

## The complaint

Mrs D is unhappy that a car supplied to her under a hire purchase agreement with Advantage Finance Limited was of an unsatisfactory quality.

Mrs D has been represented during the claim and complaint process by Mr H. For ease of reference, I will refer to any comments made, or any action taken, by either Mrs D or Mr H as “Mrs D” throughout the decision.

## What happened

On 4 August 2022, Mrs D was supplied with a used car through a hire purchase agreement with Advantage. She paid an advance payment of £2,193.02 and the agreement was for £14,997.98 over 60 months; with 59 monthly payments of £391.62 and a final payment of £591.62. At the time of supply, the car was around eight years old, and had done 72,620 miles (according to the MOT record for 29 July 2022).

A week or so after being supplied with the car, Mrs D complained to the supplying dealership that she was having problems. These included that the car was vibrating while driving, there were issues with the offside front window, the rear camera seal had failed, and that the tracking was off. The dealership lubricated the window and retracked the car. However, they said they couldn’t source a replacement for the rear camera seal, and said the vibrations were normal for the car.

In May 2023 Mrs D again complained about vibrations with the car, and that the windscreen had cracked. Advantage arranged for the car to be inspected by an independent engineer. This inspection took place on 9 August 2023.

The engineer said that the cracks on the windscreen would not have been present when the car was supplied to Mrs D, as they were easily visible, and Mrs D would’ve been able to identify them when the car was supplied to her. They also said that the ongoing noise when the window was used was as a result of the window regulators not being lubricated, which was an ongoing maintenance issue. So, these faults didn’t make the car of an unsatisfactory quality when it was supplied.

The engineer also noted *“an unusual vibration from the vehicle’s drivetrain”* which may have been because of worn drivetrain parts. However, the engineer concluded that *“the vibration is quite distinct and would have been easily identifiable even to a layperson without any mechanical knowledge if present at the point of sale, leading us to the conclusion that the symptoms have developed after the point of sale and in our opinion is the direct result of age-related wear and tear and not premature wear and therefore, not the responsibility of [Advantage].”*

Based on this report, Advantage didn’t uphold Mrs D’s complaint as they considered the car was fit for purpose at the point of supply. Unhappy with this outcome, Mrs D brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that, as Mrs D had complained about the vibration within a week or so of being supplied with the car, it follows that the vibration fault identified by the independent engineer must have been present when the car was supplied to her. So, this made the car of an unsatisfactory quality when it was supplied.

As such, the investigator said that Advantage should arrange for the car to be repaired and pay her £150 compensation for the distress and inconvenience she'd been caused.

While not agreeing with the investigator's findings, Advantage said they accepted them. However, they said that Mrs D should be allowed to reject the car instead of having it repaired, that she should have her deposit returned (with statutory interest), and that they would still pay her the £150 compensation.

Mrs D wasn't happy with the alternative offer put forward by Advantage, as she wanted to keep the car and have it repaired. Advantage said they could only do this if Mrs D provided them with quotes for repair that were economical given the value of the car. While Mrs D provided Advantage with quotes for around £6,500 for repairing the car, they weren't satisfied "*these repairs will rectify the faults, as [the garage quoting] are unsure as to what the fault is.*" As such, Advantage again said that Mrs D rejecting the car was the most reasonable resolution.

Mrs D provided an email from the quoting garage saying they guaranteed the repairs would rectify the issues with the car, but Advantage were still not satisfied. They expressed their concerns that, if the repairs failed, then Mrs D would still be entitled to rejection and that they would've had to pay the repair costs and then absorb any costs relating to rejection. So, they again asked that Mrs D was allowed to reject the car.

Given the circumstances, the investigator revised their opinion, stating that rejection was reasonable. The investigator also said that Mrs D should be refunded the payments for the days when she wasn't able to use the car and wasn't provided with a courtesy car, that she should be refunded 15% of the payments she made to reflect the impaired usage she had of the car due to the constant vibration, and that Advantage should increase the compensation to £200.

Advantage didn't agree with this revised opinion as Mrs D hadn't made all the payments owing under the agreement. They also didn't agree with the increased compensation, as this was for Mrs D having to obtain repair quotes, and this was something they were unable to do. So, they thought Mrs D should be allowed to reject the car, with only the deposit being refunded, and a total of £150 compensation. Mrs D also didn't agree as she wanted the car to be repaired, not rejected. So, this matter has been passed to me to decide.

### **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. Mrs D 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, Advantage 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 Advantage can show otherwise. So, if I thought the car was faulty when Mrs D 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 Advantage to put this right.

I've seen a copy of the independent engineer's report, dated 9 August 2023. The main findings of this report are detailed above, so I don't intend to repeat them. However, it's clear from this report that there was a fault with the car relating to vibration from the drivetrain. The engineer has said that this would've been noticeable to a layperson and, as Mrs D didn't raise this issue until May 2023, the vibration couldn't have been present when the car was supplied to her.

I've also seen the correspondence between Mrs D and the supplying dealership. In an email dated 27 August 2022 (around three weeks after the car was supplied to Mrs D), the dealership confirm they've carried out some work on the car. With regards to the vibration, they also say *"we have driven the vehicle and can't find anything out of the ordinary. You will feel the road as it is a low car with 20 inch alloy wheels with low profile run flats."*

Based on this evidence, it's clear that Mrs D identified and complained about the vibration shortly after being supplied with the car. It's also clear that the independent engineer wasn't made aware of this, or the results of the dealership's investigations, otherwise they couldn't reasonably have come to the conclusions they did. As such, I don't consider the independent engineer's report entirely reasonable to rely upon. I'm satisfied there was a fault with the car when it was supplied to Mrs D which made it of an unsatisfactory quality and, as such, Advantage are responsible for this, and for putting things right.

