

The complaint

Miss B complains about the quality of two used cars she acquired through two separate hire purchase agreements, with Honda Finance Europe Plc.

What happened

In July 2017, Miss B took out a hire purchase agreement with Honda to acquire a used car, which I'll call car one. Around five months later, Miss B says she noticed that car one was misfiring, so took it back to the dealer.

Initially, the dealer couldn't replicate the fault Miss B had told them about. However, after Miss B said she had experienced further misfiring with car one, the dealer agreed that further testing was needed. The dealer eventually managed to replicate the fault and organised a repair.

Car one was repaired in February 2018. But, when Miss B collected it from the dealer, she says that although the car was misfiring less, the fault was still there. She also says that new problems had developed with the brake pedal and with the car's fuel consumption.

Shortly after, Miss B asked the dealer if she could reject car one and have a full refund, or have a replacement car with the same specification. The dealer couldn't replicate the further faults Miss B had found, but offered to help find a different car.

In May 2018, Miss B and the dealer agreed to exchange car one for a different car, which I'll call car two. This meant the dealer bought car one from Miss B and the proceeds were put towards car two. Miss B then used a new hire purchase agreement to pay for the additional cost towards car two. The dealer also told Miss B that they would make some minor repairs to car two and extend the warranty.

Within the first two months of getting car two, Miss B had returned it to the dealer to have some paintwork repaired and for the door seals to be fixed. Miss B also said that car two juddered when reversed and complained that the car needed valeting when she had first collected it.

As well as some of the repairs which Miss B had spotted, the dealer agreed to investigate the juddering she had told them about. The dealer replaced the gearbox mount to address the juddering and the car was made available for Miss B to collect.

But, Miss B says due to her experiences with car one, she asked the dealer for a refund. The dealer allowed Miss B to end her hire purchase agreement with nothing further to owe, for car two. The refund Miss B was given for car two, was slightly more than she paid as a deposit.

Once Miss B had received the remaining balance, she complained to Honda and said she was owed more, in light of the repayments, the deposits and part exchange costs she had paid for both cars. In their final response, Honda said that the juddering Miss B had reported

couldn't be replicated after the repair, and that as the hire purchase agreement had been settled, they couldn't investigate further.

Miss B didn't accept this and brought her complaint to us. One of our investigators looked into Miss B's case and found that Honda had treated Miss B fairly. They said the faults on both cars were repaired by the dealer and they weren't persuaded that the faults continued afterwards. And the investigator found that a reasonable person would say that each car was of satisfactory quality, given its age, mileage and history.

The investigator also concluded it was fair that the dealer found a replacement for car one and allowed Miss B to end her agreement for car two. Miss B didn't agree and said the dealer had noted the faults on both cars and had offered her a refund. She also doubted the validity of the repair records kept by the dealer and that she thought she was given a replacement for car one, instead of a refund.

The investigator didn't change their opinion, so the case has been passed to me to make a decision.

I sent Miss B and Honda my provisional decision on this case, on 28 July 2021. I explained why I didn't think the complaint could be upheld. A copy of my provisional findings is included below:

Both cars were supplied to Miss B under a regulated hire purchase agreement. Our service is able to consider complaints about these sorts of agreements. Honda is the supplier of the goods under the agreement and is responsible for dealing with a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the contracts Miss B entered into. The CRA implies terms into the agreement that the goods supplied will be of satisfactory quality, fit for their intended purpose, and as described.

The CRA says that goods will be considered of satisfactory quality where they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid and other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of supply and the car's history.

In Miss B's case, car one was a used car and had covered around 8,500 miles when she acquired it. Car two was also a used car when Miss B acquired it and had covered around 19,700 miles. Also, both cars were around two years old when the hire purchase agreements were signed. So, there'd be different expectations than if either car was brand new. In other words, I think a reasonable person would expect each car to show signs of wear and tear.

Car One

Miss B acquired car one in July 2017 and says the car misfired from the start of her hire purchase agreement. Both the dealer and Miss B say that she reported the problem in December 2017 and the car was inspected. While the dealer could not replicate the misfiring Miss B had experienced at first, their records show it was replicated later, in January 2018. So, I think it's clear there was an issue within the first six months of Miss B having car one.

Looking at the repair that was carried out, I think the time taken was due to the dealer having to wait for the parts to be delivered, rather than the complexity of the work needed. I've also considered the costs involved, which are itemised on the dealer's repair records. Having

done so, I think the fault was something that was straight forward to correct, rather than having to replace the whole engine.

The dealer's records show that after some diagnostic work, they replaced the car's injectors and repaired the misfiring fault. The dealer's records also show that the car was tested for two hours to make sure the repair had worked.

It took the dealer until early February 2018 to diagnose the problem, then order and fit the replacement injectors and to complete the test. This meant it was just under a month until Miss B was able to have her car back. Throughout this time, Miss B was offered a hire car to use.

I've also considered that there's no record of Miss B reporting the fault to Honda or the dealer before December 2017. And that Miss B was able to drive car one for just over 2,500 miles, before it was repaired by the dealer.

