

The complaint

Miss P's complaint relates to problems she had with a car supplied to her by First Response Finance Ltd (FRF) under a hire purchase agreement.

What happened

Miss P entered into a hire purchase agreement with FRF in October 2022 to purchase a car. The cash price of the car was £6,995. The term of the agreement was 48 months. The total amount due under the agreement was £12,498.24, made up of 48 monthly instalments of £254.13.

In March 2023, around five months after taking receipt of the vehicle, Miss P says she began to experience issues with it. She arranged for repairs to the tyres, brake pads and brake discs. Miss P says she also noticed water ingress through the door seals, which she attributed to wear and tear and intended to repair.

However, in July 2023, before she had arranged repairs to the door seals, the car broke down due to a failed injector cylinder. It was attended by a roadside assistance firm. Miss P telephoned FRF to discuss her options. Miss P says she was told by FRF to either arrange repairs or send them a vehicle report for consideration.

Miss P has said – owing to her reliance on the vehicle – she decided to arrange for the repair of the injector herself. However, following these repairs, another injector failed. A few days after this was repaired, Miss P began experiencing a number of further issues whilst driving the vehicle.

As a result, in September 2023, Miss P contacted FRF again to get advice about her options. Miss P says FRF asked her to get a report carried out on the vehicle. Miss P arranged for a report to be carried out by a mechanic which I'll refer to as VMMS.

Upon receipt of this report, FRF contacted VMMS to get some clarity about the findings. Having done so, FRF says there were inconsistencies in the findings and because of this – alongside the passage of time since the point of sale – it decided to arrange for an independent engineer from a firm I'll refer to as 'S' to inspect the vehicle ("the S report").

Upon receipt of the S report FRF issued a final response in March 2024 in which it said the fault in question had not been present at the point of sale and, therefore, it rejected Miss P's complaint.

Unhappy with this, Miss P referred her complaint to our service. One of our investigators looked into what had happened and in April 2024, issued their findings.

In short, our investigator said that she hadn't seen sufficient evidence confirming the issue may have been present at the point of supply...so [she didn't] think FRF need to do anything more to resolve [Miss P's] complaint.

Miss P didn't agree with our investigator's findings. In doing so, Miss P raised a number of

points which I'll summarise below:

- The car passed its MOT two days prior to Miss P collecting the vehicle. However, on the day of collection, work was still being done on the car; and
- The car passed the MOT, however issues began within five months; and
- Miss P pointed to the fact the vehicle had only done an average of 3,800 miles per year since 2011 and suggested that diesel vehicles are expected to travel up to 10,000 miles per year and last up to 30 years; and
- Miss P provided receipts, a report from the roadside assistance firm and two reports from a mechanic as evidence the vehicle was damaged at the point of sale; and
- FRF sent out their engineer who couldn't confirm how these damages were caused or confirm a diagnosis.

Miss P also mentions that she had been in dialogue with Citizen's Advice who were concerned with the treatment [she] had received from FRF and feel Miss P should have been entitled to a repair or replacement.

In September 2024 our investigator responded to the additional points Miss P raised. However, as an agreement couldn't be reached, the case has been passed to me to decide.

On 4 March 2025, I issued a provisional decision, in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint, however I won't comment on everything. This is not intended as a discourtesy to either party, but it reflects the informal nature of this service in resolving disputes.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. FRF 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 is of particular relevance to this complaint. It says, amongst other things, that every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory.

The Consumer Rights Act 2015 says the quality of goods are 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 Consumer Rights Act 2015 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. FRF did not supply Miss P with a new car here. The car was 11 years old and had travelled 46,000 miles at the point of supply. And while it was not an inexpensive car – the price was a good deal less than it would have been new.

So, I think it is fair to say that a reasonable person would expect that it would not necessarily perform as well as a new car. And there would be a higher risk – if not an inevitability – of wear and repairs arising from previous use and maintenance by former users.

However, with that said, considering the mileage of the car there is still a reasonable expectation around quality and durability. I am not persuaded the car met that reasonable expectation when it was supplied to Miss P. I will explain why.

Firstly, I don't think the issues Miss P experienced with the vehicle in March 2023, five months after purchasing it, likely render the car of unsatisfactory quality at the point of sale. I say this because the parts that have needed work (tyres, brake pads and brake discs) are in relation to clearly serviceable items. With this in mind, and in the absence of evidence to suggest that these items needed to be replaced for any reasons other than general wear and tear, I have no reason to think these items were faulty or insufficiently durable at the point of supply.

Putting these issues to one side, I have turned to the other problems with the car. Around the time Miss P was arranging repairs to the tyres, brake pads and brake discs, she says she noticed water ingress through the driver door seal, which she attributed to wear and tear and intended to repair. Before she had carried out said repairs the car broke down due to a failed fuel injector in July 2023.

