

Complaint

Miss S has complained about the quality of a car that Advantage Finance Ltd (“Advantage Finance”) supplied to her through a hire-purchase agreement.

Background

Miss S appears to have raised concerns over the affordability of the agreement and whether Advantage Finance should have lent to her to begin with. However, this did not form part of Miss S’ complaint to Advantage Finance and we’ve told her that she needs to contact it about these matters in the first instance.

Therefore, this decision is concerned with matters relating to the quality of the car and I will not be offering any comment on whether or not Advantage Finance did do enough to establish whether the monthly payments for the agreement were affordable.

Miss S’ agreement

In November 2022, Advantage Finance provided Miss S with finance for a used car. The car was approaching seven and a half years old and it is my understanding that it had completed around 86,000 miles at the time of purchase.

The cash price of the vehicle was £10,000.00 and the executed agreement shows that Miss S paid a deposit of £465. Miss S applied for finance to cover the remaining amount she needed to complete the purchase. Advantage Finance accepted Miss S’ application and entered into a 60-month hire-purchase agreement with her.

The amount borrowed was £9,535.00 and the loan had an APR of 33.24%, interest, fees and total charges of £8,749.00 (comprising of interest of £8,224.00, an acceptance fee of £325 and an option to purchase fee of £200). So the balance to be repaid of £18,284.00 was due to be repaid in 59 monthly instalments of £301.40 followed by a final repayment of £510.40.

Miss S’ contact with Advantage Finance in July 2023

Advantage Finance’s notes show that Miss S contacted it by telephone in July 2023. These notes show that Miss S called to explain that the car was emitting smoke and that she thought that a new engine would be required. The car was towed to a garage. The information Miss S has provided shows that the car was serviced shortly afterwards (September 2023) and the auxiliary belt was replaced. There isn’t anything to indicate that the engine was replaced during this period. It also appears that the car was used after the service took place.

Miss S’ problems with the car in July 2024

In July 2024, the car broke down. The breakdown provider suspected an issue with the timing chain. As it was unable to get the vehicle started, the car was recovered to a garage. Miss S complained to Advantage Finance saying that the car was not of satisfactory quality

as there was corroding around the exhaust, a constant whirring noise from the engine and the car couldn't be driven.

Advantage Finance arranged for the car to be independently inspected. The car was inspected by the independent engineer on 14 August 2024. The independent engineer stated his opinion that he didn't think that any issues with the car were present at the point of sale and therefore he considered that the car was of satisfactory quality when Advantage Finance supplied it to Miss S.

Subsequent to receiving the independent report, Advantage Finance issued its final response to Miss S' complaint on 28 August 2024. Advantage Finance didn't uphold Miss S' complaint. It stated that it considered that the car was of satisfactory quality. Miss S was dissatisfied at Advantage Finance's response and referred her complaint to our service.

Miss S' complaint was reviewed by one of our investigators. She thought that the vehicle Advantage Finance had supplied Miss S with was of satisfactory quality and she didn't recommend that Miss S' complaint be upheld.

Miss S disagreed with our investigator's view and asked for her complaint to be passed to an ombudsman for a final decision. So the complaint has been passed to me to decide.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm satisfied that the main thing I need to decide in this case is whether the car supplied to Miss S was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for Advantage Finance to do to put things right.

Having carefully considered matters, I'm satisfied that the vehicle Advantage Finance supplied to Miss S was of satisfactory quality and I'm therefore not upholding Miss S' complaint. I'll explain why in a little more detail.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, Advantage Finance purchased the vehicle from the dealership Miss S visited.

Miss S then hired the vehicle from Advantage Finance and paid a monthly amount to it in return. Advantage Finance remained the legal owner of the vehicle under the agreement until Miss S' loan was repaid.

This arrangement resulted in Advantage Finance being the supplier of Miss S' vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

I appreciate that Miss S has referred to the FCA's consumer duty as part of her complaint. However, the Consumer Duty did not come into force until July 2023 and it wasn't applicable when Advantage Finance supplied this car to Miss S in November 2022.

In any event, the CRA covers hire-purchase agreements – such as Miss S' agreement with Advantage Finance. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Is there a fault with the vehicle?

