DRN-5373900

The complaint

Mr Z complains about the quality of a car supplied on finance by Advantage Finance Ltd ('AF').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

AF supplied Mr Z with a car on 17 May 2023 via a hire purchase agreement.

Mr Z is unhappy with the quality of the car. In summary, he says there have been numerous problems with it, some which started almost immediately. In particular, ongoing issues with the belt system causing loss of power and breakdowns.

Mr Z says that the car has broken down in situations which has caused he and his family trauma and he wants AF to take it back.

Our investigator did not uphold the complaint. Mr Z asked for the matter to be considered by an ombudsman for a decision.

I issued a provisional finding which said:

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

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. AF is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance 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".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they 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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from now on') says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

AF supplied Mr Z with a second-hand car that was around 10 years old and had done around 82,500 miles at the point of supply. The dealer priced it for sale at £9,995 which is notably less than what a new or newer model with less mileage would cost. In these circumstances a reasonable person would have expected the car to have suffered notable wear and tear – and that it would be more likely to require repairs and maintenance in the future than a newer, less road worn car.

However, almost ten thousand pounds is not an insignificant amount to spend on a car so there is still a reasonable expectation around quality – particularly closer to the point of supply. I would not be expecting significant issues with the car immediately after supply. However, that is what appears to have occurred here.

Mr Z says that just days after taking delivery of the car serious issues began with it losing power on a dual carriageway, accompanied by engine/drivetrain warnings. These problems have been confirmed by the dealer to be a 'shredded pulley belt' which it attempted to repair ('Repair 1') around 19 May 2023. It also refers to this on an invoice as the 'alternator belt'.

This is an older car – so the expectation on the durability of a belt will be lower. However, for the issue to have occurred a mere two days after supply – indicates to me that the car was not in a satisfactory condition at the point of supply.

However, even if AF were to argue that the failure of a consumable belt in itself is not unreasonable, later events clearly show that the issue was more than the failure of a consumable belt but a wider underlying problem with the drive belt system. I note that shortly after the initial repair the new belt then shredded causing the car to break down in a similar fashion (as confirmed by a recovery report from the consumer). The dealer has confirmed that a follow up repair was attempted around 30 May 2023 ('Repair 2') and 'our mechanic discovered an issue with the main pulley and replaced it'.

At this stage it would be very clear that the car had wider underlying problems with the drive belt system rather than a belt simply wearing out. And because of how soon this has transpired (the original issue was apparent two days after sale) I think this reinforces a finding that the car was supplied in an unsatisfactory condition (despite its age and mileage).

However, it seems that problems with the belt system continued. I note that the dealer confirms Mr Z reported an 'abnormal noise' on 12 June 2023 which was traced to a faulty 'tensioner' which the dealer replaced ('Repair 3'). Once again this points to significant underlying issues with the drive belt system and underlines a finding that the car as supplied was not of satisfactory quality in the circumstances.

I note that despite this third attempt to repair the drive system there was then a later problem which also appears to be related. It appears Mr Z broke down in similar circumstances to the past issues on 15 August 2023 (the car lost power and similar warning lights displayed). The dealer confirms that it took the car in around this time and replaced the alternator ('Repair 4'). However, Mr Z says it was visibly the belt which shredded again. And this is supported by the breakdown report which confirms that a belt needs 'immediate attention'.

It is worth noting the dealer has claimed that the car was suffering from 'accident damage' when it saw it in August 2023. However, Mr Z has explained that when the car was towed the bumper was damaged. He has sent in a picture of this (which appears to be minor

cosmetic damage to the bumper) and says the towing company accepted responsibility for getting it fixed. It seems like a credible explanation – and I am not persuaded that it is connected to the faults that the dealer repaired around that time or later on.

In summary, from Mr Z's credible testimony and the other information including job reports from the dealer and breakdown reports I consider that the car was not of satisfactory quality at the point of sale due to inherent faults impacting the drive belt system.

As I am satisfied that AF breached its contract with Mr Z to supply a car that is of satisfactory quality I turn to what is a fair remedy in the circumstances.

