

complaint

Mr H complains about the quality of car he acquired under a hire purchase ("HP") agreement with FirstRand Bank Limited ("FirstRand").

background

Mr H acquired a car costing £17,995 in March 2018. He part exchanged an existing car for £4,000 and paid a further cash deposit of £6,000. The balance of £7,995 was financed by way of an HP agreement with FirstRand repayable by 23 monthly instalments of £389.22 followed by 1 monthly instalment (in month 24) of £548.22.

At time of acquisition the car was seven years old and had travelled approximately 84,000 miles. It was acquired with a valid MOT certificate with eleven months left to expiry.

Mr H says that when he acquired the car some work needed to be done to it, but the dealership said that he could get this done himself, at a garage and time of his own choosing, and it would reimburse him the cost.

Mr H says that on the day he acquired the car he was advised by another garage that he shouldn't drive it due to issues and problems with the tyres and suspension.

Mr H says that he got various work undertaken on the car, but the dealership refused to reimburse him the costs he incurred in doing so. Furthermore, he says the car quickly developed further faults which led him to ask the dealership to take it back.

Unhappy with the dealership's decision to not reimburse him the costs he incurred for various work undertaken, and for its refusal to take the car back, Mr H complained to it.

In November 2018 the dealership, via its legal representative, responded to Mr H to say that it didn't believe there was anything wrong with the car when Mr H acquired it. It also added that many of the costs claimed by Mr H were for "*MOT items*" and any damage to the wheels, tyres and bodywork should have been apparent to Mr H on/or before acquisition.

Following receipt of the above Mr H complained to FirstRand.

In January 2019 Mr H complained to FirstRand again.

In February 2019 FirstRand issued Mr H with a final response letter ("FRL"). In this letter FirstRand said that given Mr H had been in possession of the car for more than six months "*it [was] necessary for [him] to provide evidence the...faults were either present or developing at point of sale or as a result of a failed repair.*"

FirstRand then went on to explain that Mr H should obtain an independent engineer's report. And if this report confirmed the "*faults were present or developing at point of sale, [it would] reimburse up to £200 for this report and reopen [his] complaint to continue [its] investigation.*"

In March 2019 Mr H provided our service with several invoices and quotes for parts, work undertaken on the car and work required on the car. Amongst other things this included an estimate for repairs, dated 8 October 2018, for €14,558.34.

In March 2019 FirstRand sent Mr H an arrears notice followed by a default notice.

In May 2019 our service asked Mr H to get an independent report undertaken on the car. At this point in time the car was at a garage in Germany. The car was in Germany because Mr H's work had taken him there.

In June 2019 Mr H provided a letter from the garage in Germany that had provided him, in October 2018, an estimate of required works totalling €14,558.34. This letter reiterated the required works and that:

"The defects we found on [the] car are definitely older than the date of purchase...We can assure you of this, because it can't be explained in mechanical or electronic terms how so much damage [could] have happened to a car within one year..." (translated from German)

Following receipt of the above Mr H's complaint was considered by one of our adjudicators who concluded that Mr H had indeed acquired a car that wasn't of satisfactory quality and that his complaint in this respect should be upheld. The adjudicator then went on to outline what, in his view, FirstRand should have to do to fairly compensate Mr H.

First Rand responded to say that it disagreed with the adjudicator's conclusion. In summary it said:

- It's Mr H's responsibility to evidence that faults were present, or developing, at the time he acquired the car given he first complained about the same more than six months after acquisition.
- Mr H has provided an invoice/quote for various faults with the car, but this doesn't confirm who is liable for these.
- Mr H had undertaken repairs to the car without its authority.
- Its complaint acknowledgment letter states that Mr H shouldn't instruct any repairs.
- Mr H has breached the terms and conditions of his HP agreement by taking the car outside of the UK. Section 6.2.2 and 6.2.3 states:

6.2.2- You will not take the Vehicle out of the UK without our written consent for more than 3 consecutive weeks to another country within the European Union.

6.2.3- You will not take the Vehicle out of the UK to another country outside the European Union

The adjudicator considered FirstRand's response but wasn't persuaded to change his mind. In summary he said:

- Mr H had provided enough evidence that faults were present, or developing, at the time he acquired the car.
- Mr H acted entirely reasonably in committing to the repairs that he did and at the cost that he did.
- It's unfair and unreasonable to say Mr H's complaint shouldn't be upheld on the grounds he took the car out of the country for more than 3 consecutive weeks given that this fact appears to have been known for some time by all the parties and not raised earlier.