Having considered the information provided I'm satisfied that there is a fault currently present on the vehicle. I say this because while there may be a dispute regarding the party responsible, nonetheless the information I've seen indicates the car did break down and as the investigator said the breakdown provider has reported that there are a number of fault codes reported as a result of a suspected issue with the timing chain.

Furthermore, the independent report commissioned by Advantage Finance makes it clear that car wouldn't start at the time of the inspection either. So I'm satisfied that there is now, at least, a fault with the vehicle which needs to be rectified before it can be driven.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied is currently present on the vehicle, meant that the car wasn't of satisfactory quality at the point of supply.

Was the vehicle that Miss S was supplied with of satisfactory quality?

It is clear that there are a number of issues Miss S is unhappy about. But this doesn't in itself mean that the car wasn't of satisfactory quality when it was initially supplied to her. I've therefore considered all of the information on the issues Miss S has highlighted and I have reached my own determination on the quality of the vehicle at the time it was supplied to her.

In doing so, I need to keep in mind that Miss S took possession of a car that was not only used, but it was seven and a half years old when it was sold and it had completed around 86,000 miles. And there are clearly different expectations regarding the expectations of quality when comparing a vehicle which has had some use, to a new car. I think it's fair to expect an older car will require repair or maintenance work sooner than a newer or less used model.

So it doesn't automatically follow that a car needing a repair, or remedial work, at some point after purchase means that it wasn't of satisfactory quality at the time of supply. As this is the case, I need to reach a conclusion as to whether the work that was carried out in 2023, and/or the further work that is now required, but as yet, has not been formally confirmed (but is suspected to be timing chain related) – to get the car operational, means that the vehicle Advantage Finance supplied to Miss S wasn't of satisfactory quality.

Miss S' issues with the car in July 2023

In the first instance, I note that Miss S has said that she contacted Advantage Finance about problems with the car long before July 2024. Having looked at the records of Miss S' contact history with Advantage Finance and the information that Miss S has supplied, I'm satisfied that Miss S did contact Advantage Finance about issues that she was having with the car in July 2023.

The notes from when Miss S contacted Advantage Finance in July 2023 indicate that she reported that the car had broken down and smoke was emitting from it. The notes go on to say that Miss S was arranging for a diagnostic check to take place, although she suspected that the engine needed replacing.

Advantage Finance says that as it did not receive an independent report stating that there were problems with the car at the point of sale and Miss S did not make a formal complaint

at this time, it did not take matters further. For reasons I'll go on to explain, I don't think that Advantage Finance's actions at this point were unreasonable.

In the first instance, I don't think that it was unreasonable for Advantage Finance to decide against commissioning an independent report at this stage, given Miss S had not made a formal complaint and the notes from the time suggest that Miss S said she would arrange for the car to be inspected by a garage of vehicle's manufacturer ("manufacturer garage"). At this point, given what Miss S had said, I think it was reasonable for Advantage Finance to wait and see what a manufacturer garage had to say.

I don't know if the car was checked or inspected by a manufacturer garage at this stage. But if it was, I've not been provided with anything which shows what any such check or inspection showed. And I've not been provided with anything that shows me that the engine was replaced at this stage either.

Notwithstanding this, Miss S has said that she has supplied other evidence which shows that the car was not of satisfactory quality in July 2023 and as a result at the time it was supplied to her. I've considered the information that Miss S has provided from around this time. The information provided shows that Miss S had a service completed on the car, by an independent non-manufacturer garage, in or around September 2023.

The invoice Miss S has provided with shows that the auxiliary belt was replaced at this time too. I don't know if it was the need for the auxiliary belt to be replaced that led to the issues Miss S had in July 2023. But even if it was, while I appreciate Miss S' strength of feeling on the matter, parts such as auxiliary belts will deteriorate over time and will eventually require replacing.

It is generally accepted that parts of this type will not last the entire lifetime of the vehicle. So I don't think that the auxiliary belt needing to be replaced after a vehicle has been used for around 90,000 miles (which was the mileage at the time the service took place) means that it wasn't durable. I can understand Miss S' frustration at remedial work being required sooner than she would have anticipated at the time she took delivery of the vehicle. I've also considered that Miss S has said that the garage she used told her that there were other issues at the time.