I note that repairs were carried out on the belt system. And it appears that the issues with it were eventually resolved. In the CRA repairs are a reasonable remedy when goods do not conform to the contract. However, after carefully considering the facts here I am persuaded that Mr Z should in fact be allowed to reject the car. I will explain why.

Denied attempts to reject the car and number of repairs

Mr Z has indicated that he asked to return the car after the initial breakdowns occurred. As this was such a short time into using the car I think this is likely the case. I expect that many people wouldn't want the car back if the belt shredded twice within the first week or two of using it. However, it appears Mr Z was convinced into accepting further repairs by the dealer. This is reinforced by an email he later sent the dealer on 15 August 2023 (after another breakdown) which says that he wanted to return the car from the start but was 'reassured that the issue had been definitively resolved and would not resurface'.

So it is arguable that Mr Z had been denied his right under the CRA to reject the car by AFs agent (the dealer in this case) within the first 30 days.

However, even if AF were to argue this were not the case, and that Mr Z initially accepted repairs over rejection I note that by the time Mr Z approached AF he was clearly very unhappy with the history of attempted repairs and wanted to reject the car. I note that Mr Z has produced an email which he wrote to the dealer on 15 August 2023 where he clearly states he wants to return the car.

Furthermore, AF's call notes show he contacted it on 16 August 2023 to explain that he was still having issues with the car and doesn't want it anymore. He later explains to it that the car is back with the dealership for repairs but has had similar issues numerous times. AF's agent says that there is 'nothing we can do if the vehicle is being repaired'. However, I don't consider that was a reasonable approach.

The CRA is very clear that after one attempt at repair a consumer has the option to exercise their final right to reject. Mr Z had numerous attempts at repair – he informed AF about it but it didn't establish the facts with the dealer and allow Mr Z his request to reject the car as it fairly should have at that stage, and in accordance with his consumer rights.

Later issues and outstanding recall

I note the drive belt issues were not the end of the issues with the car. Since then Mr Z has said he has had numerous other problems. I note that he has provided information indicating repairs were carried out from around September to November 2023 to components including the radiator, turbocharger and starter motor.

I think that it could be argued some of the later issues in particular are down to reasonable wear and tear in an older and high mileage car (also noting that Mr Z had been covering on average 800 miles a month in the car himself). However, it does appear that Mr Z has had a notable amount of issues with the car within the first six months. And in the circumstances, the sheer quantity and frequency of issues arguably in itself (despite the age and mileage of the car) shows said car was not in the condition a reasonable person would expect when supplied.

I also note the car drive belt snapping while on the dual carriageway/motorway could feasibly have caused wider damage to the engine and related components. Which has not been ruled out persuasively here. Furthermore, I also note that the MOT for the car confirms it is subject to an outstanding safety recall. And while it isn't clear what this recall is for or whether Mr Z's car suffers from issues in connection with it – I note it is still part of the overall factual matrix of this complaint about the quality of the car. And noting the substantial issues Mr Z has suffered since sale – I can't rule out this being an underlying and aggravating factor here in the problems he has encountered.

A fair remedy in the circumstances

Carefully considering all the factors I have noted above I consider it now fair and reasonable to allow Mr Z to reject the car in accordance with the final right to reject under the CRA. I now turn to fair redress.

It is important to note that my redress is on the understanding that the car is currently still in Mr Z's possession (albeit he says he is storing it at a garage) and the agreement is still active.

I note that Mr Z appears to be in arrears under the agreement since 2023 when he appears to have stopped paying for it. So once AF works out the redress due to Mr Z it will be able to deduct any arrears from this redress before paying it (noting that said arrears will first have to be re-worked on the basis of my direction below).

I also note that the dealer has already paid Mr Z £250 towards repairs he had carried out elsewhere on the starter motor on the understanding he would repay this. This doesn't appear to be in dispute. So AF will be able to deduct this amount from any redress payment due to Mr Z under my direction in order that it can reimburse the dealership as necessary.