Miss P had the failed fuel injector repaired. Shortly afterwards, a second fuel injector failed. Miss P says that during the repairs to the second fuel injector, the mechanic found the engine had over 18 litres of water inside. In the days that followed Miss P says she began to experience further issues with the vehicle, including engine bouncing, the vehicle dragging to the side, smoke emanating from the bonnet and the vehicle slowing down from 70mph to 50mph whilst being driven on a motorway. Miss P points to this – as well as the report carried out by VMMS in October 2023 - to show the goods are not of satisfactory quality.

The report carried out by VMMS identified a number of issues with the vehicle, including play in the rubber of the engine mount, exhaust leak and problems with the bonnet, boot and doors (the latter causing damage to the electrical system in the car). The report also points to water ingress on to the solenoid as the primary cause of the failed fuel injectors. The report concluded that the issues may have been present at the point of supply.

This report was deemed by FRF to be somewhat inconsistent in its findings. I can understand why FRF reached this conclusion. I say this because, for example, the report finds that the vehicle could not have travelled 7,000 miles (from inception to the date of the report) with the faults present but goes on to say that they were present at the point of sale. These statements appear to be contradictory.

However, I don't think this is sufficient to set aside or otherwise disregard the findings of the report. After all, as experts, VMMS provided their analysis of the vehicle and of the defects with it. And, with regards to the defects, the report identifies the problems but goes further by offering opinion as to the underlying reasons for the problems and, in doing so, is clear and non-contradictory. Further, it is consistent with Miss P's testimony in which she says she noticed water ingress a few months earlier. I find any contradictions in the report centre around the liability for those issues (which is not relevant to my decision making) rather than with the technical assessment of the car. Therefore, I have placed appropriate weight on this report.

FRF arranged for an independent engineer from S to inspect the vehicle. The S report found no fault codes were present, but it did identify that the engine was shaking and not running smoothly on startup which suggested an issue with either the engine or gearbox mounting.

The report also noted evidence of fuel seepage around the injectors. On both counts the report said confirmation under workshop control conditions would be required to ascertain the root cause. It is my understanding that no further inspection – under workshop conditions or otherwise – was carried out on the vehicle.

The S report also noted evidence of mould and a smell of dampness in the boot, but there was no active water ingress which suggested that this issue had been rectified. It goes on to conclude that whilst the vehicle evidently has faults, there was no suggestion that the performance issue or the engine vibration were present at the point of sale [and] have [been] induced by age-related general wear and tear rather than a manufacturing defect.

However, the key issue here is what the report doesn't say, rather than what it does say. One of the key problems that the subsequent faults could be attributed to is water ingress due to faulty seals. The S report might have been expected to comment on that, noting it was in the instruction, but it doesn't really do so. So, in the absence of any further expert analysis of the vehicle, I think FRF read rather more into the S report than it can carry. And, importantly I don't think the findings of the S report contradict the findings in the report carried out by VMMS. Therefore, I don't think it was fair for FRF to rely on it to rebut Miss P's claim.

The available evidence – including Miss P's testimony, the VMMS report and the S report – indicate that there has been water ingress in the doors, bonnet and boot. And the VMMS report is clear in citing water ingress as the primary cause of the subsequent failures. I accept that all of these seals might have perished due to age, but if the car is sold in a condition that allows water penetration in the boot, doors and bonnet that led to the subsequent failure, I think it would still be unlikely to meet the reasonable person's opinion of being satisfactory.

In light of the available evidence, I intend to find that the car FRF supplied to Miss P was not of satisfactory quality. It follows that I also intend to conclude that FRF hasn't treated Miss P fairly in rejecting that claim.

Putting things right

The CRA sets out a range of potential remedies under section 19(3), in addition to other remedies that might be open to Miss P to seek.

It is my understanding that FRF has already arranged a third party to collect the vehicle from Miss P. It is not immediately clear, but this appears to have been at no cost to Miss P, although if this is not the case I would expect any such to be returned to Miss P.

Further, it appears the car has been re-sold. This renders a remedy of carrying out effective repairs impossible. Therefore, I think Miss P would be entitled to reject the car at this point (a timely repair not having been undertaken) and reimbursement of sums paid other than a deduction for the use Miss P did have of the car.

Miss P had relatively unimpaired use of the vehicle from inception until July 2023 and it's right that she pays for this. However, after the vehicle broke down in July 2023, Miss P says she couldn't drive it again. Given the nature of the problems she reported – including swaying, black smoke emanating from the bonnet and the vehicle slowing down dangerously – I can understand why. So, it seems her use of the vehicle was completely impaired from that point on. I think Miss P should be reimbursed for any monthly payments made after July 2023.

