

## **complaint**

Mr A complains that a vehicle he finances through an agreement with Advantage Finance Ltd ("Advantage") is not of satisfactory quality. He wants to be able to reject it and end his agreement.

## **background**

Mr A took receipt of a used car in June 2018; the car was first registered in 2013 and had completed 31,000 miles. He financed the deal through a hire purchase agreement with Advantage.

On 10 July 2018 he complained to Advantage. He said the clutch was too high and there was a problem with the fuel tank. He subsequently had the car checked at an independent garage and they identified several problems. They said the clutch needed replacing; the parcel shelf was missing; there was a coolant leak; a fault with the fuel filler neck; damage to two tyres; damage to the front bumper and poor resprays had been completed to the door, wheel arch and bumper.

The dealership completed some repairs at the beginning of August but Mr A wasn't happy with the repairs as he said they hadn't all been completed.

So Mr A complained to Advantage and they organised a third party independent inspection of the car.

The independent engineer said the clutch was worn and, given the low mileage completed in the time Mr A had the vehicle, it was most likely the clutch failure was in an advanced state when he took receipt of it. He accepted that the subsequent fitting of dual controls may have affected the clutch but he still thought it was likely there'd been a problem at inception of the finance arrangement.

Advantage still didn't support Mr A's request to reject the car they noted that Mr A had test driven the vehicle before he agreed to take receipt of it and that it'd been identified that the clutch was riding high then. They said that, even though adjustments weren't possible at the time, Mr A had still been prepared to accept the vehicle and, as such, they couldn't be held responsible for a fault Mr A was aware of before he took possession. They understood from his application form that Mr A was a driving instructor and they thought it was therefore reasonable to suggest he would know about such issues.

Mr A referred his complaint to this service and our investigator looked into the case. She thought Mr A's claim should be upheld as she thought there was evidence the vehicle was faulty at the point of supply and the independent engineer had supported this view. And she also noted that the dealer had a chance to repair the car but the repair hadn't been successful. So she suggested Advantage should take the car back and end the agreement; refunding Mr A's deposit and paying him £200 to cover loss of use. She thought it was clear Mr A had been troubled by the issue and she suggested a further payment of £100 should be made to compensate him for this.

But Advantage didn't agree with the investigator's suggested redress. They said the relevant legislation suggested issues that had been drawn to their attention before a purchase could not be taken into account subsequently, when assessing whether a car was of satisfactory quality at the point of supply. They explained they were not disputing the fact the clutch was

nearing the end of its service life at the point of supply and Mr A clearly wasn't either as he had noted that on a form when he decided to finance the car. They therefore asked for a final decision by an ombudsman.

### **my findings**

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

I agree with the investigator's view and for similar reasons. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr A acquired his car under a hire purchase agreement. The relevant law says that the car should have been of satisfactory quality when supplied. If it wasn't then Advantage is responsible and if I thought the car was faulty when supplied, I'd think it fair and reasonable to ask them to put this right.

Advantage accept that something was wrong at the point of supply. They accept that the clutch was nearing the end of its serviceable life and the independent inspection has confirmed this.

But Advantage are right to explain that the relevant legislation says we shouldn't take into account issues that have been drawn to the consumer's attention prior to purchase, when we assess whether a vehicle was of satisfactory quality at the point of supply.

Here Mr A was advised that the clutch was high when he agreed to take receipt of the car. But I think there's a difference between being advised a car's clutch is high and understanding it will need replacing. The dealership didn't explain the extent of the damage or set out how much it would cost Mr A to resolve the issue. And if they had I don't think Mr A would've accepted the car. I say that because, as soon as he did understand the issue, he contacted Advantage to complain.

I don't accept Advantage's assertion that because Mr A is a driving instructor he would have known the high clutch would mean a clutch replacement would be necessary. He's a driving instructor not a mechanic and I note he asked a garage to diagnose the problem with the car juddering. I think it's reasonable to suggest if he knew the clutch was failing he'd have simply booked it in for that repair.

So overall, I think there is evidence that this car was of unsatisfactory quality when supplied as the fault was identified within a short space of time and the independent inspector supports the view. In those circumstances the law allows Advantage one opportunity to fix the car. But they've had that opportunity and the fault remains. So I think Mr A should now be allowed to reject the vehicle.

I note that several other problems Mr A complained about, and that I've referred to in the background of this decision, have not been elaborated on. They may also be reasons why Mr A should be allowed to reject his car but I've not asked for additional evidence as I believe the problem with the clutch is, in these particular circumstances, reason enough.

I've reviewed the redress suggested by the investigator. It seems sensible and I don't intend to change it. It's clear that Mr A has been inconvenienced by this issue and he's lost the use of the car for an unacceptable period of time.

### **my final decision**

I uphold this complaint and tell Advantage Finance Ltd to:

- end the finance agreement with nothing further to pay
- collect the car at no cost to Mr A
- refund the deposit and pay 8% simple interest per annum from the date of payment until the date of settlement
- pay Mr A £200 to cover loss of use
- pay Mr A a further £100 in compensation for the trouble and upset caused
- remove any adverse information they have recorded on Mr A's credit file in relation to this issue

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 May 2019.

Phil McMahon  
**ombudsman**