

The complaint

Mr C and Mrs C complain about a car they acquired using a hire purchase agreement with First Response Finance Ltd ("First Response").

What happened

In May 2023, Mr C and Mrs C entered into a hire purchase agreement with First Response for a used car. The car was over eight years old and had a cash price of £5,295. The car's mileage at the time was 99,280.

Mr C and Mrs C say the dealership kept the car for around two weeks before they acquired it because of a knocking noise, which they were told would be fixed. However, Mr C and Mrs C say the knocking noise was still there when they collected the car. And they say that within a month or so, the passenger window stopped working, and the dashboard showed incorrect messages saying the oil was low and the driver's door was open when they were driving around bends.

Mr C and Mrs C contacted the dealership about the car who told them they needed to get a quote from a local garage. They then contacted First Response to complain about the car, who asked them to provide an independent report about its condition.

Mr C and Mrs C arranged for a diagnostic test to be carried out by a third-party garage and the garage summarised what they'd seen in a report, as follows:

- n/s/f inner and outer cv boots are perished and need replacing.
- n/s/f ball joint has play/worn.
- gearbox and engine have an oil leak – which need further investigation.
- n/s/r wheel bearing has play.
- o/s/r brake is binding on – which needs further investigation.
- n/s/r axle bushes are worn and has excessive play.
- sat nav and DAB radio are inoperative.
- front passenger door has an electrical fault/issue – the electric windows are temperamental.

First Response then attempted to discuss the condition of the car with the dealership. According to First Response's notes, this took a few months by which time Mr C and Mrs C were becoming increasingly concerned and frustrated with the situation. Eventually, the dealership agreed to look at the car and repair it and the car was returned to Mr C and Mrs C in January 2024.

Mr C and Mrs C say though that the car wasn't repaired as there was still a knocking noise present, an oil leak and the recurrence of the messages on the dashboard saying the driver's door was open when they were driving around bends.

Mr C and Mrs C complained to First Response, who said there were insufficient grounds for them to reject the car. But they did say they had covered the cost of repairs to the n/s/f lower

suspension arm ball joint dust cover, the n/s/f driveshaft joint CV boot and n/s/f upper strut mount, all of which had been shown as advisories on a recent MOT.

Mr C and Mrs C remained unhappy and referred their complaint to us. One of our investigators looked into what happened and recommended that their complaint should be upheld. She said, in summary, that she was satisfied there was a fault with the car that hadn't been fixed, namely an oil leak, that rendered the car as being of unsatisfactory quality. She said that Mr C and Mrs C should be allowed to reject the car and that First Response should end the hire purchase agreement, refund their deposit and pay them compensation reflecting their loss of use of the car, their impaired use of it and the distress and inconvenience they'd been caused.

First Response didn't agree. They said it wasn't reasonable to conclude that the car was of unsatisfactory quality because of an oil leak and said the most recent MOT carried out confirmed the leak wasn't dangerous or made the car unroadworthy. And First Response said they hadn't seen any further evidence that the car was still faulty, as claimed by Mr C and Mrs C.

As the complaint remains unresolved, it was passed to me to decide.

I issued my provisional decision on 7 March 2025, relevant extracts of which I include below.

'First Response supplied the car to Mr C and Mrs C under a regulated hire purchase agreement. Because of that, our service can consider complaints about the agreement and the goods supplied under it, in this case the car. As the supplier of the car, First Response has an obligation to ensure it was of satisfactory quality – as set out in the Consumer Rights Act 2015 ("CRA"). Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car.

Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects amongst others, of the quality of goods: (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

It's reasonable in my view to note the car was over eight years old and had travelled nearly 100,000 miles at the time of supply. A car of this age and mileage wouldn't be expected to be in the same condition as a brand-new car, which would have cost considerably more than the price Mr C and Mrs C paid. Considering the age and mileage here it wouldn't be unreasonable to expect the car to be showing some signs of wear and tear. This would be in relation to its general overall appearance and the underlying components.

However, although the car was used, this doesn't mean it's reasonable to supply a car that has underlying problems, especially where they should have been apparent at the time. Mr C and Mrs C say they noticed the car had a knocking sound and that the dealership agreed to fix this, which delayed their collection of the car. However, they say the knocking noise was still present when they collected it and I've seen text message exchanges between them and the dealership which shows that the dealership agreed the noise was still present. This was after the car had been collected by Mr C and Mrs C.

There also seem to have been other underlying issues with the car, for example the electrical problem with the passenger window, which was shown in the third-party garage's report and was something again that the dealership acknowledged was present. The report also highlighted oil leaks in the gearbox and engine and the MOT carried out before the car was returned to Mr C and Mrs C from the dealership also set out there was an oil leak present.

Looking at the repairs and work carried out, I accept there is some work that may not be unexpected in a car of this age and mileage. But there does however seem to be a related theme with issues with the car's electrics and an oil leak that, on balance, I feel were issues present at the outset and throughout the period Mr C and Mrs C had the car. First Response has placed particular weight on the car passing its MOT. But this doesn't in my view negate the fact that the issues reported very shortly after Mr C and Mrs C took possession of the car, appear to be connected to the ongoing problems they had with it. It also appears that the attempts to remedy all the issues weren't successful bearing in mind the issue with the oil leak remained.

