

Complaint

Mr S has complained about the quality of a car that Stellantis Financial Services UK Ltd ("Stellantis") supplied to him through a conditional sale agreement.

Background

In September 2023, Stellantis provided Mr S with finance for a used car. The car was just over nine years old and (the credit agreement states) it had completed 72,564 miles. Although Mr S states the mileage was higher when the vehicle was collected.

The cash price of the vehicle was £13,995.00. Mr S paid a deposit of £4,000.00 and applied for finance to cover the remaining £9,995.00 he needed to complete his purchase. Stellantis accepted Mr S' application and entered into a 33-month conditional sale agreement with him.

The loan had an APR of 14.9%, interest, fees and total charges of £2,099.83 and the total amount to be repaid of £12,094.83 (not including Mr S' deposit) was due to be repaid in 33 monthly instalments of £366.51.

Mr S says that he experienced difficulties with the vehicle almost immediately after it was purchased. He contacted the dealer which arranged the sale about the fact that the car kept shutting down and this led to the battery being replaced at a cost of £310 in October 2023. It is my understanding that dealer paid £266 towards this repair and Mr S covered the rest.

In November 2023, Mr S once again contacted the dealer after the engine management warning light started illuminating. Mr S was instructed to visit a garage in order to have the light switched off. This was done but the warning light came on again the following day.

The dealer then arranged for a diagnostic check to take place and this indicated that there might have been a problem with the Exhaust Gas Recirculation ("EGR") valve. Mr S says that he was told to stop driving the vehicle at this stage.

Mr S initially complained to the credit intermediary, whom the dealer put him in touch with to arrange finance, in January 2024. This resulted in the car being collected by the dealer for a repair which the credit intermediary deemed necessary. From what Mr S says, the vehicle was returned having driven a further 280 miles, was returned in a poor condition and even then it was still not driving in the way that he considered it should have been.

After the engine management warning light once again illuminated, Mr S arranged his own diagnostic check which confirmed that a problem remained with the EGR. Mr S sought to reject the vehicle as a result. As I understand it, at that time at least, the credit intermediary agreed that the car was faulty. In any event, it was returned to the dealer, on 14 March 2024 and the dealer now argues that there isn't a fault with the vehicle. The vehicle was then independently inspected and this inspection confirmed that there wasn't a fault detected.

I understand that the vehicle has been in the custody of the motor dealer it was purchased from since March 2024.

Stellantis never responded to Mr S' complaint. And after in excess of eight weeks of Mr S making his complaint had passed, Mr S exercised his right to refer his complaint to our service.

Mr S' complaint was reviewed by one of our investigators. He thought that Stellantis had supplied Mr S with a vehicle that was not of satisfactory quality. So he upheld Mr S' complaint. Stellantis did not respond to the investigator's assessment. So the case was passed to an ombudsman as per the next stage of our dispute resolution process.

In the period while the case was awaiting allocation to an ombudsman, Stellantis provided a copy of a report after an inspection of the vehicle, which was commissioned by the broker which arranged the finance. This inspection took place on 5 April 2024 and the report stated that the engineer considered the car was in an acceptable condition for a ten-year old used vehicle and would have been at the point of sale.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully considered matters, I'm satisfied that what I need to decide in this case is whether the car supplied to Mr S was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for Stellantis to do put things right.

The finance agreement in this case is a regulated conditional sale agreement, which we are able to consider complaints about. Under the conditional sale agreement, Stellantis purchased the vehicle from the dealership Mr S visited. Mr S then hired the vehicle from Stellantis and paid a monthly amount to it in return. Stellantis remained the legal owner of the vehicle under the agreement until Mr S' loan was repaid.

This arrangement resulted in Stellantis being the supplier of Mr S' vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers conditional sale agreements – such as Mr S' agreement with Stellantis. Under a conditional sale agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory 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.

Is the vehicle faulty?

