

The complaint

Miss S complains that a car acquired under a hire purchase agreement with Honda Finance Europe Plc (Honda Finance) wasn't of satisfactory quality.

What happened

In August 2020, Miss S acquired a new electric car from Honda Finance under a hire purchase agreement. Miss S paid a £5,000 deposit and was then required to make 47 monthly repayments of £424.90. There was a final repayment of £12,594.07 if Miss S wanted to keep the car at the end of the agreement.

Shortly after driving the car away, Miss S has said she started to experience some problems with it. In particular with the battery charge. In September 2020 Miss S emailed the dealership she'd acquired the car from to tell them it had run out of battery charge late that evening and she was having to be picked up by a recovery team. She told the dealership this was the second time the car had lost charge and she had been alone at night with the car waiting to be recovered. At this point Miss S asked if the car could be rejected as she was unhappy with it and she felt it was faulty.

In March 2021 Miss S complained to Honda Finance. She said the battery had continued to be a problem, and she'd received a recall notice for the car from the manufacturer. She wanted to reject the car as she didn't believe it to be of satisfactory quality. Honda Finance didn't uphold Miss S' complaint. They said the recall notice was for an issue with the seat belt operation and was a preventative measure rather than a reflection on the quality of the car. Regarding the battery, Honda Finance said that the battery charge and operation had been assessed at the time the car was returned for the recall notice work, and no fault had been found with it. They said that, as no fault could be found the car couldn't be considered as unsatisfactory and Miss S' request to reject the car was declined.

Miss S brought her complaint to our service. While our investigator was looking into things, Miss S made her aware of another situation that had happened to her. In August 2021, Miss S was in the car while it was charging. At this point the car doors wouldn't unlock and the windows wouldn't lower, leaving Miss S locked in the car with her dog. She called a recovery service, who had to charge, and jump start the car – at that point the windows lowered, and the door could be unlocked. The recovery service said the car needed to go back to the dealer for some tests. At this point the car had only covered approximately 3,500 miles.

Our investigator upheld Miss S' complaint. She said she was satisfied the car wasn't of satisfactory quality when it was supplied. It wasn't defect free and it was a new car – so she didn't think the issues were down to durability or wear. She also said it was a safety concern that the car had locked Miss S and her dog in while it was being charged and a reasonable person shouldn't expect this to happen. She said that Miss S should be able to reject the car. She asked Honda Finance to:

- End the agreement with nothing further to pay.

- Refund Miss S' deposit of £5,000 and pay 8% simple interest on this amount from the date it was paid until the date of settlement.
- Refund Miss S seven finance payments to reflect the impaired use of the car. Pay 8% simple interest on those payments from the date they were paid until the date of settlement.
- Pay Miss S £100 for the distress and inconvenience she's been through.

Honda Finance didn't agree. They said no fault had been found with the battery when the car had been returned to the dealership. They also said it had been explained to Miss S the number of miles that could be achieved between charges depended on several factors, including driving style and how the car is used. They said Miss S had refused to have the car assessed so they couldn't confirm if there was a fault.

Honda Finance accepted that it was alarming to hear Miss S had been locked in the car. But they said the recovery service report said the car needed to go back to the dealership for tests, and Miss S had refused to do this. They provided a response from their technical experts discussing why the car may have locked itself. Honda Finance believed they should have a chance to repair the car before rejection could be considered, and they hadn't been given that opportunity.

As Honda Finance didn't agree, it was passed to me to decide. Prior to making my decision I wanted to know what the current situation with the car is. Miss S and Honda Finance have confirmed that Miss S returned the car to her local dealership in October 2021 prior to moving abroad. She stopped making her payments at this point. Honda Finance took the decision to terminate the agreement and sell the car at auction. Any outstanding balance at that time has been waived by Honda Finance and no adverse information has been recorded on Miss S' credit file.

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.

As the hire purchase agreement entered into by Miss S is a regulated consumer credit agreement this service can consider complaints relating to it. Honda Finance are also the supplier of the goods under this type of agreement and are responsible for complaints about their quality.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice.

