 would be fair and reasonable in all the circumstances here.

### **Putting things right**

To put things right, RateSetter should do the following;

- Refund to Mr H the costs he paid for the repairs to the front bumper bracket, radiator cowlings, radar sensor, and the wiring harness for the sensor. The invoice Mr H has provided shows those costs to be £1,303.80 and that the invoice was paid on 21 August 2023.
- Arrange for the replacement of the front near side headlight. RateSetter should arrange for the repairs to be undertaken at a time and venue to minimise any inconvenience to Mr H. And it should ensure that Mr H remains mobile whilst those repairs are completed. Or, if both parties agree, RateSetter should pay Mr H the cost of the repairs in line with the estimate he has provided to us (£1,291.44) once they have been completed.
- Add interest at a rate of 8% simple a year on any amounts that are being refunded to Mr H above from the date they were paid (if they were) to the date of settlement. HM Revenue & Customs requires RateSetter to take off tax from this interest. RateSetter must give Mr H a certificate showing how much tax it's taken off if he asks for one.
- Pay Mr H £100 for the distress and inconvenience he has been caused by being supplied by a car that was not of a satisfactory quality.

### **My final decision**

My final decision is that I uphold part of Mr H's complaint and direct Metro Bank PLC trading as RateSetter to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 July 2024.

Paul Reilly  
**Ombudsman**