

The complaint

Mr M complains Advantage Finance Ltd (Advantage) supplied him with a car that he believes wasn't of satisfactory quality.

What happened

The background of this complaint is well known to both parties so I won't repeat them. Instead I will focus on the reason for my 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 decided to partially uphold this complaint. I'll explain why.

Mr M acquired a car under a regulated credit agreement. Advantage was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 (CRA) 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 the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.

In this case, Mr M acquired a car that was around nine years old and had travelled over 73,000 miles. As this was a used car with considerable mileage and age, it's reasonable to expect parts may already have suffered substantial wear and tear when compared to a new car or one that is less travelled. Meaning there's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn.

A few months after Mr M acquired the car, he complained there were faults with it. An independent inspection report confirmed there was a fault with the head gasket. It confirmed given the mileage covered by Mr M (around 4,000), the car wasn't sufficiently durable. Meaning the car wasn't of satisfactory quality therefore a breach of contract.

Where that happens and it's outside the short term right to reject the car (30 days), the relevant law says there should be one opportunity of repair. I would expect that repair to be carried out at no cost to the consumer, in a reasonable period of time and without significant inconvenience to the consumer.

Based on job cards and email correspondence I've seen, repairs were carried out in January 2024 which is a few months after Mr M initially reported the faults in October 2023 and around two months after the inspection report confirmed the fault and what needed to be repaired.

Mr M has argued Advantage unfairly denied his request to reject the car following his initial request in October 2023. However for the reasons outlined above, there needed to be an opportunity of repair. While I accept it took some time for repairs to be carried out, I don't consider the time taken was wholly unreasonable especially given the time of year (December 2023). I acknowledge that during that time it caused inconvenience to Mr M and he's outlined how it impacted him. While I appreciate this would've been a difficult time and alternative arrangements had to be made, I don't consider the inconvenience caused to be significant to warrant a rejection. Unfortunately in situations like this, there is always going to be some level of inconvenience caused and while it's helpful for a courtesy car to be provided to keep mobile, that isn't always possible as was the case here.

From my understanding repairs were carried out and the car was returned to Mr M in January 2024. However shortly thereafter further repairs were required to the oil as it had been contaminated and the same had been noted in the inspection report. I can see Advantage provided evidence of this to the independent inspector for their further comments which I consider to be a fair course of action. The inspector's further comments said he would've expected the oil and filter to be changed when the head gasket was repaired and considered it a failed repair. On that basis, rejection was agreed by Advantage.

The relevant law says if there has been the opportunity to repair and it fails, the consumer can exercise their final right of rejection. So I find Advantage acted fairly and reasonably by agreeing to the rejection at that point. I don't find they were obliged to have agreed to it any earlier. In my opinion, the final right of rejection only become available after confirmation was received that the repairs to the head gasket had failed.

I note Mr M's comments that the job card confirming the head gasket repairs was fraudulent and he doesn't believe the car was even repaired. However I wish to stress, as this complaint is against Advantage, I can only consider their actions. They received documentary evidence repairs had been carried out to the head gasket and they relied on the same. I believe it was fair for them to do so, therefore I can't say they did anything wrong.

As rejection was agreed, I would expect the agreement to end with nothing further for Mr M to pay, the car to be collected at no cost to him, the deposit to be refunded and any adverse information about this agreement to be removed from his credit file. Advantage has confirmed this has happened.

Based on the mileage covered, it's clear Mr M had use of the car so it's fair he pays to reflect that use so I won't be saying all the monthly instalments paid should be refunded. Advantage has confirmed Mr M has only been charged for the months he was using the car and before it went in for repair. He hasn't been held liable for any other instalments thereafter, in the circumstances I consider that to be reasonable.

Mr M has also complained he has incurred a number of other costs as a result of being supplied with a faulty car. This includes but not limited to the cost to hire a car, insurance costs, recovery costs, and the overall worry, distress and inconvenience caused to him and his family.

He said for a period of time he had to hire a car which is a cost he wants to be refunded for. As Mr M hasn't been held liable for the monthly instalments after December 2023, I won't be saying Advantage also need to refund the hire car cost. In terms of insurance, this is a legal and contractual requirement meaning the car was covered for any insured events. I don't find that is a direct cost of being supplied with the faulty car. Advantage has already refunded the cost of the car's recovery for repair.

However Mr M provided an invoice to Advantage for when the car's oil and filter needed to be repaired after the head gasket repair. That out of pocket expense should be refunded. Additionally, for all refunds applied in this case (such as the deposit, recovery cost, monthly instalments, etc), Advantage should pay 8% simple interest per annum from the date of payment to the date of settlement.

Mr M has provided great detail about the impact of the situation on him. I thank him for his openness and honesty. I'm very sorry to hear how this has impacted not only him but his other family members as they also rely on the car. While I don't doubt that is the case, as the agreement is only in Mr M's name, I can only consider the trouble and upset caused to him. So I won't be saying Advantage needs to refund travel costs incurred by son.

Mr M has also complained Advantage hasn't acted in accordance to the Equality Act 2010. However for similar reasons as above, it appears his family members have characteristics which are protected under the Act, rather than himself. Therefore I don't find it's appropriate to take this Act into account when reviewing this complaint.

Lastly Advantage paid £100 as a goodwill gesture when the car needed to be collected and paid £150 compensation for the inconvenience, that's a total of £250 compensations. Given the circumstances, I find this amount to be fair so I won't be saying they need to pay any further compensation.

My final decision

For the reasons set out above, I've decided to partially uphold Mr M's complaint.

To put things right, Advantage Finance Ltd must:

- Refund the cost of the oil repairs (evidence previously provided);
- For all refunds applied to this agreement, pay 8% simple interest per annum from the date of payment to the date of settlement*;
- Remove any adverse information about this agreement from Mr M's credit file.

*If Advantage Finance Ltd considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 December 2024.

Simona Reese
Ombudsman