

## **complaint**

Mr W complains that a car he financed through a hire purchase agreement with Advantage Finance Ltd was not of satisfactory quality and was not as advertised. He wants to be allowed to reject the vehicle.

## **background**

I issued my provisional decision earlier this month. I explained why I was planning to uphold Mr W's complaint. An extract of that provisional decision is set out below:

*In April 2017 Mr W took receipt of a second hand 2007 registered vehicle that had done 97,000 miles. He financed the deal through a hire purchase agreement with Advantage but within a week he contacted them to say he wanted to reject the car.*

*He said it was not as advertised as it hadn't had only one previous owner and it hadn't got a full service history. And he also complained that the car had broken down because of a crankshaft sensor failure and that it was low powered and almost limping. He questioned whether the turbo charger was working.*

*Advantage arranged an independent inspection of the vehicle and the inspector said that although the crank shaft sensor had failed so soon after Mr W took receipt of the car it could've happened at any time as it was not a failure that happened progressively. The inspector also test drove the vehicle and noted that it:*

*"lacked power (as if the turbo) was not working and stalled readily the cause is not readily visible but a full diagnostic check should..."*

*The report stopped there and no further investigation of this fault has taken place.*

*Advantage did not respond to Mr W about his complaint that the car was not as advertised. But they said that as the independent inspector had said that the fault that caused the breakdown was not necessarily there at point of supply, they wouldn't allow Mr W to reject the vehicle.*

*So Mr W brought his complaint to this service. Our investigator initially agreed that the fault was in all probability there from the start and Mr W should be allowed to reject the car. But when more evidence was provided about the fault she changed her mind and said the fault couldn't be proven to have been there at point of supply.*

*But Mr W disagreed and thought the fault was there from the start. He asked for an ombudsman to make a final decision.*

## **my provisional findings**

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

*I don't agree with the investigator's view on this complaint and it's likely I'll uphold it. I'll explain why.*

*Advantage provided the car to Mr W under a hire purchase agreement. Relevant law makes Advantage responsible if the car is not of satisfactory quality or if the car is not as described. Under the Consumer Rights Act 2015 (CRA) Mr W has a right to reject the vehicle if that's the case.*

*was the car as described?*

*Mr W has provided a copy of the original advertisement of the car. It says the car has one former owner and a full service history. But it's clear from the registration document and the service log that Mr W has provided that he's the third owner and the vehicle wasn't serviced between 2014 and 2016.*

*So the vehicle that Mr W received was not the one that was advertised and he should therefore be allowed to reject it.*

*was the car of satisfactory quality?*

*We'd usually say that a car was of satisfactory quality if it was what a reasonable person would expect taking into account the age and mileage of the car. And the issue with the car would have, in all probability, had to have been there at the point of supply. If the car wasn't of satisfactory quality and Mr W reported the issue within 30 days he could have simply rejected it.*

*was the car of satisfactory quality?*

*the crankshaft sensor*

*I've read a lot of technical information relating to the failure of the crank shaft sensor. It's disputed whether this failure would happen progressively or whether it could happen at any time. Given that Mr W had barely driven a few hundred miles when the fault occurred it does seem a little unfair that the investigator found it could not be shown to be there at point of supply. But I can see there are arguments for and against and I don't think I have to make a definitive finding on this as there are other issues that allow Mr W to reject the vehicle.*

*the loss of power*

*Mr W has also complained from the very beginning that the car is under powered and runs "almost in limp mode". I don't think this has been taken into consideration and I note that the independent inspector also highlighted this issue and queried whether it was related to the turbo charger.*

*It seems likely that a fault of this nature, reported after such a short space of time and with the car having done only a few hundred miles, would've been there from the start.*

*And I think it's extremely improbable that two significant mechanical issues would both have started in the first week. It's more likely that at least one of them was there from the start. And I think that despite the age and mileage of the vehicle it's reasonable to say that as the car lacks power a reasonable person would consider it unsatisfactory.*

*So I think Mr W should be allowed to reject the vehicle on the basis that it wasn't of satisfactory quality and also because it wasn't as described.*

I asked both parties to respond to my provisional decision with any new information or comments they wanted me to consider.

Mr W agreed with the decision and the business also responded. They said that whilst they didn't agree, they wished to move on. They said that as Mr W hadn't paid anything towards his contract and had travelled 1,000 miles in the car they should be due at least one instalment. So they suggested the £200 payment for distress and inconvenience was waived. That seems reasonable given the mileage covered.

### **my final decision**

For the reasons I've given above I uphold this decision and tell Advantage Finance Ltd to:

- allow Mr W to reject his car and collect it at no cost to Mr W
- return Mr W's deposit and add 8% simple interest per annum from the date the deposit was paid until settlement is made
- cancel the credit agreement and make sure this shows as settled on Mr W's credit record
- return any instalments paid by Mr W since 15 May 2017 when his vehicle was disabled
- ensure that any adverse credit markers that may have been applied to Mr W's credit file, as a result of this issue, are removed

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 March 2018.

Phil McMahon  
**ombudsman**