

The complaint

Ms W is unhappy that a car supplied to her under a hire purchase agreement with Stellantis Financial Services UK Limited was of an unsatisfactory quality.

What happened

In September 2022, Ms W was supplied with a new car through a hire purchase agreement with Stellantis. She paid an advance payment of £1,000 and the agreement was for £34,475 over 48 months; with 47 monthly payments of £563.31 and a final payment of £16,709. Ms W also financed an insurance product which cost £958, and had 47 monthly payments of £15.65, and a final payment of £464.31, taking her total monthly payment to £578.96.

On 17 July 2023 the car stopped working while Ms W was driving it, due to an electrical fault. The car was recovered by a breakdown company to the supplying dealership and has remained there ever since. She was provided with a courtesy car on 17 August 2023.

Ms S complained to Stellantis, who paid her £1,157.98 compensation for what had happened, and advised her the dealership would repair the car. The car hasn't been repaired, and Ms W was unhappy with what had happened. So, she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that Stellantis had accepted the car was faulty when it was supplied, and this made it of an unsatisfactory quality. While Stellantis explained the dealership were going to repair the car, the investigator didn't think this repair was being completed in a reasonable time. So, he said that Ms W should be able to reject the car.

The investigator said that, as Ms W had had a courtesy car from 17 August 2023, it wouldn't be fair to refund the payments she'd made since this date, especially as the courtesy car was of a similar size and specification to the car Ms W had originally been supplied.

The investigator also said that Stellantis should refund a months' payment for the time Ms W was without transport, and compensate her for the impact of the breakdown, and the distress and inconvenience she'd been caused. However, as Stellantis had already refunded Ms W £1,157.98 – the equivalent to £578.96 for the months' payment and £579.02 compensation – the investigator didn't think Stellantis needed to pay her anything more. So, he thought that Stellantis should end the agreement, collect the car, and refund the deposit Ms W paid.

While both parties were considering the investigator's opinion, the dealership completed repairs to the car, and advised Ms W it was ready for collection. Stellantis accepted the investigator's recommendation that Ms W should be allowed to reject the car, even though the repairs had been completed.

Mrs W said she didn't want to accept the car back as she had no confidence in it. She was unhappy that rejecting the car would leave her with no transportation, which she needed for her job. Despite this, she returned the courtesy car on 19 February 2024 without collecting the repaired car. Ms W felt that Stellantis should refund all the payments she'd made since

the agreement started, plus interest, as well as her deposit and her costs of insuring the car since it was first provided to her.

Finally, Ms W said the car she was supplied with wasn't the car she originally ordered – the car she wanted wasn't going to be available until January 2023, and she was offered the car she financed as *"I was told someone had ordered [it] but could no longer afford it so I took the car."* She feels this shows that the manufacturer *"knew the car was not satisfactory."* So, Ms W asked for an ombudsman to make a final decision.

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. Ms W 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, Stellantis 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 and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform 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 Stellantis can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Ms W to show it was present when the car was supplied.

So, if I thought the car was faulty when Ms W took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Stellantis to put this right.

In this instance, it's not disputed there was an electrical problem with the car, nor that this fault was present when the car was supplied to Ms W. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think Stellantis should do to put things right.

Putting things right

Section 23 of the CRA states:

If the consumer requires the trader to repair or replace the goods, the trader must –

(a) do so within a reasonable time and without significant inconvenience to the consumer

Given that the car broke down on 17 July 2023 and hadn't been repaired when the investigator issued their opinion in December 2023, despite the car being with the dealership for repair for this entire period, I'm satisfied that Stellantis failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Ms W should be able to reject the car. I don't think that the car eventually being repaired in February 2024 changes this situation, as this still makes it an unreasonable time to repair. I've also noted that, despite this repair, Stellantis have accepted that Ms W should be allowed to reject the car, especially as she no longer has any confidence in it due to the nature of the breakdown.

While I've noted Ms W's comments about the car, she was able to use it without any issue from when it was supplied to her in September 2022 until the breakdown in July 2023. And I think it's only fair that she pays for this usage. When allowing rejection, the CRA also allows for a usage charge and, as Ms W's payments were fixed based on the time she had the car, and not, for example, on the mileage she'd done, I'm satisfied it's reasonable for me to base the usage charge on the monthly payments. As such, I won't be asking Stellantis to refund any payments Ms W paid for the period between being supplied with the car, and the breakdown on 17 July 2023.

