

The complaint

Mr W is unhappy that a car supplied to him under a hire purchase agreement with JBR Capital Limited (JBR) was of an unsatisfactory quality.

What happened

In July 2023 Mr W was supplied with a used car through a hire purchase agreement with JBR. He paid a deposit of £57,000 and the agreement was for £57,979 over four years; with one monthly payment of £824, followed by 46 monthly payments of £674, and a final payment of £50,684. At the time of supply the car was around nine years old, and had done 30,800 miles.

The car was supplied with a modified exhaust system. Mr W complains that he was told by the supplying dealer that they would also provide him with the full standard exhaust system. He said he chased them for several months but never received the original parts. He said the car failed a pre-MOT test because the exhaust emissions were over the legal limit. He said he was told this was because of the modified exhaust system fitted to the car.

He says this means the car is not of a satisfactory quality because it is not road legal.

He also complained that he paid for a paint protection film to be applied to the car before it was supplied to him. He says this wasn't done properly. He said the dealer had twice attempted to fix the issues with the paint protection film, but it was still not right.

Mr W also complained about numerous oil and coolant leaks with the car. He said a mechanic told him that the turbocharger on the car had too much play in it, and reported other issues with the CV joint, and the driveshaft. He said that in November 2023 he'd reported his concerns that the car was burning a lot of oil to the dealer. The dealer told him he should top it up with oil. Mr W said he thought the oil consumption was due to faults with the turbocharger.

Mr W was also unhappy with the quality of the upholstery in the car. He said it was different shades of black. He supplied a summary from an independent car upholsterer. This report confirmed that the upholstery was three different shades of black and that it would fail the manufacturer's quality control checks. It said it devalued the car considerably and would cost around £10,000 to repair and replace the upholstery.

Mr W said he'd paid £115,000 for a luxury car with many issues, and it was not as described. He said the only way to make the car road legal was to replace the exhaust with one that complied with exhaust emissions. He said this would mean the car would then not be as described. He said he chose this particular car because of the sound and performance. He said he wouldn't have purchased the car if it didn't have the exhaust and had less power.

He wanted to reject the car, a refund of the payments since he was not able to use the car, and reimbursed the costs of various repairs he had to get done.

JBR didn't uphold Mr W's complaint. They said Mr W was given the choice of taking the car with modified exhaust and spoiler, or it could be reverted back to the factory specification. They said Mr W chose to keep the car in its modified state.

They said Mr W had signed a disclaimer provided by the dealer. They said the disclaimer referred to the bodywork rectifications it had made, and that when signing, Mr W acknowledged that some minor imperfections could still exist, and that the dealer had no liability after Mr W accepted delivery of the car.

They said they wouldn't accept rejection of the car as the onus was on Mr W to prove that any issues with the car were present at the start of the agreement.

Mr W was unhappy with this response, so he referred his complaint to our service for investigation.

Our investigator said that he believed the dealer had agreed to provide Mr W with the original exhaust system and that this formed part of the negotiations that persuaded Mr W to enter into the contract.

He said that Mr W had been supplied with a car that was not roadworthy as it didn't comply with the emissions standards necessary to pass an MOT. He said that Mr W should be allowed to reject the car as it wasn't of satisfactory quality.

He said that the PPF had not been supplied under the hire purchase agreement so JBR did not need to compensate Mr W for any work he had to have done to fix the PPF. He also explained why JBR did not need to compensate Mr W for some of the other costs he had claimed.

But he did say that JBR should end the agreement and collect the car at no cost to Mr W.

JBR didn't agree with the investigator. They said they believed that the car was roadworthy (as evidenced by MOT pass in April 2024) and that the original exhaust and spoiler were not promised to the customer at point of sale. This was based on their interpretation of various messages between Mr W and the dealer, as well as further information supplied to them by the dealer.

Because JBR didn't agree, this matter has been passed to me to make a final decision.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Where evidence has been incomplete or contradictory, I've reached my 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 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. Mr W was supplied with a car under a hire

purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr W 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 – this was a high value luxury sports car and I would expect the quality to be of a higher level than in a standard family car of a lower value.

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.

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

In this instance, it's not disputed the car was provided with a modified exhaust and rear spoiler. It appears that both JBR and the supplying dealer accept this was the case.

Mr W has provided a report done in August 2024. This explains that the modified exhaust system made the car not roadworthy in the UK. The report said that due to the:

“titanium exhaust that came installed on the car this will cause the car to badly fail the emissions test and for MOT purposes it is therefore not roadworthy in the UK.

As you can see from the emissions printout supplied the Co2 emissions shown are almost 3 times the passable limit.”

The report has been provided by a business registered to perform MOT checks – as such , I'm satisfied the report is reasonable to rely upon.

It appears that JBR provided Mr W with a car that wasn't road legal in the UK as it would've failed the critical emissions element of the MOT. The CRA requires that goods, amongst other things, be fit for purpose. I don't consider that to be the case here as any car supplied should be able to pass the legally required MOT, and be legal to use on the UK roads.

JBR state that the car had passed an MOT in April 2024. They say this wouldn't have been possible if the exhaust system supplied with the car wasn't roadworthy. In his testimony provided with his complaint, Mr W explained that he wasn't aware that the modified exhaust supplied with the car wasn't roadworthy until he went for the MOT in April 2024. He said he had to borrow a standard factory specification exhaust system so that the car would've passed the emissions test element of the MOT.

