

The complaint

Miss H complains about the quality of a car she acquired under a hire purchase agreement ("agreement") with The Asset Exchange Ltd ("AE").

What happened

In July 2022 Miss H entered into an agreement with AE for a used car costing £8,098 (inclusive of a dealer handling fee of £249). Under the terms of the agreement, everything else being equal, Miss H undertook to make an advance payment of £299 followed by 48 monthly payments of £315.83 making a total repayable of £15,458.84 at an APR of 47.72%.

Shortly after taking delivery of the car it broke down due to a loose alternator lead which was fixed.

In February 2023 the catalytic convertor was replaced.

In April 2023 a faulty sensor was replaced.

In June 2023 the catalytic convertor was replaced for a second time.

In early-August 2023 the catalytic convertor was replaced for a third time.

In mid-August 2023 it was identified that the catalytic convertor needed replacing for a fourth time.

In mid-August 2023 Miss H complained to AE that she had been provided with a car that was of unsatisfactory quality.

In September 2023 AE advised Miss H that it would accept rejection of the car, that it would 'mark' the agreement as settled and pay her £200. Miss H accepted AE's offer.

Shortly after accepting AE's offer Miss H decided to refer her complaint to our service for investigation.

Miss H's complaint was considered by one of our investigators who came to the view that it should be upheld and that AE, in addition to what it had already done, should refund to Miss H all the payments she had made, together with interest, over and above six contractual monthly payments of £315.83.

Miss H accepted the investigator's view, but AE didn't. AE submitted that it understood that:

“where a final response has been sent, an offer of redress has been made, and the customer accepts that offer of settlement as fair resolution to their complaint, and receives the redress payment, it is not then open to the Ombudsman to re-open that complaint, which has been resolved between the parties.”

The investigator considered AE's response to his view and concluded that in addition to what it had already done, and in addition to refunding to Miss H all the payments she had made together with interest over and above six contractual monthly payments of £315.83, AE should also refund to Miss H the advance payment she made of £299 (together with interest) and remove any adverse information it may have recorded (in respect of the agreement) with credit reference agencies.

Because AE didn't agree with the investigator's view Miss H's complaint has been passed to me for review and 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.

First I would like to address AE's submission that I shouldn't look at Miss H's complaint.

The rules that govern us are referred to as the Dispute Resolution (DISP) rules and are set out within the Financial Conduct Authority handbook.

DISP rule 3.3.4A says:

“the ombudsman may dismiss a complaint referred to the Financial Ombudsman Service on or after 9 July 2015 without considering its merits if the Ombudsman considers that:

(5) dealing with such a type of complaint would seriously impair the effective operation of the Financial Ombudsman Service.”

First it's important to understand that DISP 3.3.4A allows me to dismiss a complaint without considering the merits. It doesn't place me under an obligation to do so. In other words, although a business can ask me to consider dismissing a complaint, ultimately it's my decision whether to do so.

I can dismiss a complaint where a consumer has accepted an offer made by a business to settle matters, as has happened here. But I don't think that's appropriate in the particular circumstances of this case. I say this because:

- I'm satisfied that Miss H accepted AE's offer because of her personal and financial circumstances and because she didn't want to continue paying for a car that in her view was of unsatisfactory quality, not because she felt AE's offer was fair and reasonable
- I'm not persuaded AE's offer was, in all the circumstances, fair and reasonable

Satisfied that this complaint shouldn't be dismissed, I will now go on to consider the merits of it.

I'm very aware that I've summarised this complaint on the first page of this decision in far less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Secondly, I would add that where the information I've got is incomplete, unclear or contradictory I've to base my decision on the balance of probabilities.

As the agreement entered into by Miss H is a regulated one this service is able to consider complaints relating to it. AE is also the supplier of the goods under this type of agreement and so are responsible for a complaint about their quality.

The Consumer Rights Act 2015 ("CRA") says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, AE are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

Having considered what both parties have said and provided I'm satisfied, on the balance of probabilities, that Miss H was supplied with a car that was of unsatisfactory quality. I say this for the following reasons:

- how quickly the fault with the catalytic converter came to light
- that three repairs to the catalytic convertor have failed
- the mileage on the car when it was supplied (approximately 69,000)
- the mileage on the car when the catalytic convertor failed for the first time (approximately 73,000)
- the mileage on the car when rejection was accepted by AE (approximately 76,000)
- the price paid for the car (£7,849)
- AE agreed to the car being rejected

Having concluded that Miss H was supplied with a car that was of unsatisfactory quality I now need to decide what AE should have to do to fairly and reasonably compensate Miss H, having regard to the fact that AE has accepted rejection, marked the agreement as settled and paid Miss H £200.

Although I've found the car was of unsatisfactory quality when supplied, this doesn't mean that Miss H should have returned to her everything she has paid under the agreement. Miss H should reasonably have to pay for the use she has had of the car and the CRA allows for this. And like the investigator I'm satisfied that AE can fairly retain for usage payments made by Miss H of £1,894.98 (equivalent to six monthly agreement payments of £315.83). I say this having had regard to, amongst other things, that:

- Miss H had, in the main, six months of unimpaired use of the car between August 2022 and January 2023 inclusive
- the miles added to the car's odometer of approximately 7,000 between the date of supply and the date of rejection – a period of approximately nine months

So this means that, like the investigator, I'm satisfied that AE should refund to Miss H (together with interest) the advance payment she made of £299 together with all the payments she has made under the agreement over and above £1,894.98. And for the avoidance of doubt, the payments I think that AE should be able to retain are the six monthly payments made by Miss H of £315.83 in August, September, October, November and December 2022 and January 2023.

I'm also satisfied that given Miss H was supplied with a car that was of unsatisfactory quality, AE should ensure any adverse information it has recorded with credit reference agencies (in respect of the agreement) is removed.

My final decision

My final decision is that The Asset Exchange Ltd, in addition to having already accepted rejection of the car, having marked the agreement as settled and having paid Miss H £200, must:

- refund to Miss H the advance payment she made of £299
- pay Miss H interest on the above refund at 8% simple a year from the date of payment to the date of settlement*
- refund to Miss H all the payments she has made under the agreement over and above £1,894.98, this being all payments made by Miss H after 26 January 2023
- pay Miss H interest on the above refunds at 8% simple a year from the date of payment to the date of settlement*
- ensure any adverse information recorded with credit reference agencies is removed.

** HMRC requires The Asset Exchange Ltd to take off tax from this interest. If Miss H asks for a certificate showing how much tax has been taken off this should be provided*

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 29 December 2023.

Peter Cook
Ombudsman