### **Putting things right**

The main point of dispute in this matter is whether the car should be rejected or repaired. I've considered this in depth, with reference to all the evidence, as well as the provisions laid down in the CRA.

Section 24(5) of the CRA says *"a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract."* This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Advantage – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The evidence from the supplying dealership, referred to above, is clear that the dealership attempted a repair on the car in August 2022, and this included investigation into the vibration. Under section 24(5) of the CRA, this is the single chance at repair. It's also clear from the independent engineer's comments that the vibration was still present in August 2023. As such, it's reasonable for me to conclude that this single chance of repair failed.

Section 23(2) of the CRA also 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*

As the fault with the car remains, more than two years after it was supplied to Mrs D, it's also arguable that Advantage have failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mrs D should be able to reject the car.

I'm therefore satisfied that rejection of the car is a valid remedy available for me to direct given the circumstances of this case.

Mrs D would like to have the car repaired instead of allowing her to reject this. And she has provided quotes from a third-party garage for work to be done on the car, which the garage say will repair the faults. The cost of the work quoted is almost £6,500. When considering if a repair is acceptable, I've considered whether it's economical to do so. This is our standard approach and I see no valid reason why the same approach should not be considered here. In general, if the costs of repairs exceed around two-thirds of the value of a car, then I'd consider it not economical to repair.

When Mrs D was supplied with the car in 2022 it had a retail price of around £17,000. Taking into consideration that, with regards to second hand cars, the retail price can exceed the actual market value, when added to the fact that the car is now two years older and has done an additional 20,000 miles; it's reasonable for me to conclude that the market value of the car supplied to Mrs D is now substantially lower than £17,000. I also need to consider that, regardless of the assurance provided by the garage quoting for the repair, I can't be 100% satisfied that the repairs will rectify the fault with no ongoing issues – a situation that would mean a second failed repair, and a likely rejection of the car resulting from this.

So, and while I appreciate this will come as a disappointment to Mrs D, when considering everything as a whole I agree with both the investigator and Advantage that the most suitable remedy is that the car should be rejected.

I've gone on to consider the payments Mrs D has made and what, if any, of these should also be refunded along with the deposit Mrs D paid.

For the most part, Mrs D has been able to use the car while it's been in her possession. And while it was being repaired, she was also provided with a courtesy car to keep her mobile. Because of this, I think it's only fair that she pays for this usage. However, it's not disputed that there were some periods where the car was off the road and Mrs D wasn't provided with a courtesy car. Mrs D was supplied with the car on 4 August 2022, and the periods she didn't have use of the car or a courtesy car were from 15 to 21 December 2022 (7 days), on 9 August 2023, on 7 June 2024, and on 10 June 2024. This is a total of 10 days.

While I appreciate Advantage's comments about Mrs D's arrears, as I'm satisfied the car was off the road on these dates because it was of an unsatisfactory quality when it was supplied, Advantage should refund the equivalent of the number of days payments for the periods stated above *if Mrs D made payments for these periods*. For clarity, if Mrs D failed to

make a payment for the month in which a partial refund of the payments should be made, then no refund is due.

I've also considered the issues with the car, and the ongoing problems with the vibration. So, I'm also satisfied that Mrs D's usage and enjoyment of the car has been impaired. Because of this, I also think it's fair that Advantage refund some of the payments Mrs D made. And I think 15% of the payments made fairly reflects the impaired use caused by the car not being of a satisfactory quality. Again, I'd like to clarify that this is 15% of the payments Mrs D had made under the agreement, not of all payments due under the agreement.

As I said above, as Mrs D has had use of the car, it's only fair that she pays for this usage. The evidence shows that Mrs D hasn't made all the payments on time, and this resulted in an arrears balance building up. As this means that Mrs D hasn't necessarily paid for all the usage she's had of the car, Advantage are able to offset the payment refunds I've referred to above (but not the deposit refund) against any outstanding payments and it's only any balance above the arrears that needs to be refunded to Mrs D.

Finally, I think Mrs D should be compensated for the distress and inconvenience she was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended Advantage pay Mrs D an additional £200, to recognise the distress and inconvenience she's been caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Mrs D would've felt. I also think it takes into consideration that Mrs D was asked to provide her own quotes for repair (which Advantage eventually rejected) rather than Advantage arranging for this through the supplying dealership (who were acting as their agent in this matter by initially supplying the car). So, this is a payment I'm directing Advantage to make.

Therefore, Advantage should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mrs D;
- remove any adverse entries relating to this agreement from Mrs D's credit file;
- refund the deposit Mrs D paid (if any part of this deposit is made up of funds paid through a dealer contribution, Advantage is entitled to retain that proportion of the deposit);
- refund the payments Mrs D paid in line with my directions above;
- apply 8% simple yearly interest on the refunds, calculated from the date Mrs D made the payments to the date of the refund<sup>†</sup>; and
- pay Mrs D an additional £200 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If HM Revenue & Customs requires Advantage to take off tax from this interest, Advantage must give Mrs D a certificate showing how much tax they've taken off if she asks for one.

### **My final decision**

For the reasons explained, I uphold Mrs D's complaint about Advantage Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 10 December 2024.

Andrew Burford  
**Ombudsman**