However, having carefully reviewed the service report that Miss S has provided from September 2023, (and given what I've already said about Miss S having to replace the auxiliary belt) I've not seen anything in the content of this report which persuades me that the car was not of satisfactory quality when Advantage Finance supplied it to Miss S in November 2022.

Miss S' issues with the car in July 2024

As I've previously explained, Miss S reported having further issues with the car in July 2024. At this point, Advantage Finance formalised Miss S' concerns into a formal complaint and arranged for the car to be inspected. I've therefore started my consideration, of whether the car breaking down in July 2024 was due to it not being of satisfactory quality when Advantage Finance supplied to Miss S, by looking at the independent report.

Having reviewed the report, I can see that as part of the inspection the independent engineer was made aware of corroding around the exhaust, a constant whirring noise and issues with the overall purpose of the car. The engineer confirmed that he when he arrived to inspect the car he was told that the battery was dead and the engine had seized.

The report then confirms that the engineer could not start the car because the battery was fully discharged. However, the engineer opened the bonnet and checked the coolant and oil levels. There was sufficient coolant in the tank however the engineer concluded that there was insufficient oil in the engine. He also thought that there wasn't anything to indicate that there was an oil leak that was major enough to explain the lack of oil in the engine.

The engineer then went on to explain his opinion that he considered it unlikely that there was an issue with the vehicle at the time the vehicle was supplied. He considered it more likely that any issue with the engine was as a result of the oil not being topped up as it should have been, while the car was in Miss S' custody.

Miss S has disputed the engineer's findings. She's said the car was only inspected for ten minutes and the car needs to be fully stripped down to be checked. Miss S has even gone as far as to allege that the independent report is fraudulent. I can understand why Miss S has questioned the adequacy of the engineer's report and his conclusions.

However, at this point, I think that it is worth me explaining that the independent engineer was commissioned with the specific purpose of establishing whether there was a fault on the vehicle. The independent engineer not only stated his experience, expertise and qualifications, on the report, but he also made it clear that he was providing this report as an independent expert and with a duty to assist the court, rather than the party (Advantage Finance) that commissioned it.

Furthermore, while Miss S has referred to information from specialists, Miss S hasn't provided an independent report of her own. All she has provided is the breakdown provider's patrol report, where the attending technician confirmed his suspicion that there was an issue with the timing chain. I'd also point out that the independent engineer's conclusion isn't necessarily incompatible with the breakdown technician's suspicions, as a lack of oil in the engine can lead to problems with the timing chain.

In reaching my conclusions, I do think that it is a little strange that the independent engineer found a complete lack of oil in the engine and no evidence of a major leak, when the car was serviced in September 2023 and that the record from the service showed that the oil was changed at this point. I note that the car had only completed around 6,000 miles since the service. So it's difficult to see how the engine would be left with no oil at all by the time of the inspection.

However, while Miss S has said that the car was out of her custody for around six months of the period between the service and the inspection. I appreciate that Miss S may not have voluntarily surrendered custody of the car. But it would be remiss of me not to consider the fact that there was a period where the car was outside of Miss S' custody and so she does not know how it was stored or how it was being driven, when considering the plausibility of the inspection report and whether the car was of satisfactory quality at the time it was supplied.

I'm also mindful that the independent engineer also relied upon the fact that the car had passed an MOT, in November 2023, while the car was in Miss S' possession. The engineer stated his opinion that the car would not have passed an MOT if there had been an issue with the engine. I've also consulted public records on the November 2023 MOT and have seen that the car initially failed an MOT earlier on the same day, as there were problems with the offside rear tyre and the nearside front windscreen wiper.

The fact that the car initially failed an MOT test before undergoing repair work and then passing a subsequent test, does support testing having taken place (for reasons I'll go on to explain later in this decision I also think this is important for other reasons). Furthermore, while advisory notices were issued, as a result of the failed test as well as the passed one,

no advisory notices were issued in relation to the engine. I'm not saying that this in itself means that the engine was in perfect condition. But it does indicate that the car was deemed to be roadworthy, in November 2023.

