

## **The complaint**

Mr U complains that the car he acquired financed through a hire purchase agreement with First Response Finance Ltd wasn't of satisfactory quality.

Mr U is represented in this complaint. For the sake of simplicity I've referred to all submissions from his representative as being from him.

## **What happened**

In January 2024 Mr U acquired a car financed through a hire purchase agreement with First Response. The car was aged about nine years and the mileage was 91,000. Mr U said he started having problems with the vehicle within the first few days including needing a new tyre and an oil change. This was followed by a problem with the electronic parking brake (EPB), the airbag light and the bonnet wouldn't open. The car also broke down.

It appears Mr U experienced some initial resistance from the supplying dealership, D, and warranty company, W, to help sort the problems. Eventually Mr U took the car to a manufacturer's dealership, M, for an inspection. M issued a report which highlighted several faults, some needing immediate attention (brake pads and discs) and a list of advisory repairs for the near future - these included airbag sensor, boot lock, issues with water in the boot, rear door drainpipe missing, parking sensors, bonnet lock and cable, and new wheel locking kit.

Mr U brought a complaint to First Response.

Mr U faced some challenges getting the vehicle recovered from M to D because of the condition the car had been left in by M. The car was eventually returned to M for reassembly before being taken back to D. When D inspected the car on its return it found that wiring was damaged which was identified as having been chewed by rodents. First Response arranged for an inspection by an independent engineer, S. S concluded that the wiring had been chewed and that this wouldn't have been present or developing at the point of sale. In its final response First Response said following the inspection it didn't consider D or First Response to be liable for any damages. Mr U didn't agree and brought his complaint to this service.

Our investigator concluded that D had accepted responsibility that some faults were present or developing at the point of sale and agreed to repair the faults with the airbag sensor, boot lock, issues with water ingress, rear door drainpipe, bonnet lock and cable, and new wheel locking kit. He went on to conclude that damage caused by the rodents was caused sometime after Mr U acquired the car and so wasn't the responsibility of First Response to fix. He said the brake pads and discs damage was likely as a result of wear and tear. First Response didn't agree and asked for a decision from an ombudsman. Mr U accepted the recommendations. Both parties made additional comments to which I have responded below where appropriate.

## **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.

Mr U has set out his account of events in considerable detail. I'd like to thank him for that and for his detailed responses to the investigator's view. I trust Mr U won't take it as a discourtesy that I've condensed his complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint.

Mr U has explained how stressful this situation has been for him, that he's been unwell and experiencing financially difficult times. I'm very sorry to hear this. Having considered the evidence I agree with the investigator's conclusions for the reasons I've outlined below.

- Mr U's agreement is a regulated consumer credit agreement, and our service can consider complaints against it;
- First Response, as the supplier of the car, was responsible for ensuring it was of satisfactory quality when it was supplied to Mr U. Whether it was of satisfactory quality at that time will depend on several factors including the age and mileage of the car and the price that was paid for it;
- The car that was supplied to Mr U was aged about nine years and had covered 91,000 miles;
- Satisfactory quality also covers durability which means the components within the car must be durable and last a reasonable amount of time. But exactly how long that time is will also depend on several factors;
- It's not disputed that there were faults with the car. The independent inspector has concluded there is evidence that wires have been chewed and M provided a diagnostic report with a list of issues that needed fixing in the car. At this point Mr U wanted to reject the car because in his view it wasn't fit for purpose. This is a key point because if I am to decide the car wasn't of satisfactory quality I must be satisfied the faults were present at the point of supply. Faults that developed afterwards are not relevant. Moreover even if a fault was present at the point of supply this will not necessarily mean that the car was not of satisfactory quality. This is because a second-hand car might be expected to have faults, for example worn tyres or damage from wear and tear but this will not necessarily mean the car is not of satisfactory quality.

### Advisory items

- M's report is dated 9 April and identified several advisory repairs. These included
  - Requires new passenger side rear airbag sensor;
  - Requires new boot lock
  - Boot full of water requires new rear air vents and drying boot out
  - Rear door drainpipe missing
  - Requires new relay for distance regulation fault 3317
  - Requires new front o/s inner parking sensor
  - Requires new bonnet lock and front cable
  - Requires new wheel locking bolt kit

- First Response has disputed that D agreed to repair absolutely everything on the health check list. It said this was an assumption made by our service. But I disagree. The emails I've noted below are from First Response. And I think it was a reasonable expectation that repairs would be done as listed, possibly even including the brakes.

