

complaint

Miss W complains about a car she bought under a hire purchase agreement financed by Advantage Finance Ltd.

background

In September 2016 Miss W bought a used car on hire purchase for £8,500. The deposit was £2,000 and the balance was on credit provided by Advantage Finance. She made monthly payments of about £255. The car was around seven years old and had been driven over 89,000 miles.

Miss W immediately began to have various problems with the car. It is not in dispute that the car was faulty when it was sold. She took it back to the dealer for repairs, and the engine was replaced. But these repairs did not resolve the issues. In January 2017 the dealer said that further repairs would be complicated, and instead recommended unwinding the hire purchase agreement, taking back the car and refunding Miss W's money. But she still asked for the car to be repaired. The further repairs took several months. Meanwhile Miss W was provided with courtesy cars, but she says that there were problems with the courtesy cars too, and two of them broke down.

When the car was finally returned to Miss W in the summer, the problems had still not been fully resolved and the car was returned to the dealer to be repaired again. Another engine would need to be fitted. The dealer advised that further repairs would not be economical and again recommended that the agreement be unwound instead. Miss W asked if she could replace the car, but Advantage Finance said that it would not be possible to change the contract due to how much time had passed. But instead she could cancel the agreement and then obtain a new car under a new agreement, either with Advantage Finance or with a third party. Miss W (through her mother, who was representing her at the time) asked for the car to be repaired instead. The engine was replaced for the second time, at the dealer's expense.

In October Miss W complained about damage to the paintwork, cosmetic damage to the wheels, and a rusty side panel, which she said had not been present before the repair work. She later complained about some other issues, and in early November she finally asked to reject the car. But Advantage Finance declined to do this. It said that the car was now of satisfactory quality for its age and mileage. Advantage Finance asked an independent expert to inspect the car, at its own cost. The expert reported that the car was in good condition, apart from a minor fault which could easily be fixed and which was probably not present when the car was sold. And Advantage Finance has since provided the car's MOT history, which shows that it passed its MOT in September 2017 with no advisories.

So Miss W brought this complaint to our Service. Shortly afterwards, the car broke down twice, in late November and early December, and Miss W called the AA each time. The AA found that there were still some faults with the engine, and also with the catalytic converter. Miss W says she has not driven the car since then, as she believes it to be unsafe. She has been using her friend's car instead, and is paying her friend £200 a month, in addition to her payments to Advantage Finance, which are up to date.

Advantage Finance said that Miss W had decided to keep the car and continue making monthly payments while it was being repaired, even though she had been warned that the repairs were complex and might take a while. It argued that she should be held responsible for that decision, and so she should still be held liable for all of the monthly payments. She had been given two opportunities to return the car, and then she could have got a new car

instead of persevering with a defective car. But she had been given like-for-like courtesy cars instead, so she hadn't been without a car in the meantime. The car was now fit for purpose again, and there was no evidence that the remaining faults were present or developing at the point of sale. And Advantage Finance said it had helped Miss W by offering to reduce her monthly payments while the repairs were ongoing, although this offer was not taken up.

Our investigator upheld this complaint in part. She initially recommended that Advantage Finance refund 25% of the monthly payments, and pay for the outstanding repairs. But after learning that the courtesy cars had broken down and that Miss W had only had a car intermittently, she changed this to refunding 50% of all the monthly payments up to July 2017, when she'd got the car back, and 100% of all of the payments made since November, when she'd stopped driving it. She also said that Advantage Finance should pay for the repairs, pay Miss W £200 for her trouble, and pay interest on the refunds at 8% a year. But she didn't think it would be fair to unwind the agreement or to award more compensation than that, because it had been Miss W's choice to keep the car in January and again in July, and she'd had a courtesy car until July. And she didn't uphold Miss W's complaints about the cosmetic damage or the rusty panel, or about poor customer service by Advantage Finance. She also did not recommend refunding what Miss W had paid towards car insurance or road tax (as she'd requested), since she would always have had to pay for these, whether for this car or for another car.

Neither party was pleased with this opinion. Miss W still wanted to reject the car. And Advantage Finance argued that the investigator had not given enough weight to Miss W's decisions to keep and repair the car instead of unwinding the agreement. It said it was unfair to award compensation for the period during which the repairs had been ongoing, given that she had chosen to have the repairs. It suggested that Miss W should be "held accountable" for her decision not to reject the car, contrary to expert advice, and that any trouble or inconvenience she had suffered had been the result of her own decision.

The investigator reiterated that she had taken all of those matters into account, and that was why she had not proposed a full refund and unwinding the agreement. She referred this case to me for an ombudsman's decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I broadly agree with the investigator's opinion, and for similar reasons. I will explain why.

