DRN-5574088

The complaint

Mr D has complained about the quality of a car he acquired under a hire purchase agreement with First Response Finance Limited ("FRF").

What happened

The circumstances of the complaint are well known to the parties so I'm not going to go over everything again in detail. But to summarise, Mr D acquired a used car under a hire purchase agreement with FRF in February 2024. The car was around 12 years old and had covered 67,000 miles. It cost around £5,700 and Mr D was due to repay around £310 per month for two years.

Mr D said there was a battery issue within the first couple of months that he resolved himself. FRF said Mr D first contacted it at the end of July 2024 when he explained the car wasn't going into gear properly. FRF said Mr D agreed to let the supplying dealer inspect the car. FRF said Mr D contacted it again in August 2024 to say it was a non-runner and that he'd covered about 12,000 miles by this point. FRF agreed to cover the cost of recovering the car to the supplying dealer. The dealer said after inspection a historic TCM (Transmission Control Module) error was identified and that continuous use of the gearbox caused the clutch to wear away and eventually became stuck/engaged. It said the gearbox required replacing. The dealer also said Mr D had mentioned the TCM issue had appeared in June 2024 but he continued to drive it which caused damage.

FRF decided to instruct an independent inspection. The inspection found the car to run as expected and that the supplying dealer had fitted a second hand PCM (Power Control Module) to it. But it noted that oil, coolant and power steering fluid levels were low. It also indicated Mr D had not been checking the fluid levels regularly and any consequential damage off the back of that would be his responsibility. FRF issued a final response not upholding the complaint on that basis.

FRF said Mr D spoke to it again in November 2024 to say the gears were still slipping and that he was taking it to a garage for a second opinion. This garage that I'll call "M" advised the car required a new gearbox control unit at a cost of £1,500. FRF spoke to M and it said there was no proof the car was sold with this problem present, so FRF didn't think there was a breach of contract. It issued another final response letter not upholding the complaint.

Mr D decided to refer his complaint to the Financial Ombudsman. One of our investigators looked into things but didn't uphold the complaint. Mr D didn't agree. He said he encountered issues with the car from the start. As things weren't resolved, 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.

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr D and FRF that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr D acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

Mr D told our investigator he uses the car for work purposes. It's not clear if he entered into the agreement wholly or predominantly for business purposes. And there is different legislation for consumer and business customers. But, either way, relevant legislation covers agreements like the one Mr D entered into. Legislation implies terms into the agreement that the quality of goods is satisfactory. FRF is the "trader" for the purposes of the legislation and is therefore responsible for dealing with a complaint about the quality of the car.

Relevant legislation broadly says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of supply.

In Mr D's case, the car supplied was used, 12 years old, and had covered around 67,000 miles. There'd be different expectations than if it was a brand-new or less road worn car.

It doesn't seem to be in dispute there was a fault with the car. Mr D didn't provide supporting evidence about the battery issue to FRF, so I don't think it acted unfairly by not taking any action for that. But Mr D said the car wasn't going into gear properly. And the supplying dealer noted an issue with the PCM. I think FRF acted fairly when it arranged an independent report on the car. And based on the findings of the report, I don't think its answer was unfair when it sent its first final response.

At the time the dealer noted an issue with the PCM/TCM Mr D had covered around 12,000 miles in the car. Given the car's age and price, I think it would've been difficult for him to have covered that sort of mileage had the fault been there at the point of supply. As it turned out, if there was a fault that meant the car was a non-runner, but it was running when the independent inspection was carried out, I can only assume the dealer carried out some sort of repair/replacement on a part. But it's not clear it was required to do that.

What I have to bear in mind is that I'm not an expert on car faults, and neither is FRF. It's reasonable that FRF decided to obtain an independent report. The inspector would have been an expert in the field, and the report is laid out as I'd expect. The inspector didn't find any faults that they could point towards being there at the point of supply. So I think FRF's answer to not uphold the complaint at that point wasn't unfair because it didn't have sufficient evidence the car was not of satisfactory quality.

I think it's also important to note that the inspector noted fluid levels were low. Given how long Mr D had the car by that point and the mileage covered, it would be hard to say that the car was supplied with fluid levels that were too low. Mr D said he serviced it not long after acquisition. But he also ought to have been maintaining the car by taking steps such as checking the levels regularly.

Overall, by the time FRF sent its first final response, I don't think it acted unfairly.

I also think FRF's answer following on from the first final response was fair. It reviewed the evidence Mr D sent in showing the car required a new ECU. The mileage doesn't look correct on the vehicle health report because it shows it as 49,556. So it's difficult to know how much further the car had covered. But I think, importantly, FRF went back to M to ask if the faults would likely have been present at the point of supply. And M said:

There is no real evidence this fault would be present at point of sale although the failure of the gearbox ECU can be mechanical failure in the vehicle and have no real cause.

Mr D has referred to another email from M about fault codes and diagnostics indicating something happened prior to acquisition. But it's not totally clear what this related to, and I'm conscious it wasn't something FRF was provided before it sent the second final response. I primarily need to consider what happened up to the point it issued its final response because the events before this relate to what it had the chance to consider. Based on what M told FRF, I don't think it reached an unfair conclusion when it didn't think there was evidence of a breach of contract due to the car not being of satisfactory quality at the point of supply.

While I'm sorry to hear there's a fault with the car which requires an expensive repair, I don't have the grounds to direct FRF to cover the cost of it. In summary, I say this because:

- The car was around 12 years old at the point of supply and the price paid would have reflected its age and condition. It already would have suffered wear and tear and parts would require replacing sooner than a newer car.
- Mr D was able to cover around 12,000 before reporting a fault to FRF.
- Having considered the evidence FRF was supplied prior to issuing both final responses, neither independent technician has said it was more likely than not that the faults were present or developing at the point of supply.

Overall, I don't find there's the grounds to uphold the complaint. Mr D may wish to speak to FRF about his options going forward. If he's in financial difficulties, I'd remind FRF to treat him with forbearance and due consideration.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 2 October 2025.
Simon Wingfield
Ombudsman