

The complaint

Miss J is unhappy that a car supplied to her under a hire purchase agreement with First Response Finance Ltd (First Response) was of an unsatisfactory quality.

When I refer to what Miss J has said and what First Response have said, it should also be taken to include things said on their behalf.

What happened

On 10 October 2023 Miss J was supplied with a used car through a hire purchase agreement with First Response. The total cost of the car was £8,950 with Miss J paying a deposit of £100 and 54 monthly instalments of £269.81. The car was first registered in April 2013 and had travelled 80,000 miles. The car was collected on 14 October 2023.

Miss J experienced issues shortly after collecting the car which required a repair to be undertaken. This was carried out in early November 2023 and related to the DPF filter and a split hose. The cost for this was covered by the supplying garage.

In April 2024 there was a more catastrophic failure which resulted in the car needing a new engine. The car was fitted with a reconditioned engine. The costs for both supplying and fitting this engine were covered by the supplying garage. This was raised as a complaint with First Response who did uphold Miss J's complaint. However, as the solution accepted by Miss J was a reconditioned engine supplied and fitted with the costs covered by the supplying garage they felt that this was sufficient resolution. They did defer one month's payment to the end of the agreement in recognition that Miss J did not have use of the car for one month.

During July 2024 Miss J experienced similar problems with power loss that she had experienced in November 2023. She raised a formal complaint with First Response on 29 July 2024 seeking to reject the car. There were some delays in getting the car examined and this was finally done by the garage who had undertaken the work to replace the engine. They confirmed that the issue was with a blocked DPF and suggested that it was down to driving style rather than a fault.

On 2 October 2024 First Response wrote to Miss J with their final resolution letter. Their response focused on the latest breakdown and stated that the car had been looked at because of a loss of power. The car had been recovered and looked at by a third-party garage. This was the same garage that had undertaken the replacement of the engine in April 2024. Their conclusion was that the DPF was blocked, and this wasn't blocked at the time of the engine replacement in April 2024. Driving style is a causation in the DPF becoming blocked. They felt that this was sufficient evidence to show that the fault was not present at the time of supply, so they rejected her complaint.

Because Miss J was not happy, she complained to us. At the time she also raised issues with potential misdescription. This was namely:

- The first is that the car was advertised as having travelled 80,000 miles, when it had in fact travelled 80,839.

- The second description at issue is the fact that the car was advertised as having two former keepers when it had three.
- The third was that the car was advertised with a full mini main dealer service history when in fact it only had a partial history and hadn't been serviced since 2021.

On the 6 May 2025 I issued a provisional decision that upheld Miss J's complaint and directed First Response to:

- Refund two monthly payments in recognition that Miss J was without the car for two months, totaling £539.62
- Pay compensation of £100 for the inconvenience caused by having a faulty car,
- Pay an additional compensation of £300 in recognition of the estimated difference in value due to not having a full mini main dealer service history

The rationale for this decision was set out in the provisional decision as follows:

"Miss J 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) 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. Where goods are second hand, as in this case, due regard must be had to the price, age and any description applied to the car.

The CRA also states that where goods are sold by description there is a clause included in the contract that the goods must match the description. So, the description applied to the car is not just important in terms of deciding whether it is of satisfactory quality but also if it has been misdescribed.

So, if I thought the car was faulty when Miss J 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 First Response to put this right. Equally if I thought that the car had been misdescribed then it would also be fair and reasonable to ask First Response to put this right.

I can see from the case file the impact that this has had on Miss J both financially and emotionally. Whilst empathetic to this I can only come to any decision based on the evidence presented to me and on the balance of probabilities.

There are two different aspects for me to consider in relation to this case. Whether the car is of satisfactory quality and whether the car has been misdescribed. I will deal with the quality issue first.

As stated earlier the age, mileage and price of any vehicle has to be taken into account when deciding what is satisfactory quality. Miss J was supplied with a car that was over 10 years old and had covered 80,000 miles. A car of that age and mileage will have wear and tear and will be less durable than a younger car.

I need to decide whether there is a fault with the car that was supplied. Taking the first six months, where the onus is on First Response to prove the car is of satisfactory quality, Miss J started experiencing issues with the car shortly after supply. The first repair undertaken on the car, at the cost to the supplying garage was carried out in early November 2023 and related to the DPF filter and a split hose. This in itself would not necessarily make the car of unsatisfactory quality as both faults are commensurate with fair wear and tear on a vehicle of this age.