Having carefully considered everything provided, I'm satisfied that there was a fault with the vehicle at the time it was returned to the dealer at the very least. I accept that the inspection report, which has been provided by an independent engineer, states that the car is in an acceptable condition for a ten-year old used vehicle. However, the weight I can place on this report is limited.

I primarily say this because the report doesn't refer to any of the work that was carried out on the vehicle after it was sold. Furthermore, the engine management warning light did not illuminate during the inspection. However, I've seen pictures from Mr S showing that the

warning light was illuminated at the time the vehicle was collected from him on 14 March 2024.

I don't know why the engine management warning light did not come on during the inspection. I accept that it is possible that the motor dealer arranged for a garage to have the warning light switched off by performing some kind of a reset in the way that it instructed Mr S to do so in November 2023. Or it might have attempted a further repair and that this may be the reason why it was close to a month between the car being collected from Mr S and the inspection taking place. But without anything which clearly shows that the fault was rectified, I'm not prepared to accept that the inspection report is evidence that a fault that was clearly present on 14 March 2024, is no longer present on the vehicle.

Furthermore, it is not in dispute that there have been attempts to rectify the issues which have been present on the vehicle since it was sold. For example there was a previous attempt to resolve the warning light issue which had only lasted a day. And there was the period where the motor dealer arranged for the vehicle to be repaired, which left Mr S without it between November 2023 and January 2024.

As the report has made no reference to these repairs, it isn't clear to me that the engineer was made aware of what had happened since the vehicle was sold. And without this I can't see how the engineer was in a position to authoritatively state what condition the vehicle was in at the time of the sale.

I'm also concerned at some of the contradictions in the inspection report. For example, on page two of the report it states:

"We proceeded to test the vehicle with no faults identified the road test i.e. no issues with the brakes and the engine and transmission performed as expected the vehicles age and milage, with no excessive smoke from exhaust no evidence of any overheating."

However, the next paragraph goes on to say:

*"The inspection was concluded at this point **confirmation that there was evidence of excessive smoke from exhaust** [my emphasis] no unusual noises and there was of any overheating the expected levels of power assistance from the steering."*

I have considered the possibility that there is simply a 'no' omitted from just before the section I've highlighted. But adding a no in this way still wouldn't result in the sentence making sense.

Furthermore, I'm also mindful that the second page of the report also states:

"X1 diagnostic code was identified within the ECU. This has revealed the following: U0100 – Lost communication with ECU."

***The fault code identified** [my emphasis] maybe linked to previously low battery voltage."*

Yet in the conclusions section (also on page two) the report goes on to state:

*"We can confirm on the drivers display function operated as expected, **furthermore there was no fault code stored in the vehicles ECU when it was scanned** [my emphasis]."*

It is not clear to me how both of these statements can be true. I'm also concerned that the ECU reportedly had no evidence of the engine management fault. And this doesn't tally with

the engine management warning light having been illuminated, which as I've explained I've seen evidence of being the case on 14 March 2023.

Given the contradictions in the report, the fact that it isn't in dispute that remedial work has been carried out (in relation to the battery and other unspecified work in January 2024) and the evidence of the engine management light having been illuminated when the vehicle was collected from Mr S, I'm satisfied that it is more likely than not that there was a fault on the vehicle, at the very least, at the time it was collected from Mr S.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied, at the very least was present on the vehicle, when it was collected from March 2024, means that the car wasn't of satisfactory quality at the point it was supplied to Mr S in September 2023.

Why I don't think that Mr S was supplied with a vehicle of satisfactory quality

Mr S acquired a car that was used – it was just over nine years old when it was sold and had completed over 72,000 miles. I accept that there would be different expectations regarding its quality when 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, price and any other relevant factors.

In this case, Mr S almost immediately reported having difficulties with the vehicle. The available evidence indicates that there was a problem with the battery. Furthermore, it is not in dispute that further repairs were carried out in January 2024 after Mr S obtained diagnostic readouts indicating that there were faults with the EGR valve. I've also been provided with clear evidence that the engine management warning light returned after these repairs had been carried out.