FirstRand remained dissatisfied with the adjudicator's conclusion, so the complaint was passed to me for review and decision.

I issued a provisional decision on this complaint in December 2020. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's clear that both parties have very strong feelings about this complaint. They have provided detailed submissions in support of their respective views which I can confirm I've read and considered in their entirety. However, I trust that the parties will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

I would also add that where the parties disagree, I've made my findings on the balance of probabilities - in other words, what I think is most likely based on the evidence I've seen and the wider circumstances.

In response to the adjudicator's view FirstRand submitted that Mr H, by taking the car out of the UK for more than three consecutive weeks, had breached the terms and conditions of his HP agreement. Now I don't disagree, but in my view this breach isn't material to the outcome of this complaint. I say this because I've seen nothing to suggest that had Mr H sought FirstRand's written permission to take the car out of the UK, this permission would have been refused. Or that the taking of the car out of the UK has caused or contributed to the faults about which Mr H is now complaining.

Mr H submits that the car he acquired in March 2018 was of unsatisfactory quality.

As I say above, I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider was good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement – so we can consider a complaint relating to it. FirstRand is also the supplier of the goods under this type of agreement, and responsible for a complaint about its quality.

The Consumer Rights Act 2015 is relevant 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”.

To be considered “satisfactory”, the goods would need to meet the standard that a reasonable person would consider satisfactory taking into account any description of them, 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 supply and the car's history.

FirstRand supplied Mr H with a car that was seven years old and had travelled approximately 84,000 miles. And the price of the car was lower than it would have been if it had been supplied new. So, I think it's fair to say that a reasonable person would expect that parts of the car might have already suffered some wear and tear. And there's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn when it was supplied.

But despite the age of the car, the miles it had travelled and its price I'm satisfied that it wasn't of satisfactory quality when first supplied to Mr H.

Mr H has supplied our service with an estimate of works dated 8 October 2018, works that in the opinion of the issuing garage – based in Germany – were required to bring the car up to a satisfactory standard. These works included, amongst other things;

- supply and fit of new steering gear
- supply and fit of a new rear differential
- supply and fit of new brakes

Mr H has also supplied our service with follow up correspondence from the garage in Germany, dated June 2019, which states

“The defects we found on [the] car are definitely older than the date of purchase...We can assure you of this, because it can't be explained in mechanical or electronic terms how so much damage [could] have happened to a car within one year...”

Now I find the above to be very persuasive. So, with the above in mind, and having regard to various other submissions and evidence provided by Mr H, I'm satisfied that Mr H did indeed acquire a car on 30 March 2018 that was of unsatisfactory quality.

Having decided that Mr H acquired a car that was of unsatisfactory quality what I now need to decide is what, if anything, FirstRand should have to do to fairly compensate Mr H.

From the evidence I've seen it's my understanding that Mr H has, understandably, lost confidence in the car. Furthermore, it appears that the repairs identified as being needed by the garage in Germany substantially exceed the value of the car. So, and in line with what the adjudicator recommended, it's my view Mr H should be able to reject the car. However, that isn't the end of matters.

Mr H paid a cash deposit of £6,000 and traded in his previous car for £4,000. Now given that I think it's fair to assume that Mr H's part exchanged car, given the passage of time, can't be returned to him I think it's fair and reasonable that FirstRand should have to pay Mr H £10,000 together with simple interest (calculated at 8% a year from the date payment was made to the date of settlement).

I also think it's entirely appropriate that Mr H should be compensated for the time he was without the car because it was 'off the road' (loss of use) and for the time he was with the car, but it wasn't performing as it should (impaired use). Now it's my understanding that Mr H has made ten monthly payments under his HP agreement totalling £3,892.20 (last payment being made in February 2019). And that between March 2018 and February 2019 he suffered both impaired use and loss of use.

Having considered everything the parties have said and submitted I think that to fairly compensate Mr H in respect of the above FirstRand should refund the last two monthly payments made under the HP agreement (£389.22 in January 2019 and £389.22 in February 2019) to Mr H together with simple interest (calculated at 8% a year from the date each HP agreement payment was made to the date of settlement).

Like the adjudicator I'm also satisfied that this whole matter has caused Mr H both distress and inconvenience. But having taken everything into account, including – amongst other things – the extent of repairs identified as being required and Mr H's need for a reliable car for his work, I think that to fairly compensate Mr H in this respect FirstRand should have to pay Mr H £350 rather than the £200.