I've no reason to doubt Mr W's testimony here. I accept that the car passed the MOT as he arranged for a replacement part to be fitted. So I'm satisfied that the car JBR supplied to Mr W was not of a satisfactory quality as it wasn't fit for purpose – this is because the exhaust system supplied on the car made the car not road legal. Which means Mr W isn't able to use it as he intended.

I also need to consider whether or not Mr W was told he would be supplied with the original exhaust system and spoiler. JBR say that the various exchanges between Mr W and the supplying dealer indicate that Mr W wanted the original parts "*as a back up*". I don't think that is relevant.

I've reviewed the same exchanges between Mr W and the supplying dealer. I'm persuaded that the dealer did agree to provide Mr W with the original parts as part of the negotiations before Mr W agreed to acquire the car under the agreement. I say that because I can see that Mr W specifically asked the dealer if the car would come with "*the original exhaust and cats as a backup and the original active spoiler*". The dealer replied confirming: "*Yes correct.*" The only qualification was that this was subject to the finance agreement, and we know that was agreed.

The timing and content of these messages confirm that these were "*antecedent negotiations*". That's important, as under Section 56 of the Consumer Credit Act 1974 this has the effect of deeming the supplying dealer to be JBR's agent in the antecedent negotiations, and makes them responsible for the antecedent negotiations carried out directly with Mr W.

I'm satisfied that the dealer agreed in the negotiations that it would supply the original parts to Mr W. And I'm satisfied that Mr W went ahead on that basis. I'm satisfied that the dealer was acting as JBR's agent when negotiating with Mr W and is responsible for what was said. I don't think it's relevant whether or not the parts were for back up purposes, or any other purpose. What's key is that the dealer agreed to provide those parts. And because the parts were never delivered, JBR is responsible and must do something to put this right.

Mr W also complained that the car suffered with oil leaks and excessive play in the turbocharger. He supplied a statement from a local mechanic. This confirmed that it had inspected the car in December 2023, at which point the car had travelled around 3,000 miles since purchase. It reported several oil leaks, and a CV joint missing several bolts. It explained how the oil leaks were due to poorly fitted rings, and there were signs of a failing oil/air separator. They also described the excessive play in the turbo.

It described it's experience of building performance turbo engines and, based on it's experience, was surprised the faults occurred so soon after purchase.

I'm persuaded by this statement that the faults arising so soon means that they were likely to have been present or developing at the time of sale. These faults also mean that the car was not of a satisfactory quality.

Mr W also complained about the upholstery in the car. These became apparent when he took the car to an expert upholsterer to repair some scuffs and small tears. The expert has described how the leather was made up of three different shades of black. Mr W had the car for around six months at that time, and it seems that the faults were not visible. They were only visible when closely inspected by an industry professional. I can't say that this made the car of an unsatisfactory quality as the faults weren't visible to the average consumer. So I won't be asking JBR to do anything with this part of the complaint.

Neither will I be asking them to do anything about Mr W's complaint about the PPF. That's because that product was purchased separately and was not part of the agreement with JBR.

Putting things right

In a case like this where the car was not of a satisfactory quality, the appropriate remedy would be to allow JBR the opportunity to supply the promised parts and repair the car. But in this case, the car as supplied to Mr W was not of a satisfactory quality because, for the reasons I've explained, it's not fit for purpose. That means Mr W should be allowed to reject the car.

Mr W hasn't been able to use the car since January 2024 because of the emissions issues and because of the oil leaks and issues with the turbo. I think it was reasonable that he stopped using as it may have been dangerous and could've caused further damage to the car. The mileage at 31 January 2024 as recorded on the oil change invoice was 34,741. Since that date Mr W has confirmed that he has only done around 750 miles – using the car only when necessary and to take it for example, for further tests, services and MOT.

As it's not reasonable that he pays for goods he wasn't able to use, JBR should refund all monthly payments Mr W made since 31 January 2024.

In this case I think it's reasonable that JBR cover the cost of the road tax and insurance costs from January 2024 until the car is collected.

Mr W has been inconvenienced by not being able to use the car. And he was disappointed to find out that the sports car he'd chosen because of the sound and power wasn't road legal. So I think JBR should pay him £350 compensation to reflect this.

Therefore JBR should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr W;
- remove any adverse entries relating to this agreement from Mr W's credit file;
- refund the £10,000 deposit and £47,000 part exchange contribution Mr W paid (if any part of this deposit is made up of funds paid through a dealer contribution, JBR is entitled to retain that proportion of the deposit);
- refund the monthly payments Mr W has paid since 31 January 2024;
- repay to Mr W the cost of the road tax and car insurance he has incurred since 31 January 2024 (Mr W to provide JBR with evidence of payments made for these costs)
- apply 8% simple yearly interest on the refunds, calculated from the date Mr W made the payment to the date of the refund[†]; and
- pay Mr W an additional £350 to compensate him for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If JBR considers that tax should be deducted from the interest element of my award, they should provide Mr W 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, I uphold Mr W's complaint about JBR Capital Limited, and they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 April 2025.

Gordon Ramsay
Ombudsman