

The complaint

Mr J complains about a used car he acquired through a hire purchase agreement with First Response Finance Ltd. He says that he agreed to acquire the car after the dealership had agreed to complete the work needed to get the car through the MOT it had recently failed. Mr J says that he experienced some problems with the car shortly after taking possession and then had further issues when the car was MOT'd around a year later.

Mr J believes the dealership arranged for a fraudulent MOT pass and that he has now lost out significantly because of this.

What happened

In early 2022 Mr J was looking for a car and agreed to acquire a used car. The car had recently failed an MOT on 16 October 2021 and the reasons for the failure were because of a bulge in one tyre and an issue with the diesel particulate filter (DPF). It is noted that the DPF '...shows evidence of tampering. Missing...' These are both described as major or dangerous defects.

Mr J says it was agreed that he would take the car on the understanding the dealership would repair these issues and obtain a new MOT certificate. The car's MOT history shows the car passed an MOT on 9 February 2022 and the MOT pass makes no reference to the tyre bulge or DPF being an issue.

The MOT pass also makes no reference to the advisory points from the 16 October 2021 MOT fail, that referred to advisory issues with the nearside rear tyre and offside front and rear tyres.

The MOT pass on 9 February 2022 records the car's mileage as 74,258 miles, which is 78 miles more than the 74,180 miles recorded on the failed MOT of 16 October 2021.

Immediately after acquiring the car Mr J says he had a problem with the car locking. After raising this with the dealership I understand this issue was resolved without cost to Mr J. Soon after, Mr J raised with the dealership that he had been experiencing a problem with the car's handling when the car achieved around 50 mph or more. No solution was provided by the dealership and Mr J has provided a copy of an invoice dated 9 March 2022 for two new tyres, costing £196.80 in total. The tyre invoice refers to Mr J experiencing a knocking noise from the rear.

I understand that Mr J had no issues with the car after the tyres were replaced, until around February 2023 when the MOT became due. When the car was inspected it was identified that there was an issue with the DPF. More specifically, there was no DPF. After some discussion, the exhaust system, which included the DPF, was replaced. This was done without cost to Mr J, although Mr J has said he was without the car for around a month while it was being repaired.

The car was then MOT'd on 24 April 2023, where the car failed the MOT. The MOT record shows the car had at that stage travelled 93,226 miles and the reasons for the failure were

related to an inoperative number plate lamp, excessive wear in the lower rear suspension arm or pin and a fractured or broken front coil spring. The MOT history also refers to three advisory issues relating to two tyres and the other lower suspension arm or pin.

Mr J has also referred to some significant corrosion on the car, but this does not appear to be specifically referred to on the MOT history.

Mr J complained to First Response Finance Ltd and it explained, in summary, that it had ‘...reviewed the previous MOTs and the dealership did admit to selling the vehicle with a missing DPF. This is an offence under the Road Vehicles Regulations Act – Section 61...’ But as the car had now been repaired, First Response Finance Ltd considered that no further additional action or remedy was required.

The car remained without an MOT and I understand that Mr J had SORN (Statutory Off Road Notice) the car as he was unable to MOT the car. The car was subsequently impounded and as it was not recovered from the impound disposed of.

Unhappy with First Response Finance Ltd’s response, Mr J referred his complaint to our service, where it was considered by one of our investigators. In summary, the investigator acknowledged the car did have some faults but also noted that certain faults were repaired. The investigator didn’t find that the current problems Mr J had experienced were issues that First Response Finance Ltd were responsible for.

Mr J did not accept the investigator’s conclusions and after further discussion the case was moved to the next and final stage in our process, which is for an ombudsman to consider the case afresh and issue their findings. The case was passed to me and after considering what the parties had said and provided, I asked the investigator to make further enquiries to First Response Finance Ltd about the tyres that Mr J had to replace. This was because the failed MOT of 16 October 2021 referred to a bulged tyre and it seemed very likely that tyre was not replaced before Mr J acquired the car.

First Response Finance Ltd agreed to refund the £196.80 cost of the two replacement tyres, along with interest. The investigator informed Mr J of this, and the case was returned to me, where I then issued a provisional decision setting out my findings and what should be done to put things right. I issued my provisional decision on 19 July 2024, which stated:

What I’ve provisionally 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.

First, I’m very aware that I’ve summarised this complaint in far less detail than the parties and I’ve done so using my own words. I’m not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I’ve focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there’s something I’ve not mentioned, it isn’t because I’ve ignored it. I haven’t. I’m satisfied I don’t need to comment on every individual argument to be able to reach what I think is the right outcome.

