

The complaint

Ms E complains about the quality of a car she acquired through a hire purchase agreement financed by Advantage Finance Limited (Advantage) and that the car was misrepresented to her.

What happened

In August 2021 Ms E acquired a used car through a hire purchase agreement with Advantage.

Ms E said she experienced problems with the car soon after acquiring it and had been receiving charges as the car wasn't Ultra Low Emission Zone (ULEZ) compliant.

Ms E complained to Advantage in August 2022 about the faults and that ULEZ information hadn't been provided before she acquired the vehicle. Ms E said she wanted to return the vehicle as she couldn't afford it.

Advantage sent Ms E their final response to her complaint in August 2022. They said Ms E needed to check the car met her needs, and there was no obligation to tell her about ULEZ requirements before she bought the car. They said they hadn't received any evidence of the faults, but if Ms E were to provide this, they'd consider it, and they gave her options to exit the agreement early.

Unhappy with this, Ms E brought her complaint to this service for investigation. She said she'd had to pay to fix the car herself and should have been told about ULEZ requirements before she entered the agreement. Ms E was also unhappy with the figures provided in respect of early settlement, but these were resolved, and Ms E decided to voluntarily terminate the agreement.

Our investigator gave his view that the invoices Ms E had provided for work she'd had done were dated around a year after she acquired the car and appeared to relate to general wear and tear of the vehicle. So, he thought it was of satisfactory quality when supplied and didn't ask Advantage to do anything further.

Our investigator said there was no obligation for the dealer or Advantage to inform Ms E about ULEZ or the status of the car unless she specifically asked for it, and he was satisfied that she hadn't done so. So, he didn't think the car had been misrepresented to Ms E.

Ms E didn't agree. She said she'd only ever driven petrol cars and had no knowledge of ULEZ, and someone should've told her about this. She said the repairs she'd had to complete weren't general maintenance. Ms E asked that Advantage honour an offer they'd made to write off the balance following voluntary termination of the agreement.

Our investigator asked Advantage if they'd honour this offer, but they confirmed it had been made as a gesture of goodwill and had now been withdrawn. Our investigator didn't ask them to do anything more.

As an agreement can't be reached, the case has been passed to me for a 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.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Oodle as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant 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"

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £6,000. It was nine years old and had travelled around 103,000 miles at the time of supply.

When a person acquires a used car like Ms E it's reasonable to say that the expectation of quality is lower than that of a new or younger/lower mileage second-hand car. The price for the vehicle is lower, and this is reflective of the fact that the car is more road worn. The chance of encountering an issue sooner, is higher.

I've seen evidence that Ms E had work completed on the car in December 2021 for a bulb, June 2022 for replacement tyres, September 2022 for the diesel particulate filter sensor and regeneration and a turbo pipe. Ms E has also said that she had to replace an air mat sensor early on in the agreement.

I've considered the repairs that Ms E has carried out to the vehicle, and they all relate to parts that I think a reasonable person would expect to be subject to wear over time and may need replacing or repairing at some point.

I think, that at nine years old and having covered around 103,000 miles, Ms E's car was around the age when a reasonable person might expect that some wear related, or even relatively serious repairs may be needed. As a result, I find that the car was of satisfactory quality when it was supplied to Ms E, and Advantage aren't responsible for the cost of the repairs.

Ms E has said that she wasn't aware of ULEZ requirements at the time she acquired the car, having only had petrol cars in the past, and she should have been informed of this.

In order to say that the car was misrepresented to Ms E, I'd need to be satisfied that there was a false statement of fact, and that this false statement of fact induced Ms E into entering an agreement that she wouldn't otherwise have entered.

Ms E has admitted that she didn't know anything about ULEZ requirements, and so I'm satisfied that she didn't ask the dealership about this before acquiring the car. I haven't seen any evidence that ULEZ information was provided on the advert for the vehicle, and so I'm satisfied that Ms E wasn't provided with false information about the ULEZ status of the car before she acquired it.

A misrepresentation can also occur through omission of facts. So, I've thought about whether Advantage were obliged to give Ms E information about the ULEZ status of the car, and I don't think they were. ULEZ information is publicly available and could've been checked by Ms E if it was important to her. The car being non ULEZ compliant doesn't prevent Ms E from driving in a ULEZ, it just means that she faces a charge, and I'm satisfied that it was Ms E's responsibility to check that the car was suitable for her, and that Advantage had no obligation to tell Ms E about the ULEZ status of the vehicle.

So, it follows that I'm satisfied that no false statement of fact was made, and the car was not misrepresented to Ms E.

Ms E has asked Advantage to honour an offer they previously made to reduce the balance she owes following voluntary termination of the agreement. Advantage have told his service that the offer is no longer available.

I'm not asking Advantage to do anything more in respect of Ms E's complaint, so, whilst I appreciate this will come as a disappointment to Ms E, I won't be directing Advantage to reinstate this offer.

If there is an outstanding balance remaining to be paid by Ms E I would remind Advantage of their responsibility to treat Ms E with forbearance and due consideration if she is experiencing financial difficulty.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 2 August 2023.

Zoe Merriman
Ombudsman