Since the complaint was allocated to me, the investigator asked Miss S whether she wished to provide her own inspection report. However, Miss S has confirmed that she will not be providing one at this stage. Equally, as Miss S has only referred to discussions with specialists, rather than provided her own independent report, I'm afraid that she's not provided any supporting evidence to counter the findings of the independent report, or an alternative explanation that is both plausible and persuasive and supports the argument that the car was not of satisfactory quality at the point of supply.

The car requiring repairs some 14 months (10,000 miles) after supply does not in itself mean that it wasn't of satisfactory quality. The fact that the car was acquired on finance using an FCA regulated firm that has since gone on to be subject to the Consumer Duty does not alter this. Should Miss S change her mind and wish to obtain her own independent report she's free to provide this to Advantage Finance for it to consider in the first instance.

Nonetheless, as Miss S has asked for a final decision on her complaint, I need to make a determination and bring this complaint to a conclusion. And I have to reach my determination based on the information and evidence that I do have. Furthermore, given the length of time Miss S has had the car, the mileage she has completed and Advantage Finance has provided a report from an independent expert, the onus is now on Miss S to provide her own evidence to support the fact that the car was of unsatisfactory quality when it was supplied.

Furthermore, much like the independent engineer, I've also noted that Miss S had the car for around fourteen months and it had covered around 10,000 miles by this point. I appreciate that told Miss S that she thought the engine would need replacing in July 2023. But as I've said, I've not been provided with anything to show the engine, needed to be, or was, replaced around this time. So the fact that Miss S was able to get as much use out of the car as she was able to, and before she began experiencing any engine problems, leads me to consider that any issues developed after Miss S was supplied the car.

Therefore, while I appreciate Miss S' strength of feeling on the matter and I can understand her frustration at remedial work being required sooner than she would have anticipated at the time she took delivery of the vehicle, I'm afraid, I've simply not been provided with anything persuasive to disbelieve or doubt the conclusions of the independent report. Indeed, it's fair to say that the rest of the circumstances – the MOT passes and the car being driven 10,000 miles – support the independent engineer's conclusions.

Bearing in mind the above and Miss S hasn't provided her own report I'm satisfied that any engine related issues the car may now be experiencing, are not because the car that Advantage Finance supplied to her in November 2022 was not of satisfactory quality.

What if the problem is with the timing chain?

For the sake of completeness, I have also considered the possibility that the current issues with the car are to do with the timing chain needing replacement. However, even if I were to conclude that the issues Miss S is having with the car failing to start are to do with the timing chain and are wholly unrelated to the lack of oil in the car at the time of the independent engineer's explanation, I'd still be unlikely to reach a different conclusion.

As I've explained, the components on a car aren't expected to last forever. Components will deteriorate over time and will eventually require replacing. It is generally accepted that a timing chain will not last the entire lifetime of the vehicle. I think a reasonable person would

consider that a car will have suffered some wear and tear - after seven and a half years and 86,000 miles (at the time of sale) - and that components are likely to need replacing in the time that car is subsequently with them.

I think the fact that Miss S may need to replace the timing chain, after the car having completed almost 100,000 miles isn't out of the norm. The timing chains on some cars might last longer than others. Indeed, timing chains for most vehicles typically tend to last between 80,000 and 120,000 miles. So it doesn't necessarily follow that because the timing chain on this car only lasted around 100,000 miles means that it was not durable.

Furthermore and most importantly, I don't think that a reasonable person would consider a timing chain needing replacing after a vehicle has completed close to 100,000 miles – particularly where 10,000 of those miles were completed while the customer had custody of the car – is unreasonable. So even if it the case that the timing chain on the car now needs replacing, this doesn't mean that the car wasn't of satisfactory quality at the time it was supplied to Miss S.

Miss S' concerns regarding corrosion and the car's MOT history

I've also seen what Miss S has said about corrosion around the exhaust. But I've not been provided with anything that persuades me that this is anything beyond the general wear and tear a car of such age and which as much use would reasonably be expected to have. I accept that this may have deteriorated after Miss S was supplied the car. However, this is be expected as the vehicle's age and use increased over this time.