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 light of the available evidence and the wider circumstances. Mr J says that when he agreed to acquire the car in February 2022 he did so on the basis that the car would be provided with an MOT and the issues in the failed MOT of 16 October

2021 were to be resolved by the supplying dealer. There is no dispute about this and I'm satisfied this is the basis on which Mr J agreed to pay the £7,995 asking price for the car.

There seems to be little or no dispute that when Mr J acquired the car in February 2022, after the 9 February 2022 MOT pass, that the issues that caused the car to fail the 16 October 2021 MOT had not been rectified. First Response Finance Ltd has said that the dealership did admit to selling the vehicle with a missing DPF and I consider more likely than not that the dealership didn't change the tyre with the bulge that was also a reason for the MOT failure.

Mr J reported a problem with the car's handling once it reached a certain speed and this appears to have been resolved once the tyres were changed. On balance, this is sufficient evidence in my view that the car was supplied with the defective tyre, in addition to not having the DPF.

Mr J has referred to the 9 February 2022 MOT pass as being fraudulent as it is clear that the same issues that caused the car to fail the 16 October 2021 MOT were still present on 9 February 2022. I accept from the evidence presented in this case that the 9 February 2022 did not accurately reflect the condition of the car and that at that time certain issues still remained unrepaired. As to whether or not the MOT was actually fraudulent, as Mr J has suggested, this is not something I am able to comment on here. Any allegations of fraudulent or criminal activity are not within my powers to consider and would need to be considered by other parties, such as the Police.

I would however reassure Mr J that not being able to consider allegations of fraudulent activity has not impacted my decision here and I am satisfied I can reach a fair finding without commenting further on this specific point.

First Response Finance Ltd was the supplier of the car to Mr J through the hire purchase agreement and as the supplier of the car, First Response Finance Ltd was required to ensure the car was of satisfactory quality. This is set out in the Consumer Rights Act 2015, along with the available remedies that are available through the Act.

Mr J was acquiring a used car and it is not unreasonable to expect a car of similar age and mileage here to show signs of wear and tear. The price of the car would be considerably cheaper than when new and this is to reflect the wear and tear on the car's components and aesthetics. But even for a car of this age and mileage there are still requirements about the quality of the car, even if those requirements are less than when buying a new car. As referred to above, it is accepted that the car was supplied to Mr J with the failed issues highlighted in the 16 October 2021 MOT. The MOT is a basic roadworthiness test required of all qualifying vehicles and is a legal requirement to ensure the car is safe for the user and everyone else. The car's DPF plays a crucial role reducing the car's exhaust emissions and without a DPF the car will be more polluting to the environment.

Despite the MOT certificate of 9 February 2022, as the car still had no DPF and a bulged tyre when supplied to Mr J, I'm satisfied the car was not of satisfactory quality when supplied to him.

I'm also satisfied that as Mr J had agreed to acquire the car on the understanding that the failed MOT issues would be repaired, First Response Finance Ltd would be responsible for those repairs through S56 Consumer Credit Act. This refers to antecedent negotiations and in circumstances like this where Mr J took out a hire purchase agreement with First Response Finance Ltd, it makes First Response Finance Ltd liable for any negotiations or assurances provided to Mr J by the supplying dealership. I'm satisfied that Mr J entered into a contractual arrangement to acquire the car with the failed MOT issues repaired or

replaced.

As First Response Finance Ltd does not dispute Mr J was to acquire the car with the failed MOT issues repaired or replaced, I don't consider it necessary to go into further detail around S56 Consumer Credit Act at this stage, but feel it relevant to mention for completeness.

What is required to put things right

First Response Finance Ltd has accepted it is liable for certain issues in the case and as I have set out above, I agree there are certain issues that First Response Finance Ltd is liable for and if it hasn't already done so, should now put right. But, for the reasons I will now set out, I do not consider that First Response Finance Ltd is responsible for all of the issues Mr J complains about, or for the unfortunate position that Mr J now finds himself in.

The failed issues on the 16 October 2021 MOT relate to the DPF and a bulge in the tyre. These are the issues, for the reasons set out above, that I consider First Response Finance Ltd is responsible for. I also note the 16 October 2021 MOT included some advisory points, again relating to tyres, and that Mr J may have believed these were to be repaired/replaced too. Although there is uncertainty around whether or not these advisory issues should have been resolved, I'm not persuaded First Response Finance Ltd needs to do anything more about these now as the car is no longer available. Mr J only incurred costs replacing two tyres and it is this cost of £196.80, plus interest, that First Response Finance Ltd has now agreed to repay Mr J.

