

The complaint

Ms J complains that the car she acquired financed through a hire purchase agreement with Lendable Ltd, trading as Autolend, wasn't of satisfactory quality.

What happened

In December 2022 Ms J acquired a second-hand car financed through a hire purchase agreement with Autolend. The car was approximately six and a half years old and had been driven 28,820 miles.

About five weeks after receiving the car, in January 2023, Ms J experienced problems with the vehicle on the motorway. She took it to a garage which ran some tests and cleared the error messages. Ms J said she contacted the credit broker on 16 January 2023 to tell it what had occurred. She said the credit broker requested a diagnostic report which she booked for 19 January. The garage recommended the spark plugs and coil pack for the cylinder be replaced. This was completed.

As the car was still under warranty Ms J was able to receive partial payment towards the cost of these repairs. Ms J said as there were no errors to report a diagnostic report wasn't issued, only an invoice for the work that was completed.

Ms J said she was frustrated that the car had broken down, so she complained, asking for a replacement vehicle or to cancel her agreement. Autolend did not uphold her complaint. It said:

"We must receive evidence that states whether the faults were present or developing at the point of sale. The invoice you sent to the broker and us lists two items to be paid for, which are consumable, and this doesn't suggest a fault. The invoice may cover items that are either worn or should be changed soon, as you would expect from a used vehicle. The invoice does not state that the faults are due to a certain issue, and there is also no mention of the concerns you raised in your complaint. Due to the invoice outlining general wear and consumable items, we cannot authorise the payment or continue with your complaint."

On 25 February 2023, Ms J said the car broke down again while on the motorway. She said the same issue occurred – engine backfiring with the service light illuminated. She called out the recovery service who provided a diagnostic report. Ms J contacted Autolend which asked for a diagnostic report from a VAT registered garage. Ms J said a new report wouldn't pick up any faults because the codes have been cleared by the recovery service when she broke down. Autolend didn't reopen the complaint and Ms J brought the complaint to this service. She said she didn't expect a car to breakdown twice so soon after purchase and following a service and MOT.

Our investigator concluded that the car wasn't of satisfactory quality and recommended Autolend allow Ms J to return the car. Autolend didn't agree and asked for a decision from an ombudsman. I issued a provisional decision on 18 March 2024. I said:

Ms J's agreement is a regulated consumer credit agreement, and our service can consider complaints against it. As the supplier of the car Autolend is responsible for the quality of the car and the Consumer Rights Act 2015 implies terms into the agreement requiring the car to be of satisfactory quality.

Exactly what is satisfactory quality will depend on the specific circumstances. In this instance the complaint relates to a car. When considering whether the car is of satisfactory quality the car's age and mileage at the time it was supplied are key considerations. Auto lend was required to ensure the car was of satisfactory quality at the time it was supplied but it wouldn't be responsible for any wear and tear items that develop over time that might reasonably be expected on a used car. When it was supplied Ms J's car was six and a half years old and had travelled 28,820 miles. So it would be reasonable to expect some wear and tear in its mechanical components.

Ms J said about five weeks after acquiring the car it developed a fault. I've seen copies of invoices for a coil pack and spark plugs. The costs of which were paid in part by the warranty company. In its response to Ms J's complaint Autolend said there was no evidence of a fault being present or developing at the point of purchase. It said the invoices concerning the spark plug and coil change indicated wear and tear.

The car developed the fault again related to coils a few weeks later and was repaired. Although I can see Ms J produced a report from the recovery service this only indicated the engine had been misfiring. I think it fair that Autolend asked Ms J for a full diagnostic report from a VAT registered garage. Ms J told Autolend that because the recovery service had cleared the error codes it wasn't possible to get a diagnostic report. She said the garage she'd taken the car to when she'd broken down hadn't seen any error codes as they'd been cleared. I'm not disputing Ms J as it's possible error codes wouldn't reappear, but a full diagnostic inspection would look beyond error codes.

In its response to the investigator's view Autolend provided further commentary as well as evidence from the broker. I've summarised its comments:

- It wanted to review the car, but Ms J hadn't provided a diagnostic report as per its request, in order to see exactly what was wrong. The garage was also unable to supply evidence that the spark plugs were faulty, and there is no evidence that the coil pack or sparkplugs even required replacement, only that they were replaced (to discount the possibility of 'upselling').*
- The items are wear and tear related which, under legislation, wouldn't be the dealership's responsibility.*
- It couldn't make any reasonable assumptions because it could not determine if the issues with the car were from the purchase or due to an incorrect repair from Ms J's garage. Autolend can't be held responsible for the quality of the repair and needed a diagnostic report to understand if it was liable or not.*
- Autolend, the dealership and the broker have yet to have one opportunity to repair the vehicle required under the Consumer Rights Act 2015. Ms J also replaced wearable items without informing any party involved.*
- It is fair and reasonable to suggest that Autolend does not need to accept the rejection, as it had not had its first chance to repair the vehicle.*
- The dealership was unaware of any concerns with the vehicle.*
- The warranty covered spark plugs and coil pack in January and then covered another coil pack for the following breakdown suggesting that the third-party repairs had failed in the first instance.*

Autolend is correct when it says the legislation provides that it does have one opportunity to repair the vehicle. And I can see that Ms J didn't take the car back to the dealership or to a garage approved by Autolend or the dealership. It doesn't automatically follow that this repair is invalid if the situation was an emergency or had to be carried out over the weekend.