- I've seen a copy of an email dated 22 April from First Response to Mr U. It says:

*"Just to update you, we have spoken with the supplying dealership, and they have offered to have the vehicle returned to them and repaired. As a gesture of goodwill, First Response Finance can cover the cost of the recovery back to them. However, in the meantime — due to the communication problems between yourself and them, I feel it best we open a complaint so we can monitor this. In order to do this, we would need you to call us."*

- I've seen a copy of an email dated 29 April from First Response to Mr U. It says:

*"As discussed, we have rearranged the recovery now the bill for inspection has been settled with the garage. The recovery agent has confirmed the rearranged recovery is booked for this Thursday. Please note, the dealer has confirmed once they have the vehicle back, they will get started on the repair right away. They estimated they will need the vehicle for 2 days maximum to complete the necessary repairs, they also advised they will be happy to deliver the vehicle back to you once the repairs have been completed."*

- The email isn't specific about which repairs would be covered but the vehicle was being collected from M to D so I'm satisfied the repairs were as listed in M's 'vehicle health check report'. And I'm persuaded that D accepted responsibility for these faults as being present or developing at the point of sale. So it follows that the vehicle wasn't of satisfactory quality at the point of sale.
- However, I don't consider the brakes to be included in this list of repairs as I've addressed below.
- First Response also said in its opinion the vehicle was road legal at the time of sale, which is supported by the fact that the vehicle passed an MOT with a similar mileage as at the point of sale. Being road legal and having an MOT is not the same as being of satisfactory quality for sale.
- I'm also satisfied that given the nature of the faults they aren't linked to the rodent damage.

#### Brake pads and discs

- The diagnostic report from M identified the rear brakes as needing immediate attention. Generally speaking brakes are considered consumable and will suffer from wear and tear over time. Mr U's car had 91,000 miles on the clock when he acquired it and he drove some 4,000 before the inspection. So even if the rear brakes were worn at the point of sale I think it likely this would be as a result of wear and tear. As such I'm not able to find First Response liable for the repair costs.

#### Rodent damage:

- First Response commissioned an inspection, a copy of which I've read. It says:  
*"...the vehicle is currently unfit for regular use on the public highway as there is*

*evidence of rodent damage to the wiring and the seat belts. It is impossible to state when the rodent damage occurred, however we are confident that the damage was not present at the point of sale as it been easily identifiable much sooner i.e. the multiple warning lights displayed on the drivers panel and the damage to the site be easily noticeable ...”*

- I'm persuaded by this technical evidence that there is rodent damage and it developed sometime after Mr U acquired the car.
- Mr U is insistent he isn't responsible for this. While I think this damage occurred after Mr U acquired it I also know that the car has been in various garages so it could've happened at one of a few places.
- I'm satisfied this damage was caused by a third party and as such neither D or First Response are liable. Mr U would need to speak to his insurance company regarding this damage.

I'm persuaded the vehicle wasn't of satisfactory quality at the point of sale and I believe First Response should arrange for and cover the cost of repairs.

Our investigator has outlined in his view the impact this situation has had on Mr U. He has managed to get some use out of the car, but I can see arranging for the car to be assessed by a VAT registered garage and dealing with the car in a disassembled condition has caused delays and additional stress.

Mr U has explained that he is experiencing financial difficulty at this time. It would be prudent to contact First Response to discuss a way forward if he is having difficulty making his repayments.

### **Putting things right**

To put things right First Response Finance Ltd must:

- arrange for and cover the cost of the repairs to the car as directed above (airbag sensor, boot lock, issues with water in the boot, rear door drainpipe missing, parking sensors, bonnet lock and cable, and new wheel locking kit) – these should be carried out within a reasonable timescale from the date the customer accepts this decision;
- Refund Mr U 5% of the payments made from 3 January 2024 to the date of settlement to fairly reflect the impaired use;
- pay Mr U 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay Mr U a further amount of £250 for any distress or inconvenience that's been caused;
- remove any adverse information from the customer's credit file in relation to the agreement.

### **My final decision**

My final decision is I uphold this complaint and First Response Finance Ltd must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 28 November 2024.

Maxine Sutton  
**Ombudsman**