The DPF/exhaust was replaced without cost to Mr J when the issue was identified around February 2023. I note Mr J believes the replacement exhaust system was of a lower quality to the one the car had but I haven't seen sufficient evidence of this. Nor have I seen anything to indicate the replacement exhaust wasn't a reasonable component to install onto the car. The car exhaust does not feature as an issue on the failed MOT of 24 April 2023, so it is reasonable to assume the exhaust/DPF issue was reasonably resolved.

I also note that immediately after acquiring the car Mr J had problems with the car not locking and had to get this resolved by the supplying dealer. This was I understand at no cost to Mr J but does in my view demonstrate further that the car was not of satisfactory quality when supplied. A car that successfully locks is a reasonable expectation and requirement, even in a car of this age and mileage when supplied to Mr J.

I am pleased to see that First Response Finance Ltd has now agreed to refund the £196.80 cost of the replacement tyres, and again note that the exhaust/DPF and locking issue were resolved without cost to Mr J. However, I have also considered the impact on Mr J in being without the car while the repairs were completed and the distress and inconvenience this has caused him.

Mr J would have needed to return to the dealership to get the locks repaired and the exhaust/DPF fitted. Mr J says that he was without the car for around a month when the exhaust/DPF was being fitted and as he was without use of the car at this time, I consider it reasonable for First Response Finance Ltd to refund one month's repayment to the hire purchase agreement. It is unreasonable in my view to expect Mr J to pay for use of the car for that month if he didn't actually have use or benefit from the car.

I understand that Mr J did make the required monthly repayment for the month of February 2023, when I understand the car exhaust/DPF was repaired. Mr J would have likely incurred additional or alternative travel costs at that time so First Response Finance Ltd should refund that month's repayment to him, with interest. If I am mistaken and the required

repayment for that month was not made, this should now be written off and reduced from any overall balance owed.

In addition to refunding one month's repayment, First Response Finance Ltd should also pay Mr J an amount to reflect the trouble and upset he has experienced as a result of being supplied with a car that was not of satisfactory quality, and had missing or defective parts. Having a valid MOT is a legal requirement for the car Mr J was using and while I accept he did have an MOT certificate, for the reasons now clear to all, the MOT certificate did not reflect the actual state or condition of the car. The bulged tyre was described as a 'dangerous defect' and the MOT certificate says the car should not be driven until repaired. I appreciate the tyre was replaced shortly after Mr J got the car but there was a period of use where the car clearly had a dangerous defect.

The missing DPF also meant that Mr J had been driving the car for approximately one year and had been polluting the environment with excessive emissions. It is also quite possible that the missing DPF impacted the fuel efficiency of the vehicle too.

And finally, having to return to the dealership to get the lock and DPF repaired, plus arranging for the tyre replacement, would have been inconvenient to Mr J.

All of this could have been avoided if the car had been supplied in the condition that it should have been in. Having considered all of the circumstances of this complaint and the issues that I have set out above that First Response Finance Ltd is responsible for, First Response Finance Ltd should pay Mr J an additional £500.

Having set out above what I consider First Response Finance Ltd is responsible for and what they are required to do to correct those issues, I will now explain why I do not consider First Response Finance Ltd is responsible for the current position Mr J now finds himself in. I have already explained why the car should not have been supplied in the condition that it was and that the MOT certificate of 16 October 2021 did not reflect the condition of the car. But the issues relating to the failed MOT of 16 October 2021 have all been rectified without cost to Mr J.

The failed MOT of 24 April 2023 appears to have failed because of new and unrelated issues that are not connected to the previous failed MOT of 16 October 2021. By the time the car was MOT'd on 24 April 2023 the car had travelled 93,236 miles, which means that Mr J had travelled almost 19,000 miles since he had the car. The car was approximately 13 years old by this time.

First Response Finance Ltd is responsible for the quality of the car when it was supplied to Mr J and it is not responsible for any issues that arise out of general wear and tear associated with the age or mileage of the car. Having considered the cause of the failed 24 April 2023 MOT, I'm satisfied those issues do relate to general wear and tear and what might be associated with a car that was around 13 years old with over 93,000 miles having been travelled. Similarly, I have considered what Mr J has shared about the corrosion on the car and while I understand his disappointment, corrosion can occur on cars of this age and mileage. These issues are again not linked to the previous failed MOT of 16 October 2021 and are not issues that First Response Finance Ltd are in my view responsible for. It would therefore have been Mr J's responsibility to carry out those repairs in order to MOT the car. I am sympathetic to Mr J's position as he says he was unable to afford the repairs to the car because of a change of circumstance. And that as the car could not be MOT'd it could not be taxed. I note Mr J received a penalty notice for the car being used on the road while untaxed and that the car was subsequently impounded. As the car was not collected it has now I understand been disposed of and is therefore no longer available. I again fully appreciate the position that Mr J was in and that he could not afford to recover

the car and arrange for the necessary repairs to MOT and tax the car. But the responsibility of the car and its general upkeep are the responsibility of Mr J and I cannot find First Response Finance Ltd responsible for the car being impounded and subsequently disposed of.