In April 2024 there was a more catastrophic failure which resulted in the car needing a new engine. It would appear at this stage there was an acceptance that this fault would give Miss J the right to reject the car as it was of unsatisfactory quality. I am content that at this stage there was a fault with the car. The fact that these faults occurred so shortly after supply and the nature of them meant that the car was not of satisfactory quality.

At this stage Miss J would have had the right to reject. Indeed the supplying garage offered Miss J that in an email of 14 April 2024 which included the following "If you don't want to go ahead let the finance company know please and we will start the process of you returning the car. Mileage and usage charges will apply as per standard practice".

Miss J herself in her complaint to us states that she did think about pursuing rejection at this stage but wanted to keep the car.

Therefore, I am comfortable that it is accepted by both parties that in April 2024 Miss J had the right to reject because the car was of unsatisfactory quality. They agreed to a repair as a mutually acceptable resolution. The repair itself was undertaken by a third-party garage and the costs covered by the supplying garage. I do uphold this element of Miss J's complaint, but Miss J has forgone the right to reject in accepting the repair. First Response did defer the payment for the month she was without the car but my understanding is that she no longer has the car, so it is right and proper that First response refund her for the time she did not have the car.

I need to consider whether First Response should make any payment in compensation for the impact on Miss J of the faulty car and feel the amount of £100 suggested by the investigator a reasonable amount. This is because of having to deal with the breakdown and trips to the garage.

On its own the blocked DPF filter in July 2024 would not be sufficient for me to consider the car to be of unsatisfactory quality. This is because the DPF is subject to wear and tear, so nine months and over 6,000 miles after supply it is unlikely the fault was there at the time of supply. For Miss J to exercise the right to reject, which she wishes to do, she would have to show that the previous repairs undertaken had been ineffective in rectifying the fault.

Miss J has produced evidence to show her driving style is commensurate with regenerating the DPF. She has also produced evidence from trusted sources that show the average life is in the range of 100,000-150,000 miles for a DPF. However, none of this is proof that on her actual car the fault was due to a failed repair or that the DPF has failed prematurely. It is not inconceivable that a car of the mileage that Miss J was supplied would require the DPF replacing and a range of factors, such as driving style, could contribute to it needing replacement. I understand that Miss J did try and get an independent expert opinion on the car but was unable to do so. There is very little evidence produce to show what has gone

wrong and why, so I am unable to conclude that the car is of unsatisfactory quality. The evidence produced by First Response shows that the car had travelled between 5,500-6,500 miles since the DPF was fixed in November 2023. I have seen an extract from the garage who changed the engine in April 2024 and subsequently examined the car in relation to the fault in July 2024 that states "...the issue with this vehicle is nothing related to any other repairso therefore down to the customer to pay to be repaired". Miss J has pointed out that this garage is not independent as they undertook the earlier repair. Whilst accepting this point it is still the best evidence that I have as to whether the fault was due to an earlier repair.

I also note that the regeneration of the DPF would have cost in the region of £150 and I do not feel that this is an unreasonable amount for Miss J to pay for a part that is subject to wear and tear, some nine months after the supply of a ten year old car that had travelled over 80,000 miles at the point of supply. Based on the evidence presented to me I do not feel that Miss J has shown that the fault in July 2024 was due to a failed earlier repair. For that reason I do not uphold this element of Miss J's complaint.

I will now move on to consider whether the car has been misdescribed. Miss J has identified three things that she believes were false in the advert for the car. I will deal with each description in turn.

The first is that the car was advertised as having travelled 80,000 miles, when it had in fact travelled 80,839. There is a question in my mind as to whether the difference of 839 miles on a ten-year old car that had travelled 80,000 miles is material and would have impacted upon Miss J's decision to purchase. I also need to consider that Miss J has confirmed to us that she did test drive the car, when the true mileage it has covered could have been easily ascertained by looking at the odometer reading. For those reasons I do not believe that it would be fair to hold First Response liable for the discrepancy between the two figures.