In addition, it is fair that Miss P is reimbursed for costs she incurred resulting from issues directly attributable to the fact the vehicle was not of satisfactory quality at the point of supply. Miss P has provided receipts evidencing the cost of parts for the two replacement fuel injectors and it is right that she is reimbursed for this. Depending on how Miss P paid for these items (it is not immediately clear from the receipts provided), interest may need to be added to this reimbursement. I'll take this opportunity for Miss P to confirm how these items were paid for (supported by evidence) before I finalise my position with regards to this.

In her Complaint Form, Miss P has said she incurred costs using alternative transport once she was without use of the vehicle to, amongst other things, attend medical appointments. I am satisfied the steps I am proposing – including a refund of any payments made towards the finance after July 2023 - puts Miss P (as far as practicable) back in the financial position she would have been once she no longer had use of the vehicle. So, I don't intend to direct FRF to reimburse Miss P any costs in this regard.

However, Miss P should be reimbursed any tax or insurance costs from July 2023 onwards whilst the car has been unused (on production to FRF of proof of payment).

Finally, Miss P has told us about the overall impact this has had on her not only in a financial sense, but also on her mental and, by extension, physical well-being. Miss P has said that the stress caused by this issue has resulted in her needing to take anti-anxiety medication which has a knock-on effect on her physical health condition. I would like to thank Miss P for sharing this information, which I imagine was not easy to do. Thinking about what Miss P has told us about the impact this has had, along with the time and effort spent which wouldn't have otherwise been necessary had the vehicle been of satisfactory quality at the point of supply, I think an award of £300 is a fair reflection of the distress and inconvenience caused to Miss P.

Subject to any further comments or evidence I receive from both parties, I intend to require FRF to take the following steps to resolve Miss P's complaint:

- 1. End the hire-purchase agreement, ensuring Miss P has nothing further to pay;*
- 2. Reimburse costs (if any) Miss P incurred relating to the collection of the vehicle;*
- 3. Remove any adverse information in relation to this agreement from Miss P's credit file;*
- 4. Refund any monthly payments Miss P made (if any) during the period from July 2023 to the date it pays this settlement. FRF should pay 8% simple interest* per year on each monthly payment from the date Miss P paid each amount until the date of settlement;*
- 5. Refund Miss P (on production to FRF of proof of payment) her tax and insurance costs related to the period from July 2023 to the point of settlement. FRF should pay 8% simple interest* per year on each payment from the date Miss P paid each amount until the date of settlement;*
- 6. Refund the £300 deposit;*
- 7. Refund £199.95 – this being the cost Miss P incurred replacing the first fuel injector;*
- 8. Refund £169.95 – this being the cost Miss P incurred replacing the second fuel injector;*

9. Pay Miss P a further £300 in recognition of the distress and inconvenience she's been caused.

**If First Response Finance Ltd considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss P how much it's taken off. It should also give Miss P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

I gave both parties an opportunity to respond to my provisional decision.

FRF did not agree. In doing so, it said the *Scotia report does comment on water ingress. It advises that there was no active water ingress at the time of their inspection. It also states that there was evidence of fuel seepage around the injector seals, and not water.*

Further, FRF said there is *no proof of Miss P's allegations that 18 litres of water was found in the engine and all of the mechanical issues occurred with the vehicle over the 6 month point in the agreement [and the] CRA is clear that beyond this point [6 months], we must be provided with clear evidence of any wrongdoing on our behalf. So, what the reports doesn't say shouldn't be held against us.*

Miss P accepted my provisional decision and, in doing so, provided no further submissions.

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 reconsidered the available evidence in this complaint – including what has been said in response to my provisional decision - I see no reason to depart from my initial findings. I'll explain why, with particular reference to FRF's comments in response to the provisional decision.

FRF has argued that the S report it commissioned from the independent engineer makes a finding on the issue of water ingress. I agree – as FRF has noted – that the S report states that there is no *active* water ingress. However, in my view, the absence of active water ingress at the time of the inspection¹ does not, in and of itself, speak to whether there has been prior water ingress² or, if there was prior water ingress, whether it is or is not attributable to the subsequent faults.

Further, I agree that the S report does describe fuel seepage in and around the fuel injectors. But I do not agree that this is the same as finding that there is not (or has not been) water ingress. In other words, in my view, the presence of fuel seepage around the fuel injectors does not necessitate the absence of water ingress.

So, on both counts, I don't think the S report is making a finding which contradicts or otherwise calls into question the findings of the report carried out by VMMS.

