

The complaint

In summary, Miss W complains that a car she purchased under a hire purchase agreement with 247 Money Group Limited, had various defects and didn't have a service history.

What happened

The parties will be aware of the background to the complaint. But I have set out below what I consider to be the relevant key facts. In summary:

Miss W purchased a five-year-old car from a car dealership in March 2023. The car had covered 45,843 miles at the time Miss W purchased it. The sale price for the car was £9,599 with an addition of £169 for upholstery and paint protection, making a total cost of £9,768. The finance agreement recorded that a deposit/part exchange of £2,199.73 was paid, with £7,568.27 being the total amount of the credit provided.

In July 2023 Miss W subsequently experienced problems with the car's clutch which was slipping. She also noticed a fault light in respect of the driver's side air bag. And she said that she had only been provided with one key for the car.

Miss W then arranged for the car to be inspected by a mechanic in August 2023. The report confirmed that a road test indicated the clutch was slipping in third gear and recommended that the gearbox be removed to check the flywheel and clutch. It also recommended further diagnostics in relation to the airbag fault. The recorded mileage was 47,218.

After Miss W contacted 247 Money, it organised for the car to be examined and a report to be prepared. In summary, the report recorded:

- After scanning the vehicles ECU, a fault code registered in respect of the driver's side airbag.
- It also noted an issue with the rear seat belts not clipping together properly which required investigation and replacement as necessary.
- A static clutch test showed no issues as did the road test carried out. The road test did note that the clutch biting point was high, which suggested the clutch was reaching the end of its service life.
- The car had an MOT in February 2023, and it was likely the seatbelts were working then when it passed the MOT.
- The report concluded that the car's overall general condition was in line with its age and mileage. There was no evidence to suggest that any of the highlighted issues were the direct result of anything other than general wear and tear and not the responsibility of the sales agent.

Miss W then raised a complaint with 247 Money in September 2023. In its response to the complaint, 247 Money explained that it wasn't upholding the complaint because the independent inspection report, didn't suggest any issues with the gearbox, and explained that the issues with the clutch would not be the dealerships liability.

Miss W then proceeded to have the clutch replaced. And she obtained a diagnostic report on the gearbox. This was carried out by a specialist gearbox company. The report recorded that there was a leak from the gearbox input shaft area. A full strip down would be required to confirm the cause of the leak. It also recorded that the gearbox was noisy which it suspected was due to a faulty bearing. It went on to say that the leak had contaminated one clutch and would do so again if left, which could cause a complete vehicle breakdown.

The report concluded that the fault hadn't just happened during the last 4,000 miles, due to several contaminated clutches and the significant wear on the selector components. The faults must have already been present at the point of sale, but just become more obvious to the owner now. The recorded mileage at the time of the inspection was 49,037 miles.

Due to the multiple issues with the car, Miss W wanted to reject it. The complaint was looked into by one of our investigators. They explained why taking into account the most recent report, from the gear box specialist, that Miss W's complaint should be upheld. And they set out what 247 Money needed to do to put things right for Miss W. They provided a copy of the report from the gearbox specialist.

In its response to the investigator's view, 247 Money explained why it didn't agree with the assessment. It referred to the report it had provided and asked for an ombudsman to review the case. It didn't think it was reasonable for it to have the vehicle serviced when it wasn't advertised as having a full-service history. Regarding the service, it said it believed the pre-sale checklist was indicative of a service having been carried out.

The investigator responded to the points made by 247 Money. They explained the evidence they had relied on in respect of the reports that had been provided, and also explained why they were persuaded by the report provided by the gearbox specialist, taking into account all the information they had.

As no agreement could be reached the case was passed to me for review. I issued a provisional decision on 26 June 2024, explaining why I was intending to uphold Miss W's complaint. Both Miss W and 247 Money accepted my decision. 247 Money said it had calculated the total money due back to Miss W as £2,575.21. It asked for Miss W to provide the location of the vehicle so collection could be arranged.