Before I do that, I should explain that my role is not to hold complainants accountable for decisions they have made, but only to decide whether respondents have done anything wrong – and if so, to decide how to put things right. But in deciding what is a fair and reasonable resolution to a complaint, I can still take into account what the complainant has done, and whether they could have done more to reduce the impact on them of any error that has been made. In this case, that means I will still have regard to Miss W's decisions in January and July 2017 to keep the car instead of rejecting it, against advice to the contrary, and the fact that a different decision could have saved her a great deal of trouble.

I recognise that Miss W now feels strongly that she should be allowed to reject the car after all, following the breakdowns when the AA were called. But I agree with the investigator's view that it is too late to do that now. I have no reason to doubt the expert report, which says that the current faults would be easy to repair (unlike the original faults). So I think it would be disproportionate to allow the car to be rejected now. There is no reason to think that this

repair will take a long time or that there will be a repeat of Miss W's previous experience. (But if there is, then she may be able to bring a new complaint about that.)

The expert also told the investigator that the air flow meter would have been detached from the old engine and re-attached to the new one, and that a problem with the air flow meter can cause the catalytic converter to fail. So although those faults were not present or developing when Miss W bought the car, on the balance of probabilities I think that it is the result of the engine being replaced, and so it would still be fair to require Advantage Finance to pay to repair them.

For completeness, I note that the AA report also mentions cylinders misfiring, which they suspected was because of a problem with the coil pack. The independent expert told the investigator that this fault (if indeed that is the fault) would also be easy to fix, and might also have been the result of replacing the engine. And the oil pressure sensor would need to be reset – again, this may also be the result of the engine being replaced, according to the expert. On balance, I think that this is the most likely cause, given the car's recent history. These repairs should also be done at no cost to Miss W.

That leaves the question of how much compensation it would be fair to award to Miss W. I cannot accept Advantage Finance's argument that she should receive no compensation at all, just because she chose to have the car repaired rather than reject it. The choice of repairing or rejecting the car would not have arisen in the first place if it had not been faulty. And Advantage Finance has told me that it offered to reduce Miss W's monthly repayments by half while the car was being repaired (and that she declined this offer). If Advantage Finance thought it was fair to halve the payments then, then it is hard to see why this should be unfair now. (Miss W does not recall this offer being made to her, and I've seen no evidence about it one way or the other, but I don't think I need to make any finding about that.) Advantage Finance is not liable for the courtesy cars breaking down, but that need not prevent me from taking into account the unforeseen level of inconvenience which resulted from Miss W being without the original car. So I agree with the investigator's recommendation to refund half of the payments Miss W made from the first payment up until July 2017 inclusive (she got the car back at the end of July or in early August).

Miss W has not been driving the car since December, since she feels that it is no longer safe to drive. I accept that it may not be safe to drive until it is repaired, but once it is repaired that should no longer be a problem. I agree that Advantage Finance should refund all of the payments from December 2017, when she stopped driving the car (but not from November because she was still driving the car in that month), and until the above repairs have been carried out.

I have taken into account Miss W's decision not to reject the car by not also refunding the rest of the payments and the deposit. I have also not awarded compensation for her inconvenience prior to November 2017. But I think that the two breakdowns in November and December 2017 should be compensated, and I think that £200 is a fair amount.

The refunded amounts should not be added to the outstanding balance (as if they were then that would defeat the object of refunding them). I will award interest on the refunds.

For the same reasons as the investigator gave, I do not think it would be fair to require Advantage Finance to refund Miss W for the car tax and insurance. She would have had to pay these if nothing had gone wrong, or if she'd rejected the car and then got another one. Nor will I require Advantage Finance to pay to repaint the car or replace the rusty panel, as due to the age of the car these problems may well have occurred anyway, and are probably fair wear and tear.

my final decision

My decision is that I uphold this complaint. I order Advantage Finance Ltd to:

- Repair the car at no cost to Miss W – that is, fix or replace the air flow meter; the oil sensor; the catalytic convertor; and (if faulty) the coil pack, or do any other repair which needs to be carried out to prevent a recurrence of the cylinders misfiring.
- Refund 50% of the monthly payments Miss W made between the beginning of the hire purchase agreement and July 2017 inclusive.
- Refund 100% of the monthly payments Miss W made from December 2017 until the above repairs have been carried out.
- Pay Miss W simple interest on the above refunds at 8% a year.
- Pay Miss W £200.

The refunds must not affect the outstanding balance due on the agreement, or the amount which is charged on the voluntary termination of the agreement (if that occurs).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 4 June 2018.

Richard Wood
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