Having considered the age and mileage of car one and the extent of the fault, on balance, I think the fault was likely present at the point of supply. So, I don't think a reasonable person would say that the car was of satisfactory quality. However, the CRA says that after the first 30 days of a customer having the goods, the dealer has one chance to repair a faulty vehicle, before a customer can ask to reject it. In this case, the dealer agreed to repair car one after they managed to replicate the fault Miss B had experienced.

Miss B says that even after the repair, the fault continued, albeit less obvious than before. Other than Miss B's comments, there isn't any other evidence to show that the fault continued for car one after the repair. The dealer's engineer's notes suggest that the fault was rectified, and I don't have a report of further faults after the car was returned by Miss B.

In all the circumstances, I think Honda treated Miss B fairly when car one needed to be repaired. I think Honda had the right to attempt a repair on the car under the CRA. And on balance, I think the dealer repaired the fault they had found with the injectors. This meant that Miss B had the choice to sell the car back to the dealer, and then look elsewhere for a replacement. Or, to take up the dealer on their offer to enter a new hire purchase agreement for car two.

Car Two

After around two months, the dealer found Miss B a different car, which she agreed to take under a new hire purchase agreement. I can see from Miss B's correspondence, that she was supplied with car two on 18 May 2018. Miss B says that very shortly after acquiring car two, she noticed some problems. She says the car wasn't cleaned properly, the door and wheels needed repairing and some stone chips had caused paint damage. Miss B says she also told the dealer about a more significant problem, with the juddering she'd experienced.

I have considered the emails between Miss B and the dealer and I can see that all her concerns were discussed and repairs agreed. I've also thought about the age of car two, the mileage it had covered before it was supplied and the extent of the faults the dealer agreed to repair.

Having done so, I think a reasonable person would expect car two to show signs of wear and tear. So, I think Miss B's concerns about the cleanliness of some of the interior, the paintwork, the door seal and the wheels are issues a reasonable person may expect.

But, looking at the job cards provided by the dealer for car two, I can see that a repair was also needed to the gearbox mount. And as this was shortly after the car was supplied to

Miss B, I think the fault was there when she got it. Considering the extent of this repair and the parts replaced, I don't think a reasonable person would consider car two to be of satisfactory quality. Because of this, I've thought about the timescales involved and the options the dealer made available to Miss B, together with their obligations under the CRA.

I think Miss B's emails to the dealer show that she asked to reject car two on 24 June 2018, which was more than 30 days after she got it. So, I think Miss B told the dealer she no longer wanted car two after the 30 day period where she had a right to reject it had passed.

Under the CRA, I think the dealer had a right to repair car two. I can see from the repair records that car two needed a replacement gearbox mount and a successful repair took place on 20 July 2021. Also, the dealer has explained that they don't have any records of further faults with car two, after Miss B's hire purchase agreement was ended.

Miss B didn't take back car two after it was given to the dealer for repair. Instead, Miss B ended her agreement and was given a refund for slightly more than was used as a deposit.

Having considered everything, on balance, I don't think Miss B used the car, after it was repaired by the dealer. Miss B's records suggest that she just wanted to end her agreement, rather than take the car back. So, I think it follows that the agreement was ended on the same day as car was repaired. Given the information from the dealer, I also think that their repair successfully resolved the fault with the gearbox mount.

In all the circumstances, I think Honda treated Miss B fairly when they allowed to exit the hire purchase agreement for car two at no extra cost to her. I also think the dealer treated Miss B fairly, when she was given a refund for a larger amount than she paid as a deposit. So, I think Honda treated Miss B fairly when she decided she didn't want to keep car two, after the repairs were made by the dealer.

The repayments under both hire purchase agreements

I've thought carefully about the repayments Miss B made throughout her hire purchase agreements with Honda. Under the agreement for car one, Miss B made all the payments due, until the contract was ended and a different car found. Miss B had use of car one for the majority of that time, although I accept she had lost confidence in it. When car one was with the dealer for investigation and repair, Miss B says she was given a different car to use.

Honda's contact records show that Miss B told them she says she was reluctant to use a car she didn't own. And the records show that Miss B told Honda she would be on holiday for some of the time, when the dealer had the car for repair.

Having considered everything, I think Miss B had the use of her car or a hire car, throughout the period she was making repayments for car one. So, I think it's fair that Miss B is responsible for the monthly repayments made under the hire purchase agreement for car one.

I've also considered the repayments due under the hire purchase agreement for car two. I can see that the agreement started on 15 May 2018 and was ended on 20 July 2018, when Miss B was given a refund. Both Miss B and Honda say that car two was back with the dealer for repair by early July 2018, which means Miss B had this car just under two months. I can also see that the refund Miss B received from the dealer, was around £150 more than the deposit she paid of £13,784.26 for car two.

In all the circumstances, I think it is fair and reasonable for Miss B to pay for the use she had of car two, for the time she had possession of it. I'm aware Miss B didn't quite have the car

to use for the full seven weeks, but she also received a refund which was more than she had paid as a deposit. So, I don't think it would be fair for Honda to refund any further payments to her for the hire purchase agreement, for car two.