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.

As both parties have accepted my provisional decision, I have no reason to depart from what I said in that decision. I've set out my reasoning again below.

The finance agreement that Miss W entered into with 247 Money, was a regulated hire purchase agreement. As a result, this service can consider complaints relating to the agreement. And the agreement is a contract to supply goods under the Consumer Rights Act 2015 (CRA). This means that under the provisions of the CRA, 247 Money is responsible for ensuring the car supplied to Miss W under the hire purchase agreement, was of "*satisfactory quality*."

What does satisfactory quality mean under the CRA?

Goods will be of satisfactory quality if they meet the standard a reasonable person would consider satisfactory, taking into account the description of the goods, the price paid and other relevant circumstances, such as whether the goods are new or second hand and in relation to Miss W's car, the mileage of the car. This isn't an exhaustive list of relevant issues. And under section 19(14) of the CRA there is a rebuttable presumption that faults which mean goods would not be of satisfactory quality, and which occur within six months of delivery, are taken to be present on delivery.

In this case, if Miss W's car wasn't considered to be of satisfactory quality, her potential remedies under the CRA, could include the right to repair or replacement of the car, rejection of the car, and the ending of the hire purchase agreement.

The condition of Miss W's car at the point of sale

When Miss W purchased the car, it was five years old and had travelled 45,843 miles. As a second-hand car, its cost was lower than a similar new vehicle. So, I think it's reasonable to expect that a vehicle of its age and mileage would have incurred wear and tear. And as a result, there was a greater risk of it needing repair or maintenance sooner than a newer car. However, I don't think a reasonable person would expect a second-hand vehicle to be supplied with significant defects, or with important parts that were on the verge of failing.

Were there faults with Miss W's car, and if there were, was the car of satisfactory quality?

It's not in dispute that there were faults with Miss W's car. As I've summarised above, the report commissioned by 247 Money, records that the car's ECU recorded a fault code in respect of the driver's side air bag, and the report obtained by Miss W also noted a fault. And the report also records that at the time of the inspection there was a problem with the rear seatbelts.

There are some disagreements however regarding other faults that the various reports obtained by 247 Money and Miss W record. When Miss W raised her concerns with 247 Money, she had obtained a mechanic's report which confirmed that a road test indicated the clutch was slipping and recommended that the gearbox be removed to check the flywheel and clutch. It also recommended further diagnostics in relation to the airbag fault. The recorded mileage was 47,218 at the time of the test. So, at the time of the test, Miss W had travelled 1,375 miles since purchasing the car.

The report obtained by 247 Money reached a different conclusion. It noted the clutch biting point was high which suggested the clutch was reaching the end of its service life. The report concluded that the vehicles overall general condition was in line with the vehicles age and mileage. It went on to record that there was no evidence to suggest that any of the highlighted issues were the direct result of anything other than general wear and tear and not the responsibility of the sales agent. So, there was a disagreement as to whether there was a problem with the clutch or if its condition was because of wear and tear.

However, after the inspections were carried out on Miss W's car, she had the gearbox examined by a specialist gearbox company. And as I've summarised above, the report concluded that the gearbox had an oil leak which had contaminated and damaged several clutches. And that due to the significant wear on selector components, the faults must have been present at the point of sale.

I think the specialist gearbox report is persuasive evidence, not only in that it was prepared by a gearbox specialist, but also in that an inspection of the gearbox was carried out, which wasn't done with the other two inspections. As a result, I think its conclusions that the oil leak

from the gearbox had been present at the point of sale and damaged the clutch is credible and persuasive.