Although the car has been disposed of Mr J has not yet repaid all of the amounts due under the hire purchase agreement. I again note the difficult position that Mr J is now in financially, being required to pay for the car he no longer has any benefit of. First Response Finance Ltd is required under the rules to treat Mr J with forbearance and due consideration. First Response Finance Ltd should therefore work with Mr J to ensure he is able to afford the required monthly repayments that remain due under the hire purchase agreement.

My provisional decision

I fully appreciate that even with an increased award my decision here will come again as a major disappointment for Mr J. As I have set out above, there are grounds to uphold aspects of this complaint. But the significant problems that Mr J now faces are because of the new issues that caused the MOT to fail on 24 April 2023. And these are separate and in my view unconnected issues to the MOTs of 16 October 2021 and 9 February 2022.

I will consider any further submissions from the parties before issuing my final decision, but my provisional decision is that I partially uphold Mr J's complaint against First Response Finance Ltd. To settle the complaint, First Response Finance Ltd should:

- Refund the February 2023 monthly payment to the hire purchase agreement, with interest. Or write off or reduce the outstanding account balance by the same amount as this payment if it has not already been paid by Mr J.*
- Pay Mr J £500 for the distress and inconvenience he has been caused.*
- Pay Mr J £196.80 for the cost of the replacement tyres, with interest.*

Interest should be added to the refunded sums and calculated at 8% simple interest per year, from the date of each payment until the date of settlement.

Should the £500 payment not be made within 28 of days of Mr J accepting my final decision, interest at the same rate should be added to that amount, from the date of payment until the date of settlement.

Both parties responded to my provisional decision. In summary, Mr J said that he appreciates the recognition of certain aspects of his case, but he does not believe the award of £500 for distress and inconvenience is sufficient. Mr J believes there should be punitive measures against First Response Finance Ltd for financing a dealership that knowingly sold a defective car.

Mr J has asked that I consider increasing the distress and inconvenience award to £2,000, regulatory bodies should conduct a thorough investigation into the dealership's practices and First Response Finance Ltd should be held accountable and mandated to review and improve its practices.

Mr J has asked that considering the significant inconvenience, distress and financial burden caused by the defective vehicle, he requests that the remaining balance of the finance be written off. Or, if this is not possible, that the interest on the remaining debt be paused to provide much needed financial relief to the hardship he has endured over the previous two years.

In response to the provisional decision First Response Finance Ltd said the proposition feels a little unfair as it could not have become involved in the issues with the car locking and tyres, as it didn't know anything about these issues. It had already deferred Mr J's March 2023 payment (which means it is still due on the outstanding balance) in acknowledgement of the time Mr J was without the car for the DPF repairs.

First Response Finance Ltd feels the £500 award is 'out of line' with other awards it has received from our service. It acknowledges the car was sold without a DPF, but it did not know this at the time. It also refers to Mr J being the reason why it lost its asset, the car, as it was impounded due to his actions and it was not able to collect the vehicle as per its usual process.

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'm grateful for the parties' responses to my provisional decision, particularly the detail that Mr J has gone to. Having reconsidered what was said and submitted previously and what the parties have said in response to my provisional decision, I have come to the same overall conclusions as set out in my provisional decision, for the same reasons I have previously set out. I shall however respond to the points the parties have recently made.

I fully appreciate that Mr J may feel my decision does not go far enough when considering the actions of the supplying dealer and therefore First Response Finance Ltd as the finance provider of the car supplied through that dealer. But my role here is to consider if First Response Finance Ltd has treated Mr J unreasonably or unfairly and if so, what is required in the circumstances of this complaint to put things right. I have no power to make an award for punitive damages or measures on First Response Finance Ltd or the dealership who supplied the car. Mr J would need to seek alternative avenues, such as the courts, if he wishes to continue with this.

Mr J has recommended that regulatory bodies should conduct a thorough investigation into the dealership. But again, I have no powers to instruct this. I would however remind Mr J that First Response Finance Ltd did refer the dealership to the relevant body when it became aware of the issues with the MOT certificate.