When there is conflicting or missing evidence, such as in this case, I have to make my decision based on the balance of probabilities. Or in other words, what I think is most likely to have happened. And, in this case, I think there is enough evidence to suggest the car wasn't of satisfactory quality at the time it was supplied. I'll explain why.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Miss S entered. Because Honda Finance supplied the car under a hire purchase agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

But on the other hand, satisfactory quality also covers durability. For cars, this means components must last a reasonable amount of time. Of course, durability will depend on various factors. In this case, Miss S was supplied with a new car. I don't think a reasonable person would generally expect there to be a fault with the battery charge on a new electric car within 12 months of supply – nor do I think a reasonable person would expect to be locked in their car without any means of unlocking the doors or windows. I agree with the comments made by our investigator and accepted by Honda Finance that this is alarming.

Miss S has told us she first had a problem with the battery charge shortly after taking delivery of the car. She noticed it reducing significantly and on a couple of occasions was left without any battery charge. She had to arrange for a recovery team to collect her and the car, and she was understandably frustrated by this. In September 2020 she brought this to the dealership's attention and first raised the prospect of rejecting the car. It was obvious from this point that Miss S was concerned about the suitability of the car and whether it was of a satisfactory quality.

I must also take notice of the email received from Miss S from the dealership in September 2020. It said, amongst other things, that:

'If we are sitting down to highlight all the points, it will only come to one conclusion: car has some faults and they are clearly making you unhappy, which I FULLY understand.'

This email was sent to Miss S in response to her concerns about the car and her request, at that stage, to reject it as she wasn't happy with it and felt it was faulty. I'm satisfied that the email from the dealership confirms that the car had faults from the outset.

There is some confusion over any repairs that might have taken place when Miss S has returned the car. She feels that the battery was looked at and fixed initially, and Honda Finance have stated that the battery was checked out and no fault was found. They have confirmed that they gave Miss S a new charging cable, but that wasn't to fix any issues with the battery itself – it was to help with the speed of the charging rather than the efficiency of the battery when it was in use. It's difficult for me to say exactly what repairs, if any, were carried out at this stage due to a lack of information. But I am satisfied Miss S spoke to Honda Finance and/or the dealership at times during the first six months of owning the car to explain her concerns about the quality of the car.

But, from my point of view, the most serious aspect of this complaint is the issue of the car doors and windows locking while Miss S was in the car and the car was charging. This is a serious safety fault and one that could have had significant impact on Miss S. I appreciate the Honda Finance technical report which says the doors and windows wouldn't have locked without Miss S making a conscious decision to do it herself – but that is in direct contrast to the recovery service's report. This said that Miss S was in the car and the doors and windows wouldn't unlock. The recovery agent had to jump start the car to get the power back, and at this stage the windows were able to be unlocked. The doors remained locked at this point. The recovery agent was present throughout this and I'm more persuaded by his report than I am of Honda Finance's, who weren't there to see the faults.

Honda Finance have said that, under the CRA, they should be given the opportunity to repair the car before a rejection of it can be sought. And that is true in most cases. It's also clear that Miss S hasn't been prepared to give Honda Finance that opportunity. But I also have to consider what's fair and reasonable here. Putting the battery issues aside, I have no doubt

that Miss S had lost faith in the car and this was compounded when she found herself locked in it and needing recovery. I don't think a reasonable person should expect that, and even less so from a new car that was only a year old and had only covered approximately 3,500 miles. Honda Finance's technical summary suggests the fault hasn't been seen before, and it implies that it isn't possible for the car to lock itself. So, it could be argued that, even if Miss S had given them the opportunity to look at the car, the fault wouldn't have been able to be corrected.

But even if it was, I'm not persuaded that any repair would have made Miss S feel any more comfortable with the car. An experience like she went through isn't something that is easily forgotten, and it just reinforced Miss S' continued unhappiness with