

The complaint

Mr D's complaint is that a car supplied to him under a Hire Purchase Agreement ("HP Agreement") with AutoMoney Limited ("AML") was of an unsatisfactory quality. He has asked AML to take redelivery of the car, cancel the HP Agreement and refund his money.

When I refer to what Mr D has said and what AML has said, it should also be taken to include things said on their behalf.

What happened

The background to this complaint was set out in my provisional decision of 8 October 2024. I have set out below, in italics, what I provisionally decided and why. This forms part of my final decision.

On 31 May 2023, Mr D entered into the HP Agreement with AML to finance the purchase of a second-hand motorcar. Under the HP Agreement ownership of the car was vested in AML and the car was hired to Mr D until all payments due under the HP Agreement had been made. The cash price for the car was £20,000.00; the total charge for credit provided was £19,249.00. The term of the HP Agreement was 77 months and Mr D was required to repay the credit and interest in monthly instalments, with a first payment of £558.74, followed by 75 payments of £509.74 and a final payment of £608.74. The total amount due and payable was £39,397.98 with an APR charge for credit of 26.8%. At the time of supply, the car was just over 7 and a half years old since first registration (November 2015) and had done about 55,000 miles.

On or about 16 August 2023, Mr D contacted AML as he was experiencing issues with the Car related to the timing chain and a leak from the roof. Then, on or about 22 August the exterior of the car, including the paintwork, was damaged with paint stripper. Mr D reported this to the police. In October 2023 the dealer arranged for repairs to undertaken to the car including the timing chain.

After repair, the car was returned to Mr D on 18 October 2023. These repairs did not address any damage caused by the paint stripper incident, and the job cards do not evidence any repairs to the panoramic roof being undertaken despite the fact that Mr D had reported leaks in the roof when he first complained of problems with the car.

On or about 9 November the car broke down and was recovered by the RAC. Mr D arranged for it to be delivered to a paint shop where cosmetic repairs were undertaken to address the damage to paintwork caused by the paint stripper. It seems that Mr D paid £2500.00 for this work: the legitimacy of the paint shop invoice and the quality of the work undertaken has been challenged by AML. In December, AML instructed a firm of consulting engineers ("CE") to assess the car.

The CE's assessment was conducted on 5 December 2023, and the CE concluded the faults complained of weren't present or in development at the point of sale. However, after further information was provided - specifically about the repairs conducted in October 2023 - the CE said that the previous repair to the timing chain had failed.

On 8 January 2024, AML wrote its final response letter (FRL) to Mr D and said that:

“ ... due to significant damage caused by paint stripper to the bodywork, wheels and seals, it is not proportionate ... to accept an unwind ..[of the HP Agreement].. at such a significant loss.”

From what it said I think AML accepted that Mr D had the right to reject the car under the relevant legislation due to the issues with the timing chain, however, it didn't think that it would be proportionate to do so given the losses it and/ or the supplying dealer would likely incur due to damage to the car caused by paint stripper.

Mr D referred his complaint to this Service. Our investigator considered Mr D's complaint. He upheld the complaint and said that Mr D should be allowed to reject the car. AML did not agree with our investigator and made a counter proposal which Mr D rejected.

It's my understanding that AML took possession of the car in May 2024. Subsequently AML has, however, articulated that it doesn't believe that the repairs Mr D affected to the paintwork were of a satisfactory standard and that further repairs costing in the region of £16,000 are required. It's maintained that it would not be proportionate to allow Mr D to reject the car.

So, this matter has been passed to me for determination.

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.

Where evidence has been incomplete or contradictory, I've reached my provisional view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've also had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. In this case, Mr D was supplied with a car under a hire purchase agreement, which is a regulated consumer credit agreement which means this Service can consider this complaint.

The Consumer Rights Act 2015 (“CRA”) covers agreements such as the one Mr D entered into. Under the HP Agreement, there is an implied term that the goods supplied will be of satisfactory quality, and, in certain circumstances there is a right for consumer's to reject unsatisfactory goods.

So, if I thought the car was faulty when Mr D 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 AML to put this right.

The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In this instance, it's been clearly established that the car had a number of defects as set out in the CE's report dated 14 December 2023. This included defects to the engine and timing chain. The CE's opinion in that report was that:

"Based on the evidence available to ourselves at this time, the faults identified would not have been present at the point of vehicle sale as the vehicle has covered in excess of 12,000 miles from the point of vehicle sale to the point of reported fault. This mileage, in our opinion, is sufficient for the faults to have developed within the current client's ownership."

However, after further information was provided, CE said that the repairs to the timing chain effected in October 2023 (first reported in August) appeared to have failed.

