DRN-5775613

The complaint

Mr C is unhappy that a car supplied to him under a hire purchase agreement with First Response Finance Limited was of an unsatisfactory quality.

What happened

On 11 February 2025, Mr C was supplied with a new/used car through a hire purchase agreement with First Response. He paid an advance payment of £1,500 and the agreement was for £7,295 over 49 months, with monthly payments of £270.94. At the time of supply, the car was approaching 13 years old and had done 86,145 miles (according to the agreement).

The car broke down and Mr C had it inspected by a local garage on 4 March 2025. The garage confirmed that the car had been filled with 13 litres of oil (the manufacturer said the maximum the car should be filled with was 9 litres) and this had caused the engine to seize. The garage also noted there was no issue with the coolant levels, and there was no sign of any damage to the car.

He complained to First Response on 6 March 2025, and they arranged for the car to be inspected by an independent engineer. However, between the complaint and the inspection, the car was vandalised, causing a coolant leak. Mr C reported this vandalism to the police.

The independent inspection took place on 26 March 2025, when the car had done 86,875 miles – 730 miles since it was supplied to Mr C. The engineer said the damage to the car was a missing number plate, damage to the lower front bumper, grille, intercooler, radiator, AC condenser, engine undertray, and two punctured tyres. The engineer considered that the engine had seized due to accident impact damage causing a loss of coolant, and the engine overheating, and there was no evidence to suggest the car was faulty before this.

Based on this report, First Response didn't uphold Mr C's complaint. Unhappy with this response, Mr C brought the matter to the Financial Ombudsman Service for investigation.

Our investigator felt there was clear evidence there was an issue with the car, that had caused the engine to seize, before the car was damaged. As such, they thought that Mr C should be able to reject the car, receiving a refund of his deposit, a refund of the payments he'd made; and that First Response should pay him the £40 diagnosis cost he'd incurred and an additional £150 compensation (subsequently increased to £400) for the trouble and upset he'd been caused.

First Response didn't agree with the investigator's opinion. They felt that the engine seized as a result of the accident. And if this wasn't the case, then it was plausible that it was Mr C who had overfilled the engine with oil. And they didn't agree with the increase in the recommended compensation from £150 to £400. So, they asked for this matter to be passed to an ombudsman 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.

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 C was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, First Response are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history.

The CRA also implies that goods must confirm to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless First Response can show otherwise. So, if I thought the car was faulty when Mr C took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask First Response to put this right.

I've seen a copy of the independent engineer's report dated 26 March 2025, and I've noted its conclusions. It's clear the engineer has been swayed by the damage to the car, especially the hole punched in the radiator, and had reasonably concluded that the engine seized due to the lack of coolant causing the car to overheat.

However, I'm not satisfied that the engineer was fully aware of the facts when they reached their conclusions. The garage who originally inspected the car, and advised it had been overfilled with oil, were asked for more information, and they didn't supply this until 21 April 2025. It was this additional information that confirmed there were no fault codes present, the coolant level was normal, and there was no damage to the car at the time of their 4 March 2025 inspection. As such, they were confident that the damage was caused by the overfilling of the oil.

I've noted that this information, and a copy of this report, was sent to First Response. But they've chosen not to send it to the independent engineer to obtain their comments. Instead, they confirmed that they prefer the independent engineer's conclusions as to what caused the engine to seize – even though this opinion was made without the full facts and both the police report and First Response's own case notes show the damage to the car occurred on 16 March 2025, 10 days after Mr F had complained to them about the engine seizing.

Based on these facts, I'm not satisfied that the independent engineer's report is reasonable to rely upon.

First Response have also suggested that Mr C has overfilled the car with oil, and this didn't happen before the car was supplied to him. I've noted the MOT record shows the car has had an oil leak since the MOT on 23 January 2024 that wasn't present on the MOT that took place on 23 January 2023. As such, I'm satisfied that both the previous owner, and the selling dealership, ought reasonably to have been aware the car was leaking oil. This oil leak

was still present on the MOT record for 6 January 2025, and I haven't seen anything to show me this was fixed by the dealership before the car was supplied to Mr C. So, I'm also satisfied that Mr C was provided with a car that had a long standing, unrepaired, oil leak.