Miss S has made a number of allegations regarding the MOT history of the vehicle. However, these allegations are predominantly based on her concerns regarding the corrosion. I don't think the fact that the MOT in November 2022 did not have any advisories in relation to corrosion, is in itself an indication of a lack of rigour in the MOT carried out.

Indeed, as I've previously explained, in November 2021 the car initially failed an MOT test, on the same day that a successful one later took place. Publicly available records show that the car failed the first MOT test because of a windscreen wiper earlier. The fact that the car failed an initial test before undergoing repair work and then passing a subsequent test, suggests that there was some rigour to the tests carried out.

Furthermore, there wasn't a registered owner change between the November 2021 MOT and the November 2022 one either. I can't see why the registered owner would be able to get some advisories removed and not others. And overall I've not been provided with any persuasive evidence that the MOT history of the vehicle is fraudulent in the way that Miss S is arguing.

Other finance related matters

I've seen what Miss S has said about paying a higher deposit to the supplying dealer. Miss S has said that she paid a deposit of £515. I accept that Miss S has demonstrated making a payment of £515 to the supplying dealer. However I don't know if this payment was solely for the deposit on the car.

Secondly, as I've explained the copy of the hire-purchase agreement, which Miss S electronically signed, shows the deposit was £465. I don't know if Miss S paid extra for other things that weren't subject to the finance, as I've not been provided with the receipt for Miss S' payment. I've only been provided with a screenshot of a transfer for £515. But given Miss S electronically signed the agreement, I can only assume that she was happy to proceed on the terms that were set out.

I'm therefore not in a position to find that Advantage Finance did anything wrong in relation to this. In any event, Miss S may find that the supplying dealer is better placed to answer her concerns in relation to this matter.

Finally, I've also seen that Miss S has said that Advantage Finance has refused to discuss entering into a payment arrangement with her. It is clear that Miss S has got into contact with Advantage Finance on a number of occasions during the course of the agreement to explain why she was unable to make payments.

When a lender becomes aware, or it ought reasonably to be aware, that a borrower is experiencing difficulty making their payments, I think that it is fair and reasonable to expect it to exercise forbearance and due consideration, in line with its regulatory obligations. There are a number of ways that a lender could exercise such forbearance and there is no one size fits all approach.

In this case, I can see that Advantage Finance has let Miss S know about placing a hold on her account, payment deferrals and her options to exit the agreement – including the possibility of voluntary terminating or voluntarily surrendering the car. So it wouldn't be fair and reasonable for me to conclude that Advantage Finance didn't take any steps to help Miss S.

I appreciate that taking any one of these options is likely to leave her Miss S with some kind of a balance to pay. I also realise that Miss S may prefer Advantage Finance to simply take back the car and write off the remaining balance on the agreement. However, I don't think that Advantage Finance failing to go as far as this, so far, means that it has failed to offer Miss S help and support, that it has treated her unfairly, or that it has failed to act in accordance with its regulatory obligations.

That said, I would remind Advantage Finance of its continuing obligation to exercise forbearance and due consideration. This is particularly as there may now be a need for a further review in light of the time that has passed and Miss S has told us her circumstances have changed, which may further impact on her ability to make payments.

I would also encourage Miss S to get in contact with and co-operate with any steps that may be needed to review what she might, if anything, be able to repay going forward. Miss S may be able to complain to us – subject to any jurisdiction concerns – should she be unhappy with Advantage Finance's actions in relation to exercising forbearance over any debt that remains to be paid.

Overall and having considered everything that Miss S has said as well as everything she has provided, I'm not persuaded that the car supplied to Miss S by Advantage Finance was not of satisfactory quality. I've also not been persuaded that Advantage Finance failed to treat her fairly and reasonably for any other reason either.

I appreciate that this is likely to be very disappointing for Miss S – particularly as she will be left in a position where she is being expected to pay for a car which she's unable to use without first getting it repaired. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Miss S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept

or reject my decision before 28 February 2025.

Jeshen Narayanan
Ombudsman