The dealer's repair records

I've looked more into the repair records kept by the dealer. Miss B says that the records show that repairs were completed after she gave car two back to the dealer. The dealer has explained that the work on car two was completed on 20 July 2018, which was the same day as Miss B received her refund. Miss B has told us that she had already made her mind up about asking for a refund, before this date.

But, I can see that the repair record for car two was dated 23 July 2018. I accept this was after Miss B's hire purchase agreement had ended. But, on balance, I think this is when the dealer finalised their records of work carried out over a period of time. I say this because the repair records show work done on 16 June 2018 and further work scheduled on 27 June 2018.

I think this matches the times where Miss B says she needed to take the car back to Honda, in the first weeks of having car two. Having looked at all the evidence, I don't think the dealer's repair records have been fabricated. I think on balance, the dealer carried out repairs to the gearbox mount, on the understanding that it was Miss B's wish to end the agreement for car two.

Miss B responded to the provisional decision and didn't accept it. In summary, Miss B said:

- She didn't have a private registration plate and was worried Honda had given us the incorrect information.
- The dealer didn't offer a straight exchange for car one, instead she had to pay an additional £600.
- She made an overall loss across both cars and sent us her calculations.
- That the dates on the job cards and the information they hold are unreliable and shouldn't be used to base the outcome of her complaint on.

Clydesdale responded and agreed with the provisional 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 her response, Miss B says that she's never had a private registration plate for her cars. I've thought carefully about this and looked at the dealer's letter to Miss B of 13 April 2018. In this letter, the dealer offered to replace car one with another vehicle, that Miss B had been shown.

I think the wording of the letter may have caused the confusion here, and I accept that the dealer wasn't offering to transfer a private registration plate for Miss B. I understand how this has led Miss B to question the information given to us by Honda. But, having carefully looked again at the hire purchase agreement for both cars, the job cards and the communication between the dealer and Miss B, I think the information given to us by Honda is correct. So, I don't think my findings have been based on information about another customer.

Miss B says that she had to pay an additional £600 to enter the hire purchase agreement for car two. I acknowledge that Miss B may have agreed to contribute more as a cash payment, when the dealer arranged the finance for car two. But, I don't think that changes my finding about the satisfactory quality of car one after the repair by the dealer.

I've concluded that the dealer was able to attempt a repair on car one, when Miss B told them about the fault with the engine misfiring. I've considered what Miss B says about the fault still being present, albeit it to a lesser extent, after the repair.

But, I find it more persuasive that the fault was fixed by the dealer, because there aren't any repair or diagnostic records to show the fault remained, after the dealer took it back from Miss B.

It then follows that the dealer was able to offer Miss B two options. Either to exit the hire purchase agreement, or to enter another for a different car, which may have involved a higher deposit amount. Having considered everything, I think Honda treated Miss B fairly, when they offered Miss B a new hire purchase agreement for car two.

In July 2018, Miss B received a cheque for car two, for £13,935.74. This is slightly more than the deposit of £13,784.26 paid when the hire purchase agreement was signed. I still consider that Honda have treated Miss B fairly here, as they allowed her to exit the agreement and to hand the car back at no extra cost to her.

I accept Miss B considers she has lost out financially, given the repayments she made towards the hire purchase agreement for car one. And I've considered the calculations she has sent to us.

I've concluded that it's fair that Miss B should pay for the usage of car one and the hire car, for the time the first hire purchase agreement was in place. Although I understand why Miss B would like a refund, I still think it's fair for her to pay for the months she used car one. So, I don't think it would be fair to ask Honda to refund the repayments Miss B has told us about.

Miss B has explained that the dealer's job cards show that work was completed when the car was in her possession and they cannot be fully relied upon. I accept that the dates on the dealer's job cards may overlap with times when Miss B was driving the car.

I also acknowledge that on occasion, the dealer's work involved Miss B being asked to test the car for a period herself. And where the dealer may have left a job open, as the repair was still outstanding.

Overall, I think the dealer's job cards are persuasive, because they detail the work carried out, around the times Miss B says the work was done. I think this is supported by the correspondence between Miss B and the dealer, about the steps being taken to repair or replace both vehicles.

I have found the dealer's repair records useful in my investigation, to think about the repairs to both cars. But, I've also thought about the other information available with Miss B's hire purchase agreements and that there isn't a record of other faults, after the dealer had their opportunity to conduct a repair.

So, I think the other evidence, added to the dealer's records has helped to reach the conclusion, that Honda have already taken the necessary action.

I do acknowledge Miss B's strength of feeling about her complaint with Honda, But, having considered everything, I think Honda treated Miss B fairly when reviewing what happened with both hire purchase agreements.

My final decision

My final decision is that I don't uphold Miss B's complaint – in the sense that I don't require Honda Finance Europe Plc to take any further action to settle this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 12 October 2021.

Sam Wedderburn
Ombudsman