As our investigator noted in his view, the time that a defect first manifests itself is an important consideration when applying the provision of the CRA to the quality of the car. The CRA implies that if the fault occurs within six months of supply, then the onus is on AML to demonstrate that the car supplied was of satisfactory quality. Where the threshold of six months has passed, then that responsibility would fall to the consumer.

Here the problem with the timing chain arose within 6 months and the repair effected failed, as confirmed by the CE.

Section 24(5) of the CRA says:

"a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract."

This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for AML – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The CRA is clear that, if the single chance at repair fails, as was the case here, then the customer has the right of rejection. However, this doesn't mean that the customer is required to reject the car, and they can agree an alternative remedy i.e., further repairs to the car.

In this case, having considered the evidence available, my view is that it is more likely than not the faults with the timing chain were present at the point of supply and that the failure to remedy that fault at the first opportunity in October entitled Mr D to reject the vehicle.

AML said, in response to our investigator's view, that it could not accept a return of the car due to damage which it says occurred during the period Mr D was responsible for the car in accordance with the terms of the HP Agreement. AML also said that they intend to charge the cost of effecting repairs to Mr D and that this should be taken into account in any settlement. In this regard I agree with our investigator: this complaint is about whether Mr D was supplied with a car which was of satisfactory quality, rather than any damage which may have occurred since the point of supply. Any such damage is a separate issue that I am not able to comment on here, except to say that Mr D has been advised of the damage reported by AML and of AML's intention to charge for the cost of repairs. AML may believe that it is entitled to seek recovery of sums in respect of that damage. In that event if Mr D is unhappy with any charges that AML may apply, he might be able to raise a complaint with AML and subsequently to make a new and separate complaint to this Service, as appropriate.

Putting things right

Impaired Usage

Mr D was able to use the car before it was returned for repair in October 2023. After that, although the position is not exactly clear, it appears, he had limited use of the car based on the mileage recorded at the date of first repair and subsequently. Mr D has paid to AML a sum equal to 5 monthly instalments under the HP Agreement, more or less. So, given the mileage incurred whilst the car was in his possession, I won't be asking AML to refund any of the payments he's made prior to uplift of the car.

However, given the issues with the car, it's clear that Mr D's use was impaired. I know that he spent some time without the car whilst it was repaired. I also imagine that to experience repeated problems within the first six months of supply was particularly frustrating and inconvenient for Mr D. Having regard for the time that it seems Mr D was without the car, the monthly payments, and the extent to which Mr D was caused trouble and upset by all events, in my view it'd be fair for AML to pay Mr D £500.00 compensation by way of an apology.

Therefore, AML should:

- end the HP Agreement with nothing more to pay;*
- refund any deposit Mr D paid;*
- remove any adverse entries from Mr D's credit file relating to this complaint specifically, including any entries related to missed monthly payments;*
- refund 100% of any payments made after uplift of the car (if any);*
- apply 8% simple yearly interest on the refunds, calculated from the date Mr D made the payment to the date of the refund*; and*
- pay Mr D £500.00 to compensate him for impaired use as well as the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

**If AML considers that tax should be deducted from the interest element of my award, they should provide Mr D with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.*

Mr D responded to my provisional decision and accepted it. AML did not accept the provisional decision and made an offer to settle Mr D's claim on different terms. This was put to Mr D and he rejected it.

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.

AML disagreed with my provisional decision. It's not necessary for me to repeat everything that AML said in response to my provisional decision, however, in summary AML accepted that Mr D should have the right to reject the car; and, as noted above, they made a proposal to settle on different terms, which Mr D rejected.

Having considered this claim and the further offer made by AML, and Mr D's rejection of that offer, I have reached broadly the same conclusion as set out in my provisional decision. That is, due to the issues with the car, Mr D had the right to reject the car. Therefore, I uphold this complaint, and AML is responsible for putting things right.

Putting things right

To settle this complaint AML should now:

- end the HP Agreement with no further instalments to pay;
- refund any deposit Mr D paid;
- remove any adverse entries from Mr D's credit file relating to this complaint specifically, including any entries related to missed monthly payments;
- refund 100% of any payments made after uplift of the car (if any);
- apply 8% simple yearly interest on the refunds, calculated from the date Mr D made the payment to the date of the refund*; and
- pay Mr D £500.00 to compensate him for impaired use as well as the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

*If AML considers that tax should be deducted from the interest element of my award, they should provide Mr D with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

My final decision

For the reasons explained, my final decision is that I uphold Mr D's complaint, and direct AutoMoney Limited to settle this complaint in accordance with the putting things right section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 December 2024.

Michael Hoggan
Ombudsman