

The complaint

Mr J complains that a car he acquired which was financed by a hire purchase agreement with JBR Capital Limited wasn't of satisfactory quality.

What happened

In March 2022, Mr J entered into a hire purchase agreement with JBR Capital Limited ("JBR") for a car. The car was six years old when Mr J acquired it, had a cash price of £310,000 and had covered around 3,500 miles. Mr J says there were a number of faults identified with the car, but it was agreed the dealership would fix those before he took possession of it.

Mr J says he booked the car in for a full health and mileage check at a specialist garage on 17 March 2022, but this was cancelled because the battery/command display wasn't turning on. Mr J says that once these faults were fixed, further faults were identified, and the dealership from where he acquired the car agreed to fix them.

The car was then inspected by a third-party garage on 4 May 2022 with the following issues identified:

- Front shock absorbers were leaking and needed replacing
- Air conditioning needed servicing
- Owner manual wasn't found in the car and tool kit was missing
- Intermittent faults logged for the exhaust temperature sensors, and replacement of all sensors advised
- New wipers were needed
- Top-up oil was missing, and fuel filler cap strap was broken
- Near side right wheel arch trim was damaged and needed replacing
- All four tyres showed signs of aging and cracking and needed replacing

The third-party quoted just over £32,000 for all the above work to be carried out.

Mr J complained to JBR as he was unhappy with the quality of the car when he acquired it and that it still required repairs, which he asked JBR to arrange and pay for. Mr J also asked JBR to reimburse him with extra travel costs he'd incurred when he hadn't been able to use the car. JBR agreed to refund the travel costs and to pay Mr J £150 for distress and inconvenience. However, they said they were unable to conclude their investigation because Mr J had authorised a third party to settle the hire purchase agreement, and the third party had taken on the responsibility for the faults and repairs as a result.

Mr J didn't agree and referred his complaint to us. Our investigator recommended that it be upheld. She said she was satisfied the car was faulty when supplied and there were faults that still needed to be repaired. She also said it wouldn't be reasonable to expect Mr J to experience these issues so soon after the supply of the car bearing in mind this was a luxury car that came with a high price.

Our investigator felt the car wasn't of satisfactory quality and recommended that JBR cover the repair costs identified by the third-party garage or instruct a specialist to complete the repairs. And she recommended that JBR pay Mr J £300 for distress and inconvenience.

Since then, Mr J has arranged to have the car repaired and has sold it. He has recently clarified that he would like the repairs costs refunded along with the extra travel costs that JBR agreed to refund. Mr J also asked for a refund of an inspection report carried out and for two monthly repayments made to JBR to be refunded for the time he wasn't able to use the car. He hasn't asked for any further costs to be refunded.

JBR doesn't agree they are liable for any costs other than the extra travel costs they originally agreed to refund. They've made several points to support their position, namely:

- Mr J agreed to purchase an extended warranty which covered repairs to the shock absorbers, as part of the deal to acquire the car from the dealership.
- Mr J arranged a 'sale and return' agreement with a third-party after he'd settled the finance agreement and set the price of the car for £70,000 above the cash price agreed when he originally acquired it. As such, they don't agree the car was faulty, or that Mr J made a loss as the third-party wouldn't have agreed to buy the car if it was in the condition as Mr J had described.
- The car passed its MOT in July 2022 with no advisories listed for shock absorbers.
- The car wasn't supplied with an owner's handbook, tool kit or top up oil because these weren't items that were always available with second-hand cars. And Mr J didn't make anyone aware of the importance of these in deciding whether he wanted to go ahead with the deal.

I issued my provisional decision on 23 October 2023, in which I said the following and which forms part of my final decision:

'It's clear the position on this complaint has changed since it was originally brought to us by Mr J. He has sold the car and so no longer requires it to be repaired.'

I will though set out the key considerations involved as regards liability just so it is clear for all parties.

This complaint is about a regulated hire purchase agreement. We can consider complaints against the supplier – JBR - about the quality of goods under this type of arrangement.

When considering what's fair and reasonable, I take into account relevant law. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. This says that when Mr J got the car, the supplier had a responsibility to make sure it was of 'satisfactory quality'. Satisfactory quality is what a 'reasonable person' would expect – taking into account things like the car's age, price, mileage, description and other relevant factors.