I will now turn to the various costs Mr H says he has incurred, or he is being held liable for, and to what extent (if any) FirstRand should refund or pay these.

Mr H submits that when he acquired the car certain repairs were needed, but the dealership advised him that he could and should get these done himself and it would reimburse him the cost.

Now I've considered this submission (in conjunction with many others made by Mr H) very carefully and I find it to be both plausible and persuasive. I'm also satisfied, on the balance of probabilities, that Mr H wouldn't have acquired the car, or entered into the HP agreement, had he not been advised by the dealership what he says he was. I would also remind FirstRand that under section 56 of the Consumer Credit Act 1974 it's responsible for anything the dealership does, or says, in its capacity as a credit broker during antecedent negotiations.

And because of this I think it was entirely appropriate for Mr H to have incurred the following costs and for these to be now refunded by FirstRand together with simple interest (calculated at 8% a year from the date each payment was made to the date of settlement).

date	description	£ paid (*1)	€ paid (*2)
03/04/18	purchase of brake discs and pads	£259.37	
04/04/18	purchase of anti-roll bar bushes	£43.39	
23/04/18	discs and brake replacement		€500.00
20/05/18	inspection of wheels and suspension (*3)		€250.00
01/06/18	new wheels	£1,214.00	
13/06/18	purchase of tyres		€600.00
23/08/18	suspension arms front bottom	£105.95	
23/08/18	suspension arms rear bottom	£165.95	
	total	£1,788.66	€1,350.00

*(1) costs incurred in the UK *(2) costs incurred in Germany

*(3) this report identified a number of longstanding issues with the wheels and suspension

As well as incurring the above, Mr H also spent €288.94 on a new battery. But in my view, it would be unfair to direct FirstRand to refund this cost given that replacing a battery after several months, especially on a car of the age and mileage acquired by Mr H, isn't unusual and should be expected.

Mr H says he has also incurred the following costs.

date	description	€ paid	€ unpaid
	tow costs	€250.00	
29/03/19	new pump and diagnostics		€1,038.79

Now I don't dispute that Mr H required his car to be towed. But as Mr H has been unable to provide our service with an invoice for this, or documentary evidence that such an invoice was paid – for example a bank statement – I don't think I can reasonably direct FirstRand to refund this cost.

I will now turn to the unpaid cost of €1,038.79. Now I appreciate that this cost was incurred after Mr H was advised by FirstRand that he shouldn't have any repairs undertaken. But at the same time, I note that:

- Mr H was in Germany and needed a car that worked.
- Mr H capped the work undertaken on the car to €1,038.79.
- A large part of the €1,038.79 invoice was to replace a pump because the existing pump was of the wrong fuel type which made the car unsatisfactory.

So, I think that it's only fair and reasonable that FirstRand pay (direct to the garage in Germany) the unpaid invoice of €1,038.79.

However, €1,038.79 isn't the only sum being sought from Mr H by the garage in Germany. As well as seeking €1,038.79 for work undertaken, the garage is seeking (as at 16 June 2020):

- €284.25 in costs and fees in trying to seek recovery of the invoiced sum of €1,038.79
- €48.38 in interest (accruing at €0.12 a day)
- €1,190.00 in storage costs

Now I've considered the above costs very carefully and in all the circumstances I think that it's only fair and reasonable that these costs (plus any further accrual in respect of the same) be met by FirstRand. I say this in part because had FirstRand upheld Mr H's complaint at the outset and settled the invoice for €1,038.79 then the above costs of €1,552.63 wouldn't have accrued. I'm also satisfied, based on what Mr H has said and provided, that he wasn't in the financial position to arrange the release of the car back into his custody to prevent the above costs from accruing.

As well as the above I think it's only fair that FirstRand ends Mr H's HP agreement with nothing further to pay and that it ensures Mr H's credit file has no adverse information recorded against it. And that it should also arrange for the car to be collected from Germany at no cost to Mr H or ensure that it comes to some other arrangement with the garage for the car's disposal. But whatever it decides to do, FirstRand should ensure that Mr H is no longer pursued by the garage for anything in respect of the car subject to this complaint.

Mr H responded to my provisional decision to say that although he was prepared to accept it, he wondered if he should get back his private registration plate and whether he should be refunded for other costs he has incurred, including the cost of acquiring a second car.

