

The complaint

Mr S complains about the quality of a car supplied to him by Advantage Finance Limited (AF) through a hire purchase arrangement. He feels the car was faulty and was sold in an unroadworthy condition. Having made a previous complaint to our service about the car, which was upheld, he says he continued to have the same problems with the car as the underlying cause of the problem was not corrected by the work carried out.

What happened

Mr S acquired a used car from AF in April 2022 for £5,495 under a hire purchase arrangement with repayments to be made over 54 months. The car was nine years old and had completed 111,130 miles.

In July 2022 Mr S had to replace the rear tyres and spare tyre due to excessive wear on the inside edge. By January 2023 he had had to replace the tyres several times. In January 2023 Mr S complained to AF. AF completed an investigation in which it was suggested this may be due to issues with the rear caster camber and offered to pay for the repair Mr S had arranged. Mr S was not satisfied with this response and made a complaint to our service.

In May 2023 an investigator here recommended that Mr S's complaint should be upheld. He based this conclusion on evidence provided by Mr S in the form of invoices, a roadside assistance report and the findings of the report by an independent engineer carried out on behalf of AF, at which point the car mileage was 120,190. This confirmed uneven tyre wear had been caused by misalignment and that in their opinion this was a developing condition at point of sale and that the selling agent should cover the costs of repair.

Our investigator's view was that AF should pay the cost of repairs and replacement tyres plus an amount for distress and inconvenience, to which both parties agreed. Although this complaint was closed, I have considered the facts of the case as they relate to this second complaint.

In June 2023 Mr S complained to AF again as he found the problem of the need to replace tyres was persisting but found that AF refused his complaint. AF advised him that as he had accepted the Financial Ombudsman Service view, they would refer him to their Collections Department to discuss his options, which they said were to hand the vehicle back in the form of a voluntary termination or to surrender the vehicle.

Mr S did not want to take up this option and kept the vehicle but had to replace tyres again in July and November. In November 2023 he arranged further repairs as he felt the car was dangerous to drive. He confirmed these repairs resolved the problem. At this point the mileage on the car had increased to 131,875, so Mr S had driven 11,685 more miles.

Mr S has provided an invoice and report from the garage that conducted these repairs. The invoice shows replacement of rear trailing arm bushes which were completely de-bonded allowing excessive rear toe, rear camber bushings which were very badly worn causing excessive rear camber as well as front wishbone bushes which were de-bonded causing excessive movement in the front arms. Their report links these faults to the regular wearing

down of the tyres and provided a report which said that based on the Mr S's reports of abnormal tyre wear from the time of purchase, it was likely that these components were already worn to some degree at the time of purchase. This aligns with the report commissioned by AF following Mr S's first complaint.

Following the repairs Mr S complained again to AF and asked to reject the vehicle. AF agreed to look into his complaint but informed him that as the car had been repaired and the fault he complained of no longer existed, this would be a review of invoices and reports. They said if they upheld the complaint there would be a reduction in any redress for usage of the car. This Mr S declined and brought his complaint to our service.

The initial view given by our investigator on this second complaint was to reject it on the grounds this was a new complaint, raised approximately 20 months after purchase and after around 20,000 miles driven. Mr S did not accept this view and asked for his complaint to be referred to an ombudsman.

I issued a provisional decision on 19 September 2024 where I explained my intention to uphold the complaint. In that decision I said:

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

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to be good industry practice at the relevant time.

The finance agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. AF is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 ('CRA') is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". The CRA says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

So, if I thought the car was faulty when Mr S took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask AF to put this right.

The car when purchased was nine years old and had completed 111,130 miles and so I believe it would be generally accepted that more and earlier maintenance would be required than would be needed on a younger car or one with less mileage, and I have noted that in subsequent correspondence Mr S has identified other repairs that are required including new front brake pads and brake discs, offside front drive shaft and calliper. Given the age and mileage I feel it is realistic to expect parts to become worn and need replacing and so based on this and the fact these did not form part of Mr S's second complaint when made, I have not included this in my considerations.

First, I considered if there was a fault with the car. I've considered evidence provided by both sides and the independent report and it is not in dispute that there is a fault with the car. But just because there are or were faults found with the car, does not automatically mean that the car was not of satisfactory quality at the point of supply. So, I've gone on to consider if the car was of satisfactory quality when it was supplied to Mr S.

However, it has already been identified that at the point of sale there was a fault with the car that was causing excessive wear to the tyres. Although repairs were carried out to the car, as Mr S reported the fault still present shortly after these repairs were carried out, I believe it is reasonable based on the balance of probability to accept that the first repairs undertaken did not resolve the problem. The need to purchase tyres on three occasions within six months supports his view that the fault which was causing the excessing wear on the tyres was still present. This is further backed up by the repairs carried out in November and the report from the garage that completed them, together with the fact this additional work has now resolved the issue.

I therefore feel satisfied that the fault causing the excessive wear to the tyres was present at the point of sale and that it was not corrected by the first repair. I note that AF feel that had the first repair been completed by a mechanic they had selected the full extent of the problems may have been uncovered at that time. However, there can be no certainty that would have been the case. Even if that had been the case, as it has been identified that the fault was present at the point of sale it is not evident that the overall repair costs would have been any different. The work completed in November 2023 was different to and considerably more than was undertaken in the earlier repair so it is reasonable to expect it would have cost more.

On that basis I believe it reasonable that AF should reimburse Mr S for the cost of tyres he had to purchase between the date of the first repair carried out on the car in February 2023 up to and including the date of the second repair in November 2023 together with the costs of those repairs, which totalled £846.53. Simple interest of 8% should also be paid on these amounts from the date Mr S had to make the payments, to the date of settlement.

