

The complaint

Mr A complains about the quality of a car he acquired under a hire purchase agreement with Lendable Ltd (Lendable).

When I refer to what Mr A and/or Lendable said or did, it should also be taken to include things said or done on their behalf.

What happened

In April 2024, Mr A entered into a hire purchase agreement with Lendable to acquire a used car. The car was first registered in March 2012. At the time of acquisition, the car had travelled approximately 90,000 miles. The total cash price of the car was approximately £5,295 when Mr A acquired it. The total amount payable under the finance agreement was around £ 6,387.25. There was a deposit of about £1,500. The agreement consisted of 32 monthly repayments each of around £147.30 and one final payment of £148.65 plus an option to purchase fee of £25.

Mr A said that at the end of June 2024, a month after supply while he was driving, the car suddenly started beeping and transmission failed service warning appeared on the dashboard. Mr A called for a recovery agent to come out, who diagnosed that there is a transmission issue. The car would not move into second gear and was locked in first. The recovery agent advised him to drive it home very slowly while he drove behind Mr A as an escort.

On 2 July, Mr A called a tow truck and had the car towed to a garage for a diagnostic. This cost £80. On 10 July 2024, the third-party garage completed a diagnostic and charged Mr A £150. At the time, the car's mileage was recorded as 91,897 (around 1,897 miles since supply). The repair quote was for a total price of £2,482.53. This included the following:

- TMC £654.67
- DCT coupling £1,187.86
- Labour 6hrs £480
- Programming £160

However, as Mr A was unable to get the issues resolved with the supplying dealership, he contacted Lendable on 16 July 2024.

On 9 September 2024 Lendable wrote to Mr A and said the broker/intermediary should have an outcome for him shortly. They said that, as the supply dealership has ceased trading, the responsibility will fall on the broker/intermediary to step in as the dealership. Lendable also said they were awaiting confirmation on whether the broker/intermediary believes the repairs to be economically viable, and if not, they would accept rejection of the car. Lendable also explained that as they have taken longer than eight weeks, he could now refer his complaint to the Financial Ombudsman Service (Financial Ombudsman).

Later, on 16 October 2024, Lendable wrote again to Mr A and said the broker/intermediary

had spoken with the third-party garage where Mr A took the car to be looked at. That garage advised that all faults, apart from one, do not suffer from sudden failure. So Lendable said, considering the time Mr A had the car and the mileage completed, on the balance of probability these items were likely either faulty or developing a fault at the time of sale. The only item that is subject to sudden electrical failure is the TMC. Lendable said the broker/intermediary spoke with Mr A's warranty company and explained the situation to them. As a result, the warranty company has confirmed they will cover £1,200 of the repairs. The broker/intermediary agreed to cover £300, and Lendable would also offer £300. As such, the outstanding balance of £682.53 for the TMC and some labour costs would need to be covered by Mr A, as they said, TMC is not considered a point-of-sale fault.

Mr A was not happy, so he referred his complaint to the Financial Ombudsman.

Our investigator considered Mr A's complaint. The investigator was of the opinion that Mr A was provided with a car that was not of satisfactory quality, and that Mr A should be entitled to reject the car.

Lendable did not accept the investigator's findings, so the complaint has been passed to me to decide.

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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered good industry practice at the relevant time. Mr A acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Lendable is the supplier of goods under this type of agreement and is responsible for dealing with complaints about their quality.

I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. But I have focussed on those that are central to me reaching, what I think is, the right outcome. This reflects the informal nature of the Financial Ombudsman as a free alternative to the courts.