FirstRand responded to say:

- It hadn't seen a copy of the garage report, in German or English.
- It assumes the writer of the report doesn't hold a qualification equivalent to that offered/granted by the Institute of Automotive Engineer Assessors.
- Many of the claimed part costs from Mr H are for serviceable parts for a used car.
- It was unable to complete an investigation as unauthorised repairs had been carried out.
- The best indicator of a car "*being fit for purpose*" is a MOT certificate and the car was issued with a recent one.

On receipt of the above the adjudicator contacted FirstRand to say that I was minded to award Mr H up to £80 for the retention of his cherished plate and to provide it with a copy of the 'estimate of works' dated 8 October 2018 and the 'follow up correspondence' dated June 2019 (in both English and German).

Following the receipt of the above FirstRand responded to reiterate what it had said previously and to say that the estimate of works didn't have a recorded odometer reading to confirm how far the car had travelled since Mr H had taken possession of it and that this document is dated seven months after Mr H acquired the car.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr H asks whether he should be compensated for the cost of retaining his cherished plate and for various other costs – including the cost of securing a second car.

Now having considered what both parties have said and submitted I don't think it would be fair for Mr H to have to bear the cost of retaining his cherished plate. So, I find that FirstRand should have to refund any costs Mr H incurs in this respect up to £80. However, I would remind Mr H that it's for him to arrange retention of the cherished plate and that he should do so before FirstRand recover the car or otherwise arrange for its disposal.

However, I don't think it would be appropriate for me to direct FirstRand to meet any other costs Mr H might be seeking. And in respect of securing a second car I would add that had it not been for the car subject to this complaint it's my view that Mr H would have had to, on the balance of probabilities, secure another car in any event.

I will now turn to FirstRand's submissions to my provisional decision.

First, I would like to confirm that regardless of the qualification of the writer I'm satisfied that in the particular circumstances of this complaint the 'estimate of works' dated 8 October 2018 and the 'follow up correspondence' dated June 2019 can be relied upon. I would also add that I find both these documents to be plausible and persuasive.

Secondly, and for the avoidance of any doubt, I would like to make it clear that in coming to my provisional findings I had regard to the fact that many of the claimed costs from Mr H were in respect of serviceable parts, that some repairs had been undertaken without FirstRand's authority, that the car was issued with a recent MOT certificate and the date of the estimate of works document.

Finally, Mr H has confirmed that the odometer reading of the car in October 2018 was approximately 87,000 miles. I've considered this reading and I'm satisfied it has no bearing, or certainly has no material bearing, on my provisional findings. Furthermore, I would add that I've no reason to question the accuracy of the reading provided by Mr H.

So, given what I say above, I see no reason to depart from my provisional findings except to say that FirstRand should have to refund any costs Mr H incurs in retaining his cherished plate up to £80.

my final decision

My final decision is that I uphold this complaint and that FirstRand Bank Limited must:

- End the HP agreement with nothing further to pay.
- Remove any adverse information about the HP agreement from Mr H's credit file.
- Collect the car, at no cost to Mr H, or otherwise arrange for its disposal. But whatever FirstRand decides to do it should ensure Mr H is no longer pursued by the garage in Germany for anything in respect of the car.
- Pay Mr H £10,000 in respect of his deposit (cash and trade in). ^{*(1)}
- Refund repair costs of £1,788.66. ^{*(1)}
- Refund repair costs of €1,350.00. ^{*(1) *(2)}
- Pay invoice costs of €1,038.79 (direct to the garage in Germany).
- Pay additional costs of €1,522.63 (direct to the garage in Germany)
- Pay any additional costs that accrue from the garage in Germany after 16 June 2020.
- Refund Mr H his last two HP agreement payments of £389.22 each. ^{*(1)}
- Pay £350.00 for distress and inconvenience.
- Pay any costs incurred by Mr H (up to £80) for the retention of his cherished plate.

^{*(1)} simple interest should be added to the above amounts, at a rate of 8% per year simple, from the date the payments were made, to the date of settlement ^{*(3)}

^{*(2)} FirstRand Bank Limited should use the Bank of England opening €/£ exchange rate on the day of settlement

^{*(3)} HMRC requires FirstRand Bank Limited to take off tax from this interest. If Mr H asks for a certificate showing how much tax has been taken off this should be provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 March 2021.

Peter Cook
Ombudsman