Mr S has expressed his frustration that AF did not accept the complaint he made in June 2023 and their handling of his complaint in November 2023, as well as the stress he has experienced as a result of the ongoing problems with the car and his concern that the car he was driving was dangerous. Mr S has driven approximately 20,000 miles between purchase and the time he made this complaint and I think Mr S's concerns are understandable and that he has suffered distress and inconvenience, including the need to make repeated visits to the garage to have new tyres replaced and to arrange the repairs for the underlying fault. To reflect this, I feel it reasonable that AF should pay him £200 compensation.

I appreciate that Mr S may be disappointed as he had indicated he now wished to reject the car. However, having had use of the car for 22 months at the point of this complaint, and as the fault he has complained about is now satisfactorily repaired I feel it is more suitable that AF pay for the repairs and tyres Mr S has had to pay for in respect of his complaint.

My provisional decision

I am currently minded to uphold this complaint against Advantage Finance Ltd with the decision that it should pay to Mr S:

- *£185 for the cost of tyres Mr S purchased between 9 February 2023 up to and including 10 November 2023*
- *£846.53 for the cost of the repairs carried out in November 2023*

- *8% simple yearly interest on the costs calculated from the date of purchase up to the date of settlement*
- *£200 compensation for the inconvenience and distress this situation has caused him.*

If Advantage Finance Ltd considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

I asked both parties to provide me with any additional comments or information they would like me to consider by 3 October 2024.

Mr S said whilst he appreciated my intention to uphold his complaint, he would prefer the redress to go further and wanted to be allowed to reject the car and have all costs, including payments he had made, refunded.

Mr S repeated his concerns about other issues he had with the car and said there have been additional faults since that were not included in his complaint. He also said that he had to have repairs done costing £800 in order to be allowed to drive the car after taking it for MOT in February 2024. He says the mechanic at the garage who performed the MOT said the car was dangerous.

AF said they accepted my provisional decision but asked if they could credit the awarded refunds to Mr S's account as he has not maintained his payments throughout the term of the agreement.

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've also considered again my provisional findings.

I am sorry that Mr S has experienced further faults with the car. However, in my provisional decision I took into account the fact the car was 9 years old at the time he had acquired it and had completed 111,130 miles, and that by the time of his complaint he had driven a further 20,000 miles.

I believe a reasonable person would expect a car of that age and mileage to require earlier and more frequent maintenance and repairs than a younger car with less mileage so I did not feel it would be fair to ask AF to do anything further in respect of these additional faults.

Similarly, I appreciate the comments made by the mechanic undertaking the MOT in February 2024 must have been concerning but as this was 22 months after purchase and I have no evidence of what these faults are or that they were present when Mr S acquired the car, I again do not feel it would be fair to ask AF to do anything further in respect of these faults.

In addition, as Mr S has continued to use the car it would be reasonable that he should pay for that use, and therefore even if the car were rejected this would not mean a refund of all payments made.

I know Mr S said he had rights under the CRA to reject the car. That would be true if AF had already had one attempt at repairing the car which had failed. While an attempt at repair had been made on the car, Mr S arranged and paid for this before AF had the chance to carry

out the repairs themselves. While it's perhaps true to say (as I explained in my provisional decision) that AF might have used the same dealer as Mr S did for the first repair, I still don't think for the purposes of the CRA that AF could be said to have attempted to repair the car, because the repair did not take place under AF's instruction. So, it seems unlikely that the CRA would give Mr S the right to reject on the basis AF had already attempted a repair on the car which had failed.

Another reason for rejection under the CRA is where a consumer has asked a trader to repair goods that are not of satisfactory quality, but the trader has not done this within a reasonable amount of time. When Mr S returned to AF after the first repair with the same problems with the tyres, they should perhaps have done more to help him – by agreeing to at least inspect the car for example. Several months passed with AF refusing to help Mr S before he eventually decided to have the second repair carried out himself. It's perhaps arguable therefore that AF did not complete repairs within a reasonable period of time and that Mr S may have had grounds for rejection before he had the second repair carried out. That being said, Mr S did choose to have the car repaired and he's had use of the car ever since without the same problem occurring.

Taking everything into account I don't find it would be fair and reasonable now to allow Mr S to reject the car given how things have moved on since he first asked AF to do this.

I've noted AF's request to credit the sums I've asked them to pay to Mr S direct to his hire purchase agreement. The costs awarded to Mr S are to replace money he has spent, with interest, and an amount for distress and inconvenience, and it should be Mr S's decision as to how he then allocates those funds.

AF have said Mr S is in arrears on his account. I ask that AF treats any financial difficulties Mr S is experiencing with due consideration and forbearance.

Overall, and in view of the responses to my provisional decision, I've seen no reason to depart from the conclusion I reached in my provisional decision. So, my decision remains the same.

My final decision

For the reasons given above and in my provisional decision, I uphold Mr S's complaint and I direct Advantage Finance Limited to pay him:

- £185 for the cost of tyres Mr S purchased between 9 February 2023 up to and including 10 November 2023
- £846.53 for the cost of the repairs carried out in November 2023
- 8% simple yearly interest on the costs calculated from the date of purchase up to the date of settlement
- £200 compensation for the inconvenience and distress this situation has caused him.

If Advantage Finance Ltd considers that they are required by HM Revenue & Customs to withhold income tax from the interest part of my award, they should tell Mr S how much it's taken off. They should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 November 2024.

Jo McHenry

Ombudsman