An oil leak would eventually result in the depletion of the oil and a warning message coming on. It would also most likely cause accelerated engine damage due to the lack of lubrication. An easy way to mask this when selling a car is to overfill the oil so as to extend the period before any loss of oil becomes noticeable, and warning lights come on.

However, overfilling the oil will cause the crankshaft to aerate the oil, turning it to foam. This will also result in insufficient lubrication which will cause the engine to seize – and this is what I'm satisfied happened. Given that this process will take time to cause engine failure and given that Mr C travelled less than 800 miles in the car before the engine failed, it's more likely than not that the engine was overfilled with oil (by almost 45%) before it was supplied to him. And whether this was done by the previous owner or the dealership is of no account, First Response remain liable.

Section 23(2)(a) of the CRA states that *"If the consumer requires the trader to repair or replace the goods, the trader must do so within a reasonable time and without significant inconvenience to the consumer."* However, no attempt to repair the car has taken place, and Mr C has spent an extended period without use of the car he financed through First Response. Therefore, it's arguable that First Response failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mr C should be able to reject the car.

Putting things right

The car has been off the road and undrivable since 4 March 2025 and Mr C hasn't been supplied with a courtesy car. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as First Response failed to keep Mr C mobile; I'm satisfied they should refund any payments he's made since this date, in addition to refunding the deposit he paid.

Mr C has provided evidence of the £40 cost he incurred in having the car inspected on 4 March 2025. And, given that the car wasn't of a satisfactory quality when supplied, I think it's also only fair that First Response reimburse these costs.

I've also considered that the car was vandalised while it was in Mr C's possession. Under the terms of the agreement he had a duty to keep the car in good condition and insured. As such, I would've expected Mr C to have claimed for this damage on his insurance, with the car now either being repaired or any cash-in-lieu settlement being forwarded to either the dealership or First Response to allow for this repair to happen.

However, if this hasn't been the case, then First Direct are entitled to deduct the cost of repairing the damage from the refunds stated above. And, if the damage costs are more than the refund, then they are entitled to charge Mr C for any excess. If Mr C disputes the damage charges he is also entitled to raise this as a complaint, and bring it to us if he remains dissatisfied with First Response's outcome.

Finally, I think Mr C should be compensated for the distress and inconvenience he's been caused. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended First Response pay Mr C an additional £400; to recognise the distress and inconvenience caused. Having considered this recommendation,

I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Mr C would've felt by having an engine failure, and the significant impact this had on his daily life and the difficulties it caused him getting to work. So, this is a payment I'm directing First Response to make

Therefore, First Response should:

- end the agreement, ensuring Mr C is not liable for any monthly payments after the point of collection (if any payments are made, these should be refunded);
- collect the car at no collection cost to Mr C;
- remove any adverse entries relating to this agreement from Mr C's credit file;
- refund the deposit Mr C paid (if any part of this deposit is made up of funds paid through a dealer contribution, First Response is entitled to retain that proportion of the deposit);
- refund any payments Mr C has paid from 4 March 2025 until the agreement is ended;
- reimburse Mr C for the £40 diagnostic cost he paid on 4 March 2025;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr C made the payment to the date of the refund†; and
- pay Mr C an additional £400 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (First Response must pay this compensation within 28 days of the date on which we tell them Mr C accepts my final decision. If they pay later than this date, First Response must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment†).

†If HM Revenue & Customs requires First Response to take off tax from this interest, First Response must give Mr C a certificate showing how much tax they've taken off if he asks for one.

As I've explained above, First Response are entitled to charge for the damage to the car, if this hasn't already been sorted by Mr C's insurance, deducting the cost from the above payments. Mr C retains the right to challenge those charges if he considers them excessive.

My final decision

For the reasons explained, I uphold Mr C's complaint about First Response Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 December 2025.

Andrew Burford
Ombudsman