Also, I am only considering the aspects Lendable are responsible for, so I cannot look at certain actions and/or inactions of the dealership/broker/intermediary which Mr A might be unhappy about. So, in this decision I only focused on the aspects I can look into. And, I am only looking at the events that have been raised by Mr A with Lendable, the ones they had an opportunity to address in their correspondence sent to him 16 October 2024.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr A entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. 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 Mr A's case the car was about 12 years old, with a total cash price of approximately £5,295. It had covered around 90,000 miles. So, the car had travelled a reasonable distance, and it is reasonable to expect there to be some wear to it because of this use. I would have different expectations of it compared to a brand-new car. As with any car, there is an expectation there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time, and it is reasonable to expect these to be replaced. With second-hand cars, it is more likely parts will need to be replaced sooner or be worn faster than with a brand-new car. And Lendable would not be responsible for anything that was due to normal wear and tear whilst in Mr A's possession.

Mr A thinks that he should be entitled to reject the car.

The CRA sets out that Mr A has a short term right to reject the car within the first 30 days, if the car is of unsatisfactory quality, not fit for purpose, or not as described, and he would need to ask for the rejection within that time. Mr A would not be able to retrospectively exercise his short term right of rejection at a later date.

The CRA does say that Mr A would be entitled to still return the car after the first 30 days, if the car acquired was not of satisfactory quality, not fit for purpose, or not as described, but he would not have the right to reject the car until he has exercised his right to a repair first – this is called his final right to reject. And this would be available to him if that repair had not been successful.

First, I considered if there were faults with the car.

I do not think it is in question that the car was faulty. And from the invoice of the third-party garage I can see that the required work consisted of:

- TMC £654.67
- DCT coupling £1,187.86
- Labour 6hrs £480
- Programming £160

Based on all of the above, I think the car was, most likely, faulty. But just because a car was faulty does not automatically mean that it was of unsatisfactory quality when supplied. So, I have considered if the car was of unsatisfactory quality when it was supplied to Mr A.

I know that Lendable feels all issues are considered to have been present or developing at the time of supply, except for the issue with the TMC, because the third-party garage that diagnosed the car, said it is not uncommon for TMC to have a sudden failure. I have taken that into consideration, but I also considered the description of the car from the advertisement combined with what a reasonable person would expect of a car based on this age, mileage, and price.

I can see the advertisement at the time stated something along the following lines: *'Selling this beautifully looked after [car] automatic. This car has no issue whatsoever and drives beautifully...First person will come buys it. Beautiful interior and clean exterior.'* And the cash price of the car was around £5,295, compared to market value of about £4,310. As such, Mr A paid significantly more than what the car was worth at the time. Therefore, I think a reasonable person would have higher expectations of the car and would not expect the car to have such expensive issues arise only after a month or two of its use, and only after travelling for around 1,897 miles.

Considering all the circumstances of this case I think, most likely, the faults in question would render the car of unsatisfactory quality. I say this because given the age, mileage of the car, the price paid, combined with how quickly Mr A raised the above faults, I do not think the car was of satisfactory quality when it was supplied to him.

I know Lendable believe they should be allowed to have an attempt at a repair because, they believe they have this right under the CRA. In situations similar to this one, I would have been inclined to recommend that Mr A is able to exercise his right to a repair before he should be allowed to reject the car. However, I do not think this would be fair and reasonable considering the specific circumstances of this case. I think a more fair and reasonable solution would be for Mr A to be able to exercise his right of rejection under the CRA.

When coming to this conclusion I have considered many aspects, which I will address below:

- Mr A first raised the issues with FRF in July 2024 and a solution was not proposed to him until about four and a half months later.
- Even then, Lendable did not want to arrange for all the repairs to be carried out at no cost to Mr A, and only wanted to contribute to some of the costs of the repair.
- Lendable could have commissioned an independent report to ascertain whether the car was of satisfactory quality, especially considering how soon after supply Mr A raised the issues with the car. Alternatively, they could have provided compelling evidence that the goods were of satisfactory condition. But instead on a few occasions, Lendable was only relying on the broker/intermediary even though Lendable themselves are the supplier of the goods and therefore responsible for their quality. As such, I think they should have been more proactive in dealing with Mr A, which, most likely, would have reduced the delays caused.
- The proposed repair would have caused further delays, costs, and inconvenience to Mr A.
- Mr A already has suffered long delays and has been without use of his car for a long time because Lendable did not keep him mobile during the time his car was being repaired. As such, he was forced to purchase another car which was essential for him to be able to work and provide for him and his family.