Collect the car and end the agreement

AF should collect the car at no further cost to Mr Z and end the agreement. This won't prevent AF from charging Mr Z for damage that goes beyond reasonable wear and tear. I know he says he had the bumper damage fixed for example, but if it hasn't been done to a satisfactory standard then AF might be reasonable in charging for this. However, I don't consider it fair for AF to levy any charges on Mr Z for the mechanical state of the car considering the circumstances of this case.

I note Mr Z stopped paying for his finance agreement due to the issues with the car. Although he was obligated to continue paying for it – in the circumstances I consider that AF should fairly remove all adverse information from his credit file in respect of this agreement.

Refunds relating to the agreement

AF should refund Mr Z the £103.16 deposit he paid upfront.

Mr Z has used the car. The MOT in May 2024 shows the car had covered on average 800 miles a month up to that point. So my starting point is that he should pay his contractual rentals up until he stopped using it. Mr Z says he stopped using it in June 2023 due to ongoing issues but I think that was a typo as the evidence clearly shows he was using it beyond this point. I think he meant June 2024.

The problem is that I don't have a recent odometer reading to confirm that Mr Z has not had notable use the car since the MOT in May 2024. So based on the understanding that AF receive the car with no more than an additional 100 miles on the odometer since the last MOT reading AF should write off all monthly rentals from June 2024 (inclusive) onwards.

I also consider that even though Mr Z has been using the car he has had periods where the car was in the garage for repairs. At least some of these repairs were likely due to reasonably expected wear and tear on an older car. However, some are more clearly related to the car not being of satisfactory quality at the time of supply. Mr Z has provided a breakdown of when the car was in the garage for repairs.

In the circumstances I consider a starting point is that it is fair Mr Z is refunded for the times the car was in the garage that appear to relate to the early issues with the drive belt system. The dates Mr Z has claimed are:

19/05/2023 until 24/05/2023
30/05/2023 until 09/06/2023
12/06/2023 until 12/07/2023
15/08/2023 until 25/08/2023

However, I note Mr Z says he had a courtesy car from 12/6/2023 to 12/7/2023. So overall, I consider he should be refunded for the periods above but not including this time when he was kept mobile. As I am recommending a refund of rentals I will not be refunding alternative travel costs as the aim of my redress is not to give Mr Z free travel but compensate him for additional loss.

It also appears that Mr Z had impaired use of the car when it was cutting out/not starting even when he was driving it. And while some of the issues would naturally be down to reasonable wear and tear, I think that some of the issues would be down to the car not being of satisfactory quality at the time of supply. This isn't a science but I consider AF should fairly refund Mr Z 5% of all monthly rentals from the start of the agreement to May 2024 (after which he says he stopped using it).

Refunds for other financial loss

Mr Z has claimed for certain costs to be reimbursed which he says are a consequence of the AF supplying him goods which are not of satisfactory quality. However, he says he can't show he paid for certain things because he no longer has access to his bank account he paid these from. But I think it fair (especially as some of the invoices are lacking detail and information as to whether they were settled) that if AF requires it Mr Z should request historic

statements to show he incurred certain expenses which I am directing it to refund. And if he can't prove it then AF will not be obliged to pay these.

I think that Mr Z shouldn't be liable for Repair 1, 2, 3, 4 as discussed above as these are more clearly related to the inherent unsatisfactory quality of the car at the time of sale. From what I understand Mr Z did not pay for these – the dealer did. So there is nothing to reimburse in that respect.

Mr Z says that he had other later repairs carried out on the car and provided some invoices including:

Starter motor replacement £415
Radiator repair £404
Oil sensor replacement £260
Turbocharger replacement £860

Mr Z has also claimed that each item involved a £27.25 diagnostic.

I think these other repairs/diagnostics are less clearly related to the car being of unsatisfactory quality under the CRA. In deciding what is fair I note that Mr Z would also expect to pay for some repairs in the first year of ownership when he buys a car of this age and mileage. I also note he has used the car and had the benefit of some of these maintenance costs. However, I think there are some question marks over some of these repairs in respect of the car being of satisfactory quality in all the circumstances (as I have discussed above) – and as Mr Z stopped using the car (and will be returning it) he also arguably will not have had the full benefit of these repairs. So, while this isn't a science I consider Mr Z should fairly get back 50% of the cost of each repair/associated diagnostic.