When Miss W purchased the car, it had travelled 45,843 miles. I think it's also significant that the report provided by 247 Money concluded that the average life expectancy of a clutch was between 55,000 and 80,000 miles. And, although it pointed out that premature clutch wear could be as a result of driver error, I think the clutch life expectancy estimate recorded in that report, supports the conclusion that the clutch had failed sooner than might normally be expected for a car of its mileage. And considering all of the evidence provided to me, I'm persuaded that on balance, the faults with the gearbox and clutch were more likely than not present when Miss W purchased the car.

Miss W also raised concerns about the airbag fault code that was recorded as being present in the report obtained by 247 Money and in the initial report she obtained. This fault was noted within the first six months of Miss W purchasing the car. And given the lack of any other evidence to the contrary, I think given that the fault was recorded in both reports, it's more likely than not that the airbag system was on the verge of developing a fault when the car was supplied to Miss W.

The report obtained by 247 Money recorded a problem with the car's seatbelts. But shortly before Miss W purchased the car in March 2023, it had an MOT, with a similar mileage to that recorded when the car was sold. I think as recorded in the report provided by 247 Money, it is more likely than not that the operation of the seatbelts would have been checked as part of the MOT checks. And that it's unlikely the car would have passed its MOT if the seatbelts hadn't been operating correctly. So, I think on balance considering the available evidence, it's unlikely that the problem with the seatbelts was present or developing at the point of sale.

For the reasons, I have set out above, considering the cost of the car, along with its age and mileage, I don't think a reasonable person would consider the car to be of satisfactory quality, with the mechanical problems that were identified. I am satisfied those problems were more likely than not present when Miss W purchased the car. Although the vehicle was repaired, based on the evidence available to me, I am satisfied that the repair has failed. And in those circumstances, I think it is fair and reasonable for Miss W to reject the car.

Was the car supplied as described?

Miss W believes the car was advertised as having a full-service history and that it should have come with two keys. She says the car was only supplied with one key and it doesn't have a full-service history.

I've considered the advert that described the car. This says that the vehicle will come with two remote keys and that it would come fully serviced. In my experience it isn't unusual for a car to be serviced prior to it being supplied. But that isn't the same as having a full-service history, which I'm not persuaded is what the advert says.

In its response to the investigator's view, 247 Money said that it didn't believe it was fair to expect it to service the vehicle, when it was not advertised as having a full-service history as Miss W had claimed. It also said it thought there was an argument to suggest the pre-sale checklist was enough evidence to suggest a service was carried out pre-sale. I don't agree with 247 Money's argument. This is because I think a pre-delivery checklist isn't necessarily evidence that a service has been carried out. They are two different things. And I haven't seen sufficient evidence that persuades me the car was serviced before it was provided to Miss W.

In relation to the car keys, the advert states that the vehicle would be supplied with two keys. Miss W says that it was only supplied with one key. I have no reason to doubt what she has said. And 247 Money hasn't provided me with documentation that persuades me that the car was supplied with two keys. So, I am satisfied that on balance it is more likely than not that the car was only supplied with one key.

I also think that Miss W has suffered distress and inconvenience resulting from the problems she has had with the car. She has been put to some inconvenience in having the car inspected and repairs having to be carried out. And this was ongoing for a number of months. I think 247 Money should pay Miss W the sum of £200 to compensate her for the distress and inconvenience she has incurred as a result of the problems she has had with her car.

Putting things right

To put things right 247 Money Group Limited needs to:

- End Miss W's finance agreement with nothing further for her to pay.
- Refund the deposit/value of the part exchange that she made and pay 8% simple interest from the date of payment until the date of settlement. 247 Money Limited should provide Miss W with a breakdown as to how it has calculated any refund.
- Pay Miss W £200 for the distress and inconvenience that she has been caused.
- If 247 Money Group Limited considers that tax should be deducted from the interest element of my award, they should provide Miss W with a certificate showing how much they have taken off so she can reclaim that amount, if she is eligible to do so.

My final decision

For the reasons I've set out above, my decision is to uphold Miss W's complaint about 247 Money Group Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 7 August 2024.

Simon Dibble
Ombudsman