Considering all of the above, including the amount of time that has passed, and the fact that under the CRA Lendable are responsible for carrying out the repairs within a reasonable time and without significant inconvenience to Mr A, I do not think that a repair would be a fair and reasonable outcome, bearing in mind the specific circumstances of this particular complaint. As such, I think it is fair and reasonable that Mr A should now be able to reject the car.

Lendable should end the hire purchase agreement ensuring Mr A is not liable for payments after the point of collection (they should refund him any overpayment for these if applicable). They should collect the car from wherever it is located without charging for the collection.

Mr A has been able to use the car, so I think it is reasonable he pays for this use. As such, Lendable can keep all payments that were due up to 30 June 2024.

Any adverse information should be removed from Mr A's credit file and the credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as a voluntary termination.

Lendable should also refund the deposit of £1,500.

Mr A also incurred other financial losses as a result of being supplied with a car that was of unsatisfactory quality. So it is fair that Lendable:

- Refund £59.54 for the cost of temporary insurance. Mr A paid this insurance while keeping two cars insured but was able to use only one (upon Mr A providing proof of payment).
- Refund road tax payments he made on the car in question from 30 June 2024 onwards (upon Mr A providing proof of payment).
- Refund £80 for car towing costs (upon Mr A providing proof of payment).
- Refund £150 for car diagnostic costs (upon Mr A providing proof of payment).

Lendable should also add interest to the refunded amounts from the date of each payment until the date of settlement. Interest should be calculated at 8% simple per year.

I understand that Mr A has received some payments towards the repairs from Lendable and, potentially, from the broker/intermediary. As such, Lendable can deduct any payments already made to Mr A from the total redress specified above. This is to ensure fairness for both parties, that is that Mr A is not double compensated and Lendable does not lose out because of any amount they may have already paid. Lendable should evidence any payments that were paid to Mr A and then credit those back to the broker/intermediary before deducting them from any final settlement, so that Mr A is not left in a position where a third party is chasing him for a refund that was already considered as part of this redress.

I know Mr A has mentioned that he needed to purchase another car and had other payments such as tax and insurance for that car. But I do not think it would be fair or reasonable for Lendable to pay for these except as explained above. This is because he will continue to have use of the car he acquired.

I know that Mr A has mentioned this situation had an impact on him and had caused him a lot of distress and inconvenience while trying to resolve it. Mr A has explained, in great detail, how this has impacted his life. Also, he had to take the car to the garages and spend a significant amount of time trying to resolve this issue. I think Mr A would not have experienced all of this, had Lendable supplied him with a car that was of a satisfactory quality. So, I think Lendable should pay him £200 in compensation to reflect the impact this situation had on him.

My final decision

For the reasons given above I direct Lendable Ltd to:

1. End the hire purchase agreement ensuring Mr A is not liable for payments after the point of collection (they should refund him any overpayment for these, if applicable);
2. Collect the car from wherever it is located without charging for the collection;
3. Refund all monthly payments made for the car's use on and after 30 June 2023;
4. Refund the advance payment of £1,500;
5. Refund £59.54 for the temporary insurance cost (upon Mr A providing proof of payment);
6. Refund the road tax payments he made on the car in question from 30 June 2024 onwards (upon Mr A providing proof of payment);
7. Refund £80 for the car towing costs (upon Mr A providing proof of payment);
8. Refund £150 for the car's diagnostic cost (upon Mr A providing proof of payment);
9. Deduct from the total redress, any payments already made to Mr A for the repairs;
10. Add 8% simple interest per year to all refunded amounts, from the date of

each payment to the date of settlement;

11. Pay Mr A £200 compensation for distress and inconvenience caused;
12. Remove any adverse information recorded on Mr A's credit file in relation to this credit agreement. And the credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 July 2025.

Mike Kozbial
Ombudsman