Mr Z has also claimed that when the car broke down he incurred towing costs on four occasions of £200. I think if he can evidence that he has incurred towing costs (I don't clearly see the bills/proof of payment for these) then he should get costs incurred up to 15 August 2023 (when the bulk of the issues with the drive belt system appeared to be occurring).

I also note Mr Z says the police had to tow him off the motorway and charged him for this and storage of the car. From what I can see AF received a notification of this on 31/5/23 which is around the time the car broke down for issues related to the drive belt as evidenced by a breakdown report from 30/5/23 and the subsequent repair log. So it seems that Mr Z should fairly be reimbursed for this cost as it likely stems from the car not being of satisfactory quality at the point of supply. Mr Z has submitted a credible receipt for this which shows he paid £218 in cash.

Mr Z has also claimed that he lost his job due to the issues with the car – namely it caused him not to arrive on time due to mechanical breakdowns. However, while I am sorry to hear about his loss of employment I do not consider it fair for AF to compensate him for this. I say this because:

- *There is not persuasive evidence that the issues with the car caused Mr Z to lose his job – the letter of dismissal is dated 6 July 2023 and refers to repeated warnings for incidents from 'the past 6 months'. I note that Mr Z only obtained the car about a month and a half before the date of this letter.*
- *I do not consider that certain issues in the letter of dismissal (such as falling asleep during work hours) can be reasonably be attributed to the issues with the car in any event.*

- *Even if I were to accept the issues with the car did cause the loss of employment (which I do not) I consider there to be issues around the reasonable foreseeability of such loss and the potential lack of mitigation from Mr Z in any event.*

Distress and Inconvenience

Mr Z has described in detail how the issues with the car have impacted him and his family. He has provided witness statements to attest to the distress caused particularly when it broke down during journeys on the motorway. I am very sorry to hear about this – and how distressing and frightening it was for all concerned. However, it is important to note that I am unable to award compensation for the impact on Mr Z's family members. I can only make an award for the distress and inconvenience caused to Mr Z.

Mr Z has clearly been upset by everything he has had to deal with about the car. And really he should have been able to reject it sooner – when he was having the initial problems with it. I think AF could have been more helpful in taking action and arranging a possible inspection when Mr Z first contacted it about the multiple issues he had already with the car. I think as a result of this he has had to suffer distress and inconvenience for longer than necessary.

Mr Z has detailed how matters have impacted his mental health in particular and provided medical evidence about his mental health conditions. While I cannot fairly say the car is the sole contributor to the issues Mr Z has evidenced he clearly has a vulnerability in this area which has not been helped by the ongoing concern about the car, and the lack of support from AF when he approached it.

Awarding distress and inconvenience is not a science. Guidance on such awards is available on our website – which I have considered. Here Mr Z's credible testimony about the anxiety and distress caused to him persuades me that the issues with the car have caused considerable distress, upset and worry over a notable period of time. And I consider that AF's actions could have mitigated this. Therefore, I consider an award of £400 to be appropriate here.

AF should carry out my direction as stated below – noting the comments about redress in the body of my decision. In particular that AF is able to offset any refund against outstanding arrears for rentals due to it prior to June 2024. And to deduct the £250 Mr Z has already been paid from the dealer. AF is also, if it so wishes, able to request proof of payment (in the form of bank/card statements) for the repair and private recovery costs which Mr Z is claiming.