I have noted the S report, whilst suggesting possible causes, also said that further investigation under workshop conditions would be required to establish the root cause of the

¹ It seems reasonable to assume that active water ingress would be dependent on the weather conditions at the time of the report – and I note the inspector has described the conditions as 'dry'.

² Indeed, the report goes on to say that there is evidence of *mould and the smell of dampness* in the luggage compartment which appears to be consistent with Miss P's testimony of prior water ingress.

poor engine performance and of the fuel seepage. I haven't seen anything to suggest that FRF instructed that further investigation. Given the engineer wasn't in a position to confirm the root cause of the problem, it's difficult for me to see how they were in a position to confirm whether what was causing this was present or developing at the time of the sale. Bearing in mind all of this, other than to corroborate the fact that the vehicle was indeed faulty, I cannot place the weight on the S report to the extent that FRF did.

I don't plan to dwell on the burden of proof as it is not material to my determination of Miss P's complaint. However, given FRF's response to my provisional decision, it would be remiss of me not to mention it at all.

As FRF has alluded to, under section 19 of that Consumer Rights Act, if a problem which is too serious to be considered normal wear and tear appears within six months of the point of sale, it is presumed to have been present at the point of sale, unless FRF can prove it wasn't. Later than that, and the burden of proof switches to the consumer. Legally it is only the appearance of the problem, not when Miss P reported it to FRF, which counts for the purposes of the six-month rule – provided that I'm satisfied that the problem did begin within six months.

Miss P says she first noticed problems with water ingress through the door seals in March 2023³ – five months after taking ownership of the vehicle. Miss P says she did not report it to FRF at this time because she attributed it to wear and tear and intended to repair it. I find this testimony plausible in light of the wider circumstances of this complaint, including the subsequent breakdown and findings from the VMMS report.

However, I don't think that whether the fault first appeared after five months or nine months (when Miss P first reports concerns with the vehicle to FRF) makes too much of a difference here. I say this because Miss P has provided evidence in the form of the VMMS report which offers a plausible root cause of the problems she has had with the car – namely water ingress on the solenoid caused by ineffective seals – and finds that, on balance, these faults were present or developing at the point of sale which is consistent with Miss P's testimony. And, for the reasons I've explained, I do not think the evidence FRF has relied on to rebut Miss P's claim is sufficient.

And even if I'm wrong about that, which I don't think I am, I also need to consider whether the car was sufficiently durable, because durability is an aspect of satisfactory quality. Durability means that the car should be fault free for a reasonable period of time, taking into account the age and mileage of the car, and the length of time and mileage covered since the point of supply. When the fuel injectors failed due to water ingress (July 2023), Miss P had the car for nine months and had travelled around 5,000 miles. Notwithstanding its age and mileage, I don't think a reasonable person would expect a car costing almost £7,000 to allow water ingress causing the fuel injectors to fail (and the multiple problems that flowed from that) after this length of time and mileage. So, I don't think the car was sufficiently durable, which means that it wasn't of satisfactory quality.

So, looking at things in the round and notwithstanding the age and mileage of the vehicle, I remain of the view that a car which allowed water ingress in the doors, bonnet and boot would be unlikely to meet the reasonable person's opinion of being satisfactory.

With that being the case, I'm not persuaded that Miss P was supplied with a vehicle of satisfactory quality.

³ Miss P first reports concerns with the vehicle to FRF in July 2023 – nine months after taking ownership of the vehicle.

Putting things right

For the reasons explained above and in my provisional decision, I uphold Miss P's complaint and direct First Response Finance Ltd to:

1. End the hire-purchase agreement, ensuring Miss P has nothing further to pay;
2. Reimburse costs (if any) Miss P incurred relating to the collection of the vehicle subject to receipt of satisfactory evidence;
3. Remove any adverse information in relation to this agreement from Miss P's credit file;
4. Refund any monthly payments Miss P made (if any) during the period from July 2023 to the date it pays this settlement. FRF should pay 8% simple interest* per year on each monthly payment from the date Miss P paid each amount until the date of settlement;
5. Refund Miss P (on production to FRF of proof of payment) her tax and insurance costs related to the period from July 2023 to the point of settlement. FRF should pay 8% simple interest* per year on each payment from the date Miss P paid each amount until the date of settlement;
6. Refund the £300 deposit;
7. Refund £199.95 – this being the cost Miss P incurred replacing the first fuel injector;
8. Refund £169.95 – this being the cost Miss P incurred replacing the second fuel injector;
9. Pay Miss P a further £300 in recognition of the distress and inconvenience she's been caused.

*If First Response Finance Ltd considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss P how much it's taken off. It should also give Miss P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

My final decision

My final decision is that I uphold Miss P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 18 April 2025.

Ross Phillips
Ombudsman