

The complaint

Mr T complains that a car acquired with finance from First Response Finance Ltd (FR) wasn't of satisfactory quality.

What happened

In February 2022 Mr T was supplied with a car and entered into a hire purchase agreement with FR. At the point of supply the car was around 7 years old and had covered around 118,450 miles.

In or around February 2023 the car broke down, Mr T reported this to FR and they advised him to obtain a diagnostic report.

In March 2023 Mr T took the car to a garage who diagnosed issues with the ECU and other components in the engine.

FR contacted the garage to obtain further information. The garage said there had been an engine manipulation/override, but it couldn't confirm when this had been done or whether any of the current issues with the car would've been present at the point of supply.

Based on the diagnostic report and the information provided by the garage, FR didn't uphold Mr T's complaint.

Mr T remained unhappy and brought his complaint to this service.

Our investigator didn't uphold the complaint. He said there wasn't enough evidence to show that the fault with the car was present or developing at the point of supply, or that there had been a misrepresentation about the car at the point of supply.

Mr T didn't agree. He said he wouldn't have purchased the car if he'd known there had been an engine manipulation.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of goods includes their general state and condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr T was around 7 years old and had covered around 118,450 miles. So it's reasonable to expect that the car would already have a degree of wear and tear and that it would require repairs and maintenance sooner than a brand new car.

Under the Consumer Rights Act 2015, where a fault occurs with a car in the first 6 months of the point of supply, it's assumed that the fault was present at the point of supply and it's generally up to the business to put things right.

Where a fault occurs outside of the first 6 months of the point of supply, the burden of proof is reversed and it's up to the consumer to show that the fault was present or developing at the point of supply.

I've reviewed the available evidence about the issues which Mr T experienced with the car. Based on what I've seen, I'm satisfied that the car had a fault. I say this because the report provided by the garage states that there is fuel in the engine wiring loom due to the fuel temperature sensor failing and contaminating the ECU and other components in the engine bay. The report also states that the swirl flaps are worn in the inlet manifold.

I've gone on to consider whether the car was of satisfactory quality when it was supplied.

As I've already said, where a fault occurs outside of the first 6 months of the point of supply, it's up to Mr T to show that the fault was present or developing at the point of supply.

The diagnostic report from the garage doesn't give any indication of whether the fault was likely to have been present or developing at the point of supply. And when FR asked the garage to comment on this, the garage said it wasn't able to say whether the faults would've been present at the point of supply.

Mr T got the car in February 2022. By the time the fault was diagnosed, he'd driven the car for a year and had covered around 6000 miles. If there had been a fault with the car at the point of supply, I think it's likely that Mr T would've experienced issues with the car much sooner than he did. Taking into account the time elapsed and the mileage covered before the fault occurred, I don't think it's likely that the faults were present at the point of supply.

The legislation places the burden of proof on Mr T in these circumstances. He needs to provide evidence to show that the faults with the car were present or developing at the point of supply. I haven't seen any evidence which suggests that the faults were present at the point of supply. So I'm unable to say that the car wasn't of satisfactory quality at the point of supply.

Mr T has said that he wouldn't have purchased the car if he'd known that there had been an engine manipulation.

There's no dispute that there's been an engine manipulation. This is evidenced by the report from the garage. However, the report doesn't say when the engine manipulation was carried out, nor does it link the engine manipulation to the current faults with the car.

Mr T has said that he hasn't done anything to the engine. He's asserted that the engine manipulation had already taken place at the point when he acquired the car.

I don't have any evidence to say when the engine manipulation was carried out. I've considered whether there's been a misrepresentation about the car here. But I'm not persuaded that there has been. I'll explain why.

A misrepresentation is an untrue statement of fact which induces a consumer to enter into a contract. Here, there's no evidence that an untrue statement was made to Mr T. The supplying dealer didn't say to Mr T that there hadn't been an engine manipulation. Even if the supplying dealer had said this, there's no evidence that the statement induced Mr T to enter into the agreement.

Taking all the available information into account, I'm not persuaded that there's enough evidence to say that there's been a misrepresentation.

For the reasons I've given, I'm unable to uphold the complaint.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 29 November 2023.

Emma Davy
Ombudsman