One of the considerations of whether goods are of satisfactory quality is durability. I appreciate that the vehicle had completed over 72,000 miles by the time of purchase and (according to the independent engineer's report) it had also completed a further 2,000 miles by the time of the independent inspection (although Mr S says that a significant proportion of these miles were completed by the dealer without his consent).

But even though the vehicle had been driven for over 72,000 miles, I still need to weigh this against the fact that Mr S had paid £13,995.00 for it. I accept that replacing a battery may be considered general maintenance, or work related to wear and tear in the course of ordinary use. However, replacing the battery doesn't appear to have resolved Mr S' issues with the vehicle and it appears as though the issues may well be related to the engine and the exhaust system.

I think that a reasonable person would have expected him to have had far more use of a vehicle costing £13,995.00 – notwithstanding the mileage completed prior to the purchase - before having problems with the EGR or the engine management system. And I don't think that a reasonable person would expect someone who had paid close to £14,000.00 for a car to have still had issues with the EGR or the engine management system, even after three repairs were carried out over two months having been without the use of it for close to two months a mere matter of weeks after it was purchased.

Taking all of this together, I'm satisfied that the vehicle was not durable. It follows that I don't think the car was of satisfactory quality when Stellantis supplied it to Mr S.

What Stellantis needs to do to put things right for Mr S

I've gone on to think about what Stellantis needs to do to put things right as a result of supplying him with a vehicle that was not of satisfactory quality.

The battery was replaced at a cost of £310. I'm satisfied that this was a reasonable attempt by Mr S to understand whether things could be put right and therefore mitigate any loss. It's my understanding that the motor dealer paid £266 towards the cost of replacing the battery and Mr S had to cover the rest. So, subject to Mr S providing a receipt showing what he paid, I'm satisfied that Stellantis should refund the amount Mr S paid to have the battery on the vehicle replaced with interest at 8% per year simple.

Mr S may also have paid for diagnostic checks to be carried out once he had issues with the vehicle. It is unclear whether Mr S paid for these checks, but if he did these are costs Mr S incurred because he was sold a vehicle that wasn't of satisfactory quality. So, subject to Mr S providing proof of payment, I'm satisfied that he should be refunded any costs he paid for diagnostic checks, with interest at 8% per year simple.

I now turn to the vehicle itself. I've considered whether repair or a rejection of the vehicle would be an appropriate remedy here – particularly as the CRA sets out that a supplier can have one attempt at a repair.

Mr S has told us that he is no longer prepared to accept a repair of the vehicle. As I've explained, the independent report indicates that the engine management warning light did not illuminate at the time of the inspection. I don't know if this is because the dealer arranged for another repair to have taken place in the period between the vehicle being collected from Mr S on 14 March 2024 and the inspection taking place on 5 April 2024.

Even if this is the case, and I would add I've not been provided with sufficient evidence to be persuaded that the fault has now been rectified, this does not alter the fact that the dealer had already attempted to repair the vehicle when collecting it from Mr S in November 2023.

I'm also mindful that Mr S complained to Stellantis about still having difficulties with the vehicle shortly after this November 2023 repair. Stellantis hasn't provided me with any evidence of any steps taken to help Mr S. Indeed the available evidence indicates it that it left Mr S to try and resolve matters with the motor dealer and the broker. And Stellantis hadn't even provided a response to Mr S by the time he referred the matter here.

It is clear that Mr S told the motor dealer, the credit intermediary and Stellantis that he wanted to reject the vehicle in February 2024. This was in circumstances where Stellantis appears to have taken little action to help Mr S and it was instead relying on the dealer and/or broker to resolve matters, after the dealer had already attempted a repair. Any repair carried out after the vehicle was collected, would have been carried out without Mr S' authorisation and importantly after Mr S had already stated that he wished to exercise his right to reject the car.

Considering all of this, I'm satisfied that the fair and reasonable resolution here would be for Mr S to reject the vehicle and for Stellantis to collect it from the motor dealer/or garage (holding it on its behalf) where I understand it currently is. As Mr S will have rejected the vehicle I'm satisfied that Stellantis should end its agreement with him and ensure that he has nothing further to pay on it.

