

The complaint

Mr C's complaint relates to problems he had with a car supplied to him by Ferrari Financial Services GmbH under a hire-purchase agreement. He has sold the car at a loss and is unhappy that Ferrari Financial Services has declined to reimburse him.

What happened

In September 2022 Mr C entered into a hire-purchase agreement with Ferrari Financial Services for the supply of a car. He describes that after taking delivery of the car he had ongoing problems with brake noise that he tried to resolve with the dealership ("D") over several months. As I understand it, D was initially unable to replicate the noise, and on subsequent occasions undertook repairs and other remedial work to the car to address the situation.

Ultimately, these were to no avail and Mr C lost faith in the car. In June 2023 he entered into an agreement with D under which it bought back the car from him at a significantly lower price. Before doing so Mr C says he sought to raise the matter with Ferrari Financial Services. However, he says it didn't respond to him and he felt he had little option other than to accept D's proposal, as there was a risk of D renegotiating the deal and in light of his concerns over the car's safety.

Ferrari Financial Services issued its response to Mr C's complaint on 3 October 2023. It says D told it that the remedial work carried out was as a gesture of goodwill because D had been unable to find or replicate any fault with the brakes. In addition, Ferrari Financial Services noted that while Mr C had contacted it on 21 June 2023 to discuss his concerns, he confirmed the following day that he'd completed the car sale to D. Ferrari Financial Services didn't think it had any responsibility to Mr C to make good any loss he'd suffered in that deal.

Mr C remained dissatisfied with the position and referred his complaint to us. Our investigator wasn't persuaded that the complaint should be upheld. She noted the relevant provisions of the Consumer Rights Act 2015 ("CRA"). But she didn't think there was sufficient evidence to indicate Mr C had demonstrated the car was not of satisfactory quality, such that Ferrari Financial Services would be liable to him.

Further, the investigator wasn't persuaded that there had been a delay on Ferrari Financial Services' part in responding to Mr C's concerns. She concluded that it hadn't treated him unfairly, notwithstanding the pressure Mr C said he was under to agree to D's proposal.

Mr C hasn't accepted our investigator's conclusions. He felt the investigator hadn't taken all the relevant evidence into account, including the pitted brake pads that had been replaced. The matter has been passed to me for review and determination.

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 appreciate I'm going to disappoint Mr C again when I say that I'm not upholding his complaint. I don't doubt his sincerity in bringing it, and I acknowledge that D did undertake work on the car, including replacing the pitted brake pads. Mr C's complaint correspondence also alludes to several other aspects of his interactions with D that left him dissatisfied.

But I have to be clear that I am not dealing with a complaint about D. There's nothing in the arrangements between the parties that suggests Ferrari Financial Services bears any responsibility for D's actions, other than those responsibilities it has under section 56 of the Consumer Credit Act 1974 ("CCA") for representations made by D prior to Mr C entering into the hire-purchase agreement. That includes the steps D took in terms of remedial work on the car, and the negotiations about the car's resale to D.

There's no indication that Ferrari Financial Services instructed D to repair the car – or was even aware of any issues with it – until Mr C contacted it on 21 June 2023. By that point, he was in an advanced state of negotiation with D about the car sale, and had concluded it by the time Ferrari Financial Services responded to him the following day. And while I understand Mr C's reasons for selling the car, I find no proper basis on which I can fairly hold Ferrari Financial Services liable to reimburse him for any loss arising from his decision to enter into the resale agreement with D.

As the supplier of the car, Ferrari Financial Services does have obligations that arise primarily from the provisions in the CRA. As our investigator set out, one of those obligations – and the key one in the context of this complaint – is that the effect of the CRA is to incorporate into the hire-purchase agreement a term that the car will be of satisfactory quality. According to the CRA explanatory notes, *"the test of whether or not the quality of the goods is satisfactory is determined by what a reasonable person would consider satisfactory for the goods in question, taking into consideration all relevant circumstances including any description, the price and any public statements by the trader or producer or their representatives, such as statements made in advertisements or on the labels of goods."*

The amount Mr C paid for the car was significant, and perhaps suggests a higher expectation than might be reasonable for a car at the lower end of the market. But assessment of quality remains an objective test. It isn't sufficient that a customer is dissatisfied with a car. Under the CRA, the quality of goods includes their state and condition and includes aspects such as appearance and finish, freedom from minor defects, safety and durability.

Here, it's not in dispute that D replaced pitted brake pads, or that it undertook other remedial work on the car to address the concerns Mr C had expressed. It doesn't necessarily follow that the brake pads – or other aspects of the car – were for example defective or unsafe. Nor indeed, that this was linked to the root cause of Mr C's dissatisfaction, which was the brake noise. He does say this problem persisted even after the brake pads were replaced. I'm aware that in June 2023 D also replaced the brake discs, which Mr C says also failed to address the brake noise.

Be that as it may, it is now not possible for me to ascertain with any degree of certainty what the underlying cause of any brake noise was, and in turn whether that suggests a defect or a safety issue that might point to the car failing to meet the test of satisfactory quality. I can also see that Ferrari Financial Services might be able to defend such a claim, or liability for it, by pointing to the CRA provisions that permit it to attempt a repair before Mr C might be entitled to exercise a right of rejection.

Although Mr C sought to have D (and another dealership) attempt repair, I'm conscious that this wouldn't necessarily amount to an attempt by or on behalf of Ferrari Financial Services,

and that Mr C's resale deal with D then prevented it from being able to take such action. Overall, while I'm of course sympathetic to the loss Mr C has incurred, I'm not persuaded I can fairly require Ferrari Financial Services to make good that loss.

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 Mr C to accept or reject my decision before 23 May 2024.

Niall Taylor
Ombudsman