It's important to note in this case that the car Mr J acquired was from a premium brand and cost £310,000. I'm satisfied this means a 'reasonable person' would have very high expectations for the quality of the car. I think they would expect it to be in very good condition and be free from even minor defects.

JBR said the third-party who settled the hire purchase agreement on Mr J's behalf took on the liability for the quality of the car and any required repairs at that point. I don't though agree. As I've set out above, the liability for the quality of the car rested with the supplier at

the time Mr J acquired it, namely JBR. I've not seen any evidence that the third-party agreed to settle the agreement on proviso that they took on that liability, nor have I seen that Mr J arranged the settlement on that basis.

So, my first consideration is whether or not the car was of unsatisfactory quality when it was supplied. What then results from that will be determined by me on a fair and reasonable basis.

Having considered the above points around expectations of the car, I find the car wasn't of satisfactory quality when it was supplied. I've seen a copy of the report I referred to in the 'what happened' section of this decision, and the faults that were identified. There were what I consider to be serious faults with the car's shock absorbers and the exhaust temperature sensors. I don't think a 'reasonable person' would expect such serious faults to be present in a car of such prestige, that had covered relatively low mileage and that had such a high cash price attached. I also think it wouldn't be reasonable to expect the fuel strap to be broken, the wipers to need replacing and the arch trim to be damaged.

I understand the exhaust temperature sensors were fixed shortly after the report was commissioned. Mr J maintains though that the shock absorbers weren't fixed until recently when he arranged to sell the car.

JBR feels the shock absorbers were either repaired at no cost to Mr J or that he hasn't shown he's suffered a loss because of this. And they've said Mr J specifically bought an extended warranty which covered repairs to shock absorbers.

Mr J has maintained throughout this complaint that he didn't purchase a warranty that would cover repairs to the shock absorbers. I've not seen anything persuasive to the contrary. In fact, Mr J has recently sent us a copy of an invoice for works carried out by a third-party garage to the car in May 2023 (which I can send to JBR if they wish to see it). This set out the work as follows:

- Carry out replacement of both front shock absorbers due to them heavily leaking - £18,265.25*
- Aircon gas removal and re-gassing - £120*
- Replace fuel cap due to tie being broken - £245*
- Replace front wipers - £55*
- Replace broken arch liner on near side right - £422*

Mr J has sent me evidence that he paid for this work to be completed. To my mind, it wouldn't have made much sense for Mr J to have purchased an extended warranty to cover repairs to the shock absorbers only to then pay out to have those repairs completed. I've also seen that the work carried out recently was to the parts of the car that the report from May 2022 also identified as needing to be repaired. Although JBR has mentioned that Mr J advertised the car as being well above its purchase price at some point after he acquired it, that hasn't been borne out with compelling evidence and is based solely from what I can see on comments made by the dealership from where Mr J acquired the car.

There is much more compelling evidence that faults identified very shortly after Mr J acquired the car were still there and needed repairing.

It seems to me that the faults that were identified shortly after Mr J acquired the car were still present in May 2023. I've already set out above that it wouldn't be reasonable for someone to expect these faults to occur so soon after acquiring the car, and that, in my view, meant the car wasn't of satisfactory quality. I think therefore it would be fair and reasonable for JBR to reimburse Mr J with the cost of the repairs carried out in May 2023. That will include the

cost to service the air-conditioning which I think arguably might have been something that Mr J could have been expected to pay bearing in mind that's a fairly standard issue expected with most cars. However, Mr J has said he doesn't want any storage costs or transportation costs in taking the car to be repaired refunded, in an attempt to resolve this dispute. I think an additional refund for the air-conditioning wouldn't be unreasonable in view of this.

I also think that JBR should pay Mr J for the taxi costs he incurred, which they already agreed to pay. And that they should refund Mr J the cost of the inspection report from March 2022 that initially identified all of the issues with the car, and to pay interest on that amount. It wouldn't be fair for Mr J to pay for a report that showed faults that, in my view, weren't his liability to repair.