This will seek to place Mr S in the position he would be in had he not entered into the conditional sale agreement in the first place, so I'm satisfied that Stellantis should refund Mr S the £4,000.00 deposit he paid to the motor dealer with interest at 8% per year simple.

There appears to be no dispute Mr S has had no use of the vehicle from March 2024. I'm also mindful that Mr S did not have use of the vehicle while it was with the dealer for repairs, from November 2023 to January 2024. I think that it would therefore be fair and reasonable for Stellantis to refund, in full, the payments Mr S made in November 2023, December 2023 and January 2024. It should also refund all payments Mr S has made from March 2024 onwards. All of these payments should be refunded with interest at 8% simple a year.

In terms of the payments, which Stellantis can retain, I do think that Mr S did get some usage of the vehicle and although any usage Mr S received from the vehicle was, at the absolute best, impaired. I think it's also important to keep in mind that a proportion of the miles Mr S completed in the vehicle were with a view to getting the faults rectified. In these circumstances, I think that although Stellantis can keep the October 2023 and February 2024 payments, it should refund 10% of these payments to account for the fact that Mr S' usage was impaired.

I've also considered the distress and inconvenience that Mr S experienced in light of the impact of him being without a vehicle, at all, for most of the period since November 2023. I appreciate that Mr S has, at best, had impaired usage since September 2023 and has been without a vehicle at all since March 2024, so he will have incurred some alternative travel costs. But he is now being placed, as close as possible, to the position he would be if he didn't have the vehicle to begin with. And, in these circumstances, he would always have incurred some alternative transport costs.

I also think that there have been delays in getting the faults diagnosed, as well as the attempts to rectify them. And in truth by the time of writing, I've not been provided with any persuasive evidence that the faults have actually been rectified. As I've explained, Stellantis has offered Mr S little help and hasn't even responded to his complaint.

Nonetheless, I have to be mindful of the fact that complaint handling isn't an activity that I'm able to consider a complaint about. So, while I can consider whether Stellantis supplying a vehicle that wasn't of satisfactory quality caused distress and inconvenience to Mr S, I cannot make an additional award of compensation for Stellantis' poor complaint handling – its failure to issue a final response, or its lack of engagement with Mr S' complaint.

Having kept all of this in mind, I'm persuaded that the distress and inconvenience caused to Mr S by him being without a car; having to travel in order to seek diagnostics and; as well as having to chase Stellantis, the motor dealer and the broker to try and put things right all because he was supplied with a car that was not of satisfactory quality means that Stellantis should pay Mr S a further £300 in compensation.

Fair compensation – what Stellantis needs to do to put things right for Mr S

Overall and having considered everything, I think it is fair and reasonable for Stellantis to put things right for Mr S by:

- collecting the car from Mr S (or the motor dealer should that now be where the vehicle is) at no cost to him;
- ending the conditional sale agreement and ensuring that Mr S has nothing further to pay.
- removing any adverse information it may have recorded against Mr S as a result of this conditional sale agreement from his credit file;

- refunding his deposit of £4,000.00 and the payments that he made in November 2023, December 2023, January 2024 as well as all the payments he made to the agreement from March 2024. It should also refund Mr S 10% of the October 2023 and February 2024 payments;
- subject to the provision of satisfactory proof of payment reimbursing him the amount he actually paid for the battery to be replaced and any diagnostic checks on the vehicle;
- adding interest at 8% per year simple on any refunded and reimbursed payments from the date they were made by Mr S to the date the complaint is settled†;
- paying him £300 in compensation for the distress and inconvenience that was caused.

† HM Revenue & Customs requires Stellantis to take off tax from this interest. Stellantis must give Mr S a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr S' complaint. Stellantis Financial Services UK Ltd should put things right for Mr S in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 August 2024.

Jeshen Narayanan
Ombudsman