Ms W was also provided with a courtesy car from 17 August 2023, and she returned this on 19 February 2024. While I appreciate the courtesy car was a different fuel to the car originally supplied to Ms W, I haven't seen anything to show me the courtesy car was unsuitable in any way. It's also the case that Ms W could've asked for the courtesy car to be swapped for one of the fuel of her choice, as soon as one became available. But I haven't seen that she did this. As such, I'm satisfied that Ms W was kept mobile in a reasonably similar car for this period.

When looking at what is a fair and reasonable remedy, where possible I'm looking to put Ms W back in the position she would've been had the car supplied been of a satisfactory quality. If I were to ask Stellantis to refund the payments Ms W paid while she was kept mobile in the courtesy car, then I would be putting her in a position of betterment i.e., she would essentially have seven months of payment free motoring, which I consider unfair. This would also be the case if I were to ask Stellantis to refund Ms W's insurance payments – it's a legal requirement to ensure a car is insured when on the road, and a refund would unfairly leave Ms W in a position where she would essentially be able to drive with no insurance costs.

It's for these reasons I won't be asking Stellantis to refund any of Ms W's insurance payments, nor will I be asking them to refund the monthly payments she made while she was in possession of a courtesy car.

This leaves Ms W with two periods where she was without the car she was paying for and without access to a courtesy car. The first of these was from the breakdown on 17 July 2023 to when the courtesy car was supplied on 17 August 2023 – a period of about a month. I don't think it's fair that Ms W should have to pay for this period, and I would usually ask Stellantis to refund the equivalent to one month's payment. However, I've noted they've already done this as part of the £1,157.98 compensation they paid. So, I won't be asking Stellantis to make any further payment for this period.

Turning to the period from 19 February 2024, when Ms W returned the courtesy car. While I appreciate her reasons for doing this, she could have also collected the repaired car to keep her mobile. And doing so wouldn't have affected her right to reject the car under section 23(2)(a) of the CRA, especially as I've seen the investigator had advised Ms W that Stellantis had agreed to the rejection, despite the repairs to the car.

As such, I'm satisfied that Ms W had a valid way of keeping herself mobile but chose not to do this. When looking at what's fair and reasonable, I'd expect Ms W to take reasonable steps to mitigate her losses, something she didn't do here. So, I don't think it's fair to ask Stellantis to refund any payments Ms W has made after the courtesy car was returned, and I won't be directing this.

Looking now at the impact this has had on Ms W. It's clear that the breakdown would've been a stressful experience, and Ms W would've been further inconvenienced and frustrated by the unreasonable delay in the car being repaired. So, I think Stellantis should compensate her for this.

As part of the £1,157.98 compensation Stellantis have paid, £579.02 doesn't relate to the payment refund detailed above, so I consider this to be a compensatory payment. And £579.02 is more than I would likely have directed in these circumstances, had no offer been made. As such, I won't be asking Stellantis to make any additional payment.

Finally, Ms W has raised the issue of the car not being the one she originally wanted, and that she was knowingly provided with a faulty car. While The car wasn't the make and model Ms W had initially intended to finance, the car she wanted was offered to her, albeit with a lead time she felt was unacceptable. And Ms W has said she asked if any other cars were available, then accepting the one she was offered. Given the facts as Ms W has described them, I'm satisfied she wasn't refused the car she originally wanted, nor was she put under undue duress to take the car she eventually financed.

With regards to the faults with the car, I haven't seen anything to show me that it was provided to her with a known fault. And the fact the original intended purchaser didn't go through with the car doesn't automatically mean the sale fell through because the car was faulty. But, even if I'm wrong about this, this is a complaint about the manufacturer and/or dealership, not Stellantis, as I haven't seen anything to show me that Stellantis were aware the car was faulty when it was supplied to Ms W. As such, this is a matter Ms W needs to raise directly with the manufacturer and/or the dealership.

Therefore, Stellantis should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Ms W;
- remove any adverse entries relating to this agreement from Ms W's credit file;
- refund the deposit Ms W paid (if any part of this deposit is made up of funds paid through a dealer contribution, Stellantis is entitled to retain that proportion of the deposit); and
- apply 8% simple yearly interest on the refund, calculated from the date Ms W made the payment to the date of the refund[†].

[†]If HM Revenue & Customs requires Stellantis to take off tax from this interest, Stellantis must give Ms W a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Ms W's complaint about Stellantis Financial Services UK Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 4 April 2024.

Andrew Burford
Ombudsman