Having considered all the parties have said and provided, I consider it more likely than not the car wasn't of satisfactory quality when first supplied to Mr C and Mrs C and the issues with the car persisted without being rectified.

I will now go on to consider what I provisionally feel that First Response should do to put things right. This though has been complicated somewhat by the fact that Mr C and Mrs C have confirmed that they sold the car for around £300 a few months after it was returned to them by the dealership in January 2024. However, Mr C and Mrs C didn't own the car; First Response did, so they weren't entitled to sell it.

I don't know the condition of the car when it was sold, but the price Mr C and Mrs C say they got for it suggests that it still needed repairing. I also have to factor in that First Response has lost an opportunity to sell the car that they own for a higher price than Mr C and Mrs C sold it for, as they may have been able to carry out appropriate work to the car to secure a higher price.

I would say though that although Mr C and Mrs C sold the car, that doesn't mean that they weren't covered by the CRA in relation to satisfactory quality or that this is now negated by them selling it. And had they not sold it, I would have been inclined to say that they should have been allowed to reject it and for First Response to cancel the remaining amount outstanding under the hire purchase agreement. That though is no longer an option.

Taking the above into account, I currently think the fairest way to settle this complaint is for First Response to pay Mr C and Mrs C some form of compensation for being supplied with a car of unsatisfactory quality, but that First Response is entitled to hold them liable for the current fair market value of the car, which valuation websites currently put at about £3,500.

So, I currently propose that First Response do the following:

- end the hire purchase agreement.*
- refund Mr C and Mrs C the deposit/part exchange contribution of £190.48.*
- refund Mr C and Mrs C all rentals for the period from 17 January 2024 onwards as I've seen no indication that the car was used after it was returned to them.*
- refund Mr C and Mrs C 10% of all repayments made prior to 17 January 2024 to reflect the impaired use they had of the car.*
- pay interest of 8% simple each year on the above, from the date of each payment to the date of settlement.*
- pay Mr C and Mrs C £200 for the distress and inconvenience caused to them as a result of being given a car of unsatisfactory quality.*
- remove any adverse information from Mr C's and Mrs C's credit file in respect of this agreement.*

First Response can though hold Mr C and Mrs C liable for the fair market value of the car of £3,500, but nothing more than that'.

I invited all parties to send me any further evidence or comments they wanted me to consider.

Mr C and Mrs C didn't reply.

First Response disagreed with my provisional decision. They said that Mr C and Mrs C selling the car has caused them significant extra costs, as they had to undertake numerous traces, keeper and vehicle searches as well as talking with new innocent purchasers and dealers to try to trace their asset. And they were caused unnecessary distress and inconvenience by what happened with the result that their asset was now unreachable.

First Response also said that the evidence wasn't strong enough to show the car was sold in a faulty condition and said an oil leak could refer to multiple parts of an engine. They also said the car passed an MOT and that any advisories were just that.

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.

I'd like to thank First Response for their comments following my provisional decision. I've considered what they've said and agree that they likely would have been put to distress and inconvenience by Mr C and Mrs C selling the car, and that they may well have been caused significant extra costs. And I've noted their comments about the car and its quality. However, I set out in my provisional decision my thoughts on whether the car was of satisfactory quality. And I've not been persuaded to change that view. First Response has reiterated their position in their response to me, which I already covered in my provisional decision. I still think it more likely than not the car wasn't of satisfactory quality when first supplied to Mr C and Mrs C and the issues with the car persisted without being rectified.

As I previously mentioned, the dispute has been complicated by Mr C and Mrs C selling the car when they weren't entitled to. But that doesn't mean that they had no rights under the CRA in respect of satisfactory quality or that those rights were extinguished because they sold the car. I still think it reasonable for First Response to take the action I set out in my provisional decision, which I will set out below.

Putting things right

First Response needs to do the following:

- end the hire purchase agreement.
- refund Mr C and Mrs C the deposit/part exchange contribution of £190.48.
- refund Mr C and Mrs C all rentals for the period from 17 January 2024 onwards as I've seen no indication that the car was used after it was returned to them.
- refund Mr C and Mrs C 10% of all repayments made prior to 17 January 2024 to reflect the impaired use they had of the car.
- pay interest of 8% simple each year on the above, from the date of each payment to the date of settlement.
- pay Mr C and Mrs C £200 for the distress and inconvenience caused to them as a result of being given a car of unsatisfactory quality.
- remove any adverse information from Mr C's and Mrs C's credit file in respect of this agreement.

First Response can though hold Mr C and Mrs C liable for the fair market value of the car of £3,500, but nothing more than that.

If First Response considers they should deduct tax from the interest element of my award, they should provide Mr C and Mrs C with a certificate of tax deduction.

My final decision

I uphold this complaint and direct First Response Finance Ltd to take the action I've set out in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 24 April 2025.

Daniel Picken
Ombudsman