I note Mr J would like two monthly payments refunded to him when he was unable to use the car. I can't though be sure that Mr J wasn't able to use the car during that period. I say this noting that Mr J mentioned to us in July 2022 that the car's mileage was just over 4,500 compared to the mileage being around 3,500 when it was acquired a few months prior. So, at this point, I don't intend to ask JBR to refund this. I do though think this matter has caused Mr J distress and inconvenience. While JBR offered him £150 for this, this dispute has continued for some time after that offer which I think has caused Mr J further inconvenience. I think it fair that JBR pays a total of £300 for this.

My provisional decision

For the reasons set out above, I uphold this complaint. JBR Capital Limited should:

- Refund Mr J £22,928.70 for the cost of repairs to the car;*
- Refund Mr J £799 for the inspection report carried out on 30 March 2022. Interest of 8% simple per annum should be added from that date to the date of settlement;*
- Refund Mr J his taxi costs of £72.78, if they haven't already done so; and*
- Pay Mr J £300 for the distress and inconvenience he's been caused".*

I invited both parties to provide any further comments or evidence for me to consider.

Mr J replied saying he was happy with my provisional decision and had nothing further to add.

JBR asked for a copy of the invoice from the third-party garage from May 2023 which we provided to them. They subsequently replied to say they didn't agree with my provisional decision.

JBR said it was important to note that the car was used and had covered 3,594 miles at the time Mr J acquired it and so it wasn't reasonable for him to expect it be in impeccable condition. They also sent a copy of an e-mail from a third-party which said that shock absorbers were a covered item under the terms of the warranty on the vehicle at the time in question.

JBR also said they were concerned about the plausibility of what Mr J has said to us about his complaint and mentioned there was no proof that work shown in the third-party invoice from May 2023 had been completed. They said there was a six-to-nine-month lead time for shock absorbers so were curious to know how Mr J and the garage had sourced these. And they didn't know why Mr J would authorise a non-franchised dealer to replace parts on the vehicle when he had been insistent that the manufacturer provide him with a warranty.

JBR also mentioned that Mr J decided to sell the vehicle while they were considering arranging an independent inspection.

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.

I take JBR's point about the vehicle being used. However, bearing in mind the price and the fact it was a luxury brand, I still think a reasonable person would have fairly high expectations for it. I certainly don't think it would be reasonable to expect faults with the shock absorbers and the exhaust temperature sensors to be apparent so soon after acquisition.

It would make little sense for Mr J to have paid for the shock absorbers to be replaced if they didn't need replacing and I've seen credible evidence that the faults were there in the form of the invoice from May 2023. I think it unlikely that further, unrelated faults with the shock absorbers would have appeared before the invoice was compiled. It seems more likely that the faults that were shown to be there in the reports from soon after Mr J acquired the car were still present.

I realise JBR strongly feel that the shock absorbers were covered under warranty. Mr J has maintained throughout that no such cover existed. Essentially, I have both sides saying different things. I've not seen sufficient compelling evidence that Mr J's position on this was wrong to make me think I should find differently on this though. I accept it's possible that what JBR is saying is correct. However, where the evidence is incomplete, inconclusive, or contradictory, as it is here, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances. And that is what I've done here.

I've seen evidence in the form of a HPI check that the current keeper of the vehicle changed at the start of June 2023. So, it seems to me that Mr J sold the vehicle after the May invoice and after he says the vehicle was repaired. I think it likely then that the work to the shock absorbers was carried out before then. I've noted JBR's comments about lead times, but I've not seen much in the way of evidence of this to the extent that it was unlikely the work was carried out. And despite what JBR says about Mr J's testimony, I've not seen any obvious weakness or contradiction in this.

Overall, I've not been persuaded that my provisional decision or intended direction to JBR should change. So, for the reasons given in this decision and in my provisional decision, I will be upholding this complaint.

Putting things right

JBR Capital Limited should:

- Refund Mr J £22,928.70 for the cost of repairs to the car;
- Refund Mr J £799 for the inspection report carried out on 30 March 2022. Interest of 8% simple per annum should be added from that date to the date of settlement;
- Refund Mr J his taxi costs of £72.78, if they haven't already done so; and
- Pay Mr J £300 for the distress and inconvenience he's been caused.

My final decision

I uphold this complaint and direct JBR Capital Limited to take the action I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 January 2024.

Daniel Picken
Ombudsman