After reviewing all the information provided by Ms J and by Autolend it appeared to me that the problems with the vehicle related to general wear and tear items and there wasn't enough evidence for me to safely conclude the car wasn't of satisfactory quality. So I asked Ms J to have the car inspected by an independent third party.

Ms J agreed and the car was inspected in January 2024. I've seen a copy of the report. The inspection was carried out by a company well known in the industry for independent inspections. At the time of the inspection the mileage was 38,238. The inspector received copies of the recovery service report and the invoices for repair. The report concludes:

- "We can only conclude that we were unable to confirm any faults with the vehicle at this stage and consider the vehicle is of satisfactory quality.*
- We consider the repairs which have been completed to the vehicle have been successful, with the vehicle running in a condition commensurate for its age and mileage.*
- We note that issues were originally reported at 29,525 miles, having completed only 705 miles since sale, it will most likely be appreciated that electrical issues can develop almost instantaneously giving no warning that the conditions are present before they fully materialise into a failure. However, the conditions are often deterioration related and progressive in development, as such those initial conditions do appear to have been developing faults but could not have been identified in a standard pre-sales check. We anticipate this is why the faults only became evident after 705 miles of further use.*
- Following that a further issue was identified at 31,438 after having completed 2,618 miles. This appears to be some considerable time after the previous repair and as such should not be automatically assumed that it is related. It will be appreciated that many component issues can lead to very similar symptoms but may not be related directly to the previous repairs completed and may simply be ageing repairs that are required to keep the vehicle serviceable.*
- We note from the information provided in our instructions that the vehicle has now covered 9,418 miles since purchase to the date of our inspection on 23 January 2024."*

Having reviewed this report and the evidence provided by both parties, subject to any further information I might receive, I'm minded to say the car was of satisfactory quality at the point of purchase and is now. I'm persuaded by the technical evidence that the problems with the vehicle were related to wear and tear/deterioration and that the repairs were successful. While I accept the repairs weren't carried out by Autolend/the dealership the technical report does indicate they were successful and that the first repair is not necessarily related to the second.

Ms J has said she didn't expect a car to breakdown twice so soon after purchase and

following a service and MOT. An MOT is a legal requirement for a vehicle to check it is road safe. It isn't a measure of 'satisfactory quality'. As the independent inspection notes even developing deterioration may not be picked up by pre-sale checks.

Subject to any further information I wasn't minded to uphold the complaint. Autolend accepted my provisional decision. Ms J did not and provided further comments. I have responded below where appropriate.

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.

I realise this will come as a disappointment to Ms J but having done so I won't be asking Autolend to do anything further.

I'd like to thank Ms J for the additional comments she's sent me following my provisional decision. I'm not going to respond to every single point made by Ms J. No discourtesy is meant by this. Our rules allow me to do this, it simply reflects the informal nature of our service. If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is the right outcome.

Firstly Ms J has corrected an error I made in the provisional decision. My apologies for this. Ms J has said the warranty only covers an issue once and would not cover the second coil packs for the second time. She said the warranty would not cover payment for the same issue twice. Ms J also clarified that the third-party repairs did not fail. She said the vehicle has three cylinders, when the vehicle first broke down cylinder one was replaced. She said the second breakdown covered cylinders two and three as per the break down service report.

To uphold the complaint I must be satisfied that there were problems present or developing with the car at the point of purchase. And if there were problems with the vehicle I would need to be satisfied these weren't because of wear and tear. I've not seen evidence that persuades me this was the case. The problems as I've seen them described appear to be of a wear and tear nature.

Ms J has said the car had a full service and MOT just prior to her acquiring it. She said her understanding is that a full service includes the cylinders and if they are worn they should be replaced, and this clearly wasn't done. There are different levels of service generally available for cars and I don't know whether the service prior to sale included replacement of coil packs/spark plugs. So I don't agree that it's clear what parts were or were not changed.

The independent report has said it considers the repairs have been successful and that the vehicle is running in a condition commensurate for its age. Indeed Ms J has covered over 9,000 miles since purchase. So I'm persuaded the car was likely of satisfactory quality at the point of purchase and I won't be asking Autolend to do anything further.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 14 May 2024.

Maxine Sutton
Ombudsman