The second description at issue is the fact that the car was advertised as having two former keepers. When Miss J received the updated V5 documentation it showed the number of former keepers as being three. With a description that the one was declared new at first registration. There are many reasons that this description may be applied, and as such is doesn't make that keeper a user of the car. However, in the strictest terms the dealer advertised a car as having two previous keepers when it did in fact have three, a fact that the supplying dealer could have easily ascertained themselves by checking the V5. So, I do find that there is a potential for the car to be misdescribed, but it is unlikely to have materially impacted on the contract and Miss J's decision to purchase.

The final element of the description is that the car was advertised as having a full mini main dealer service history. I have seen a printout of the service history that shows that the car had not been serviced since June 2021 and only been serviced a total of four times from 2014 to 2021. Miss J has stated that this description was key to her purchasing decision, and she did check with the sales staff before proceeding that this was a true statement. The service history was not available to her as it is stored electronically.

I have no reason to doubt what Miss J has stated and it is perfectly reasonable for her to have relied on the statement in the advertisement without clarifying further. Whilst cars can have longer service schedules than one year, I think it is reasonable to expect a full-service history on a car of this age and mileage to have had more than four services.

Having set out that I do believe there is potential that the car has been misdescribed I need to decide whether this gives rise to the right for Miss J to take action and whether it is fair to hold First Response liable to put matters right.

I am unable to definitively prove what conversations took place or whether she would have made a different decision had she known the true extent of the service history. For Miss J to have an effective right to reject because of the misrepresentation she would need to prove to me that the misrepresentation was an inducement to enter the contract. I need to consider her behaviour in April when she was offered the option to reject the car, but she chose to accept a repair. At the time she made this decision she had full knowledge of the service history. If the service history was a key inducement to purchase the car a reasonable person would have expected her to exercise her right to reject at this stage.

When looking at any possible action relating to the misdescription under the CRA the key date for me is 14 April 2024 when Miss J was offered the opportunity to reject the car. At this stage Miss J knew about the true service history, she was supplied this on 9 April 2024. She would have also been in possession of the V5 at this stage. In accepting the car rather than rejecting it at this stage Miss J's decision is inconsistent with wanting to reject the car because of the potential misdescription. In essence she has accepted the car with the misdescription. So, it would not be right and fair to expect First Response to accept rejection at this stage and unwind the agreement.

That said I do believe that, on the balance of probabilities, the car has been misdescribed. So, it is right that First Response do something to put this right. Looking at various trusted websites the lack of a service history can impact on the value of a car.

Looking at reputable sales websites the impact of no service history tends to be in the region of 10% of the value on similar cars. This would equate to an amount of £895. Clearly it would be unfair to ask First Response to pay this in full as there is a service history in place. I believe that a figure of around a third of this would represent a fair outcome. I therefore uphold this element of Miss J's complaint and direct First Response to pay an amount of £300."

In issuing my provisional decision I gave both parties two weeks to respond with any additional comments or information that they wished me to consider. First Response did not respond to the provisional decision. Miss J responded on 6 May accepting the decision. She informed me that the car had been repossessed by First Response and she had agreed a repayment plan with them to settle the debt. She requested that, as there was a separate agreement in place with First Response, any monies owed to her are paid directly to her rather than used by First Response to reduce the amount that she owes.

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.

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.

As neither party has challenged either my rationale or what First Response needs to do to put things right the provisional decision stands as set out above.

Miss J has requested that the money is paid to her rather than used to reduce the debt she owes First Response. As she has a repayment plan in place that has been agreed with First Response I feel that it is reasonable to agree to this request.

My decision is that I uphold Miss J's complaint and it is right to ask First Response to take action to put things right.

Putting things right

I find that Miss J has been supplied a car that was both not of satisfactory quality and had been misdescribed. In upholding the complaint, I direct First Response to:

- Refund Miss J two monthly payments in recognition that Miss J was without the car for two months, totaling £539.62
- Pay compensation of £100 to Miss J for the inconvenience caused by having a faulty car,
- Pay additional compensation of £300 to Miss J in recognition of the estimated difference in value due to not having a full mini main dealer service history

In putting things right First Response should make the payments to Miss J rather than reducing the amount that she owes.

My final decision

My decision is that I uphold this complaint against. In order to settle this case First Response Finance Limited are directed to follow the redress set out in the 'Putting things right' section above

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 15 July 2025.

Leon Livermore
Ombudsman