My provisional decision

I uphold this complaint and direct Advantage Finance Limited to:

- *Collect the car at no cost to Mr Z;*
- *end the finance agreement ensuring that no adverse footprint remains on Mr Z's credit file from it;*
- *refund Mr Z's deposit;*
- *refund or write off as appropriate monthly rentals from June 2024 (inclusive);*
- *refund Mr Z pro-rated rentals for the date periods as follows:*
    - *19/05/2023 until 24/05/2023*
    - *30/05/2023 until 09/06/2023*
    - *15/08/2023 until 25/08/2023;*
- *refund Mr Z 5% of all monthly rentals paid up to and including May 2024;*

- *refund Mr Z 50% of the other repair costs I have outlined above;*
- *refund Mr Z the recovery costs referred to above which were incurred up until 15 August 2023;*
- *refund Mr Z the £218 he paid to the police;*
- *pay Mr Z 8% yearly simple interest on all refunds from date of payment until the date of settlement; and*
- *pay Mr Z £400 for his distress and inconvenience.*

If AF considers it should deduct tax from the interest element of my award it should provide Mr Z with a certificate of tax deduction, so he may, if appropriate, claim a refund.

AF said it did not consider the awarded redress fair and says, in summary:

- Mr Z has covered notable mileage in the car and a minimum of 9,489 miles since inception;
- he has only made 4 payments to the agreement and made his first payment late;
- it will require invoices and proof of payment for all charges including the police charge.

Mr Z accepted the 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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

AF makes the point that Mr Z has had notable use of the car. I have already acknowledged this in my provisional findings as follows:

Mr Z has used the car. The MOT in May 2024 shows the car had covered on average 800 miles a month up to that point. So my starting point is that he should pay his contractual rentals up until he stopped using it.

I don't think I need to revisit this – I have explained that Mr Z should pay for the months he used the car and factored this into my redress. But I don't think this monthly usage should be based on 'standard usage deductions' that AF suggests but the monthly rentals agreed in the hire purchase agreement.

AF makes the point that Mr Z has made few and late payments to the agreement. I have already noted in my provisional findings the following:

once AF works out the redress due to Mr Z it will be able to deduct any arrears from this redress before paying it (noting that said arrears will first have to be re-worked on the basis of my direction below).

And then reiterated:

AF is able to offset any refund against outstanding arrears for rentals due to it prior to June 2024.

I hope on reflection AF can see that I am not suggesting Mr Z have 'free usage' of the car as it has implicated. For clarity – AF is able to work out what it owes Mr Z under my direction then before payment to Mr Z deduct the arrears it considers outstanding for rentals due prior to June 2024 when Mr Z says he stopped using the car. I highlight the following from my provisional decision too:

The problem is that I don't have a recent odometer reading to confirm that Mr Z has not had notable use the car since the MOT in May 2024. So based on the understanding that AF receive the car with no more than an additional 100 miles on the odometer since the last MOT reading AF should write off all monthly rentals from June 2024 (inclusive) onwards.

For clarity this means that in the event Mr Z has used the car more than 100 miles since the MOT reading then AF can charge him for rentals up to the point he returns the car.

I note AF has said it requires invoices/proof of payment for reimbursement of costs as directed in my provisional findings. I don't consider this unreasonable – however, the police charge was paid via cash (as clearly detailed on the invoice for this) – so I do not expect Mr Z to produce a corroborating bank statement to show he paid for this.

Putting things right

I direct AF to put things right as set out below.

My final decision

I uphold this complaint and direct Advantage Finance Limited to:

- Collect the car at no cost to Mr Z;
- end the finance agreement ensuring that no adverse footprint remains on Mr Z's credit file from it;
- refund Mr Z's deposit;
- refund or write off as appropriate monthly rentals from June 2024 (inclusive);
- refund Mr Z pro-rated rentals for the date periods as follows:
    - 19/05/2023 until 24/05/2023
    - 30/05/2023 until 09/06/2023
    - 15/08/2023 until 25/08/2023;
- refund Mr Z 5% of all monthly rentals paid up to and including May 2024;
- refund Mr Z 50% of the other repair costs I have outlined above;
- refund Mr Z the recovery costs referred to above which were incurred up until 15 August 2023;
- refund Mr Z the £218 he paid to the police;
- pay Mr Z 8% yearly simple interest on all refunds from date of payment until the date of settlement; and
- pay Mr Z £400 for his distress and inconvenience.

If AF considers it should deduct tax from the interest element of my award it should provide Mr Z with a certificate of tax deduction, so he may, if appropriate, claim a refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 2 April 2025.

Mark Lancod
Ombudsman