Our service is not the regulator of First Response Finance Ltd and I cannot therefore require First Response Finance Ltd to review and improve its internal processes for approving dealerships.

I have reconsidered the level of my proposed award but having done so I still consider that £500 is a fair and reasonable amount when considering the circumstances of Mr J's complaint and the issues that First Response Finance Ltd is responsible for. As I have previously set out, First Response Finance Ltd is not in my view responsible for the position that Mr J now finds himself in as the issues that caused the latest MOT failure, which then led to the car being impounded, are not in my view connected to the prior MOTs of 16 October 2021 and 9 February 2022.

The DPF issue and problem with the locks have been resolved and the additional award I have made here is in my view sufficient to remedy any remaining issues that I consider First Response Finance Ltd is responsible for. The latest MOT failure is in my view because of more general wear and tear issues caused by the age and mileage of the vehicle. These are not issues that First Response Finance Ltd is, in my view, responsible for.

For the reasons I have set out here, I do not consider there are sufficient grounds for First Response Finance Ltd to pay Mr J the £2,000 he has requested. Nor do I consider there to be any grounds to instruct First Response Finance Ltd to write off the outstanding balance on Mr J's account or pause or stop any additional interest being applied.

I have noted what First Response Finance Ltd has said about not being able to become involved in something, i.e. the issue with the locks and tyres, it does not know about. But for the reasons already set out, these are issues that were the result of the car being of unsatisfactory quality when it was supplied to Mr J. The lock issue was resolved without significant inconvenience and I mentioned this previously for completeness, rather than to indicate this being the main reason for upholding the complaint.

Mr J referred to the problems with the tyres when submitting his complaint to our service and as the tyre bulge was noted on the failed MOT of 16 October 2021, alongside the DPF issue, it should have been reasonably apparent that the tyre issues Mr J experienced after the sale were because the bulged tyre was not replaced. This could and in my view should therefore have been redressed before my provisional decision.

First Response Finance Ltd has clarified that the deferred monthly repayment has not been written off and is still due under the agreement balance. For the reasons previously set out, this amount should be removed from the outstanding balance due under the agreement.

First Response Finance Ltd is unhappy about the £500 award I have proposed and believes this is not in line with other awards made by our service. I have reconsidered the award but remain satisfied this is a fair a reasonable sum in the circumstances. Mr J has experienced considerable trouble and upset as a direct result of being supplied the car that was not of satisfactory quality. Multiple trips to get the car repaired, driving a car that was not safe to drive as the tyre issue had not been resolved. And having a car without a DPF for around a year, Mr J would have been polluting the environment. These are not insignificant issues and are why I have made an award that is likely higher than First Response Finance Ltd may have been more generally used to.

First Response Finance Ltd refers to Mr J's actions being the cause of it being unable to recover its asset, the car, as this was crushed when not collected. First Response Finance Ltd was the owner of the car under the finance agreement and has already acknowledged that it was aware of the car being impounded. I accept that Mr J is responsible for the car while in his possession and for the reasons I have set out, I do not consider First Response Finance Ltd is ultimately responsible for the issues that have caused the car to fail the latest MOT and therefore be impounded. But First Response Finance Ltd could if it wanted to have recovered the car from the compound, subject to paying the release fee, as it was still the owner of the car at that time.

First Response Finance Ltd has I accept now lost the asset, but it is still seeking payment from Mr J for the outstanding balance on the finance agreement. So, I am not persuaded it has actually lost out as a result of the car being crushed.

Finally, I would remind First Response Finance Ltd that should Mr J be experiencing financial difficulties it should treat him with forbearance and due consideration. This does not mean First Response Finance Ltd is required to reduce or write off what is owed (other than what I have set out in this decision). But, I would encourage the parties to work together to find an agreeable way forward and if necessary repayment plan for what remains due under the finance agreement.

Putting things right

To settle this complaint, First Response Finance Ltd should now:

- Refund the February 2023 monthly payment to the hire purchase agreement, with interest. Or write off or reduce the outstanding account balance by the same amount as this payment if it has not already been paid by Mr J.
- Pay Mr J £500 for the distress and inconvenience he has been caused.
- Pay Mr J £196.80 for the cost of the replacement tyres, with interest.

Interest should be added to the refunded sums and calculated at 8% simple interest per year, from the date of each payment until the date of settlement.

Should the £500 payment not be made within 28 of days of Mr J accepting my final decision, interest at the same rate should be added to that amount, from the date of payment until the date of settlement.

My final decision

My final decision is that I uphold Mr J's complaint against First Response Finance Ltd and direct it to settle the complaint in line with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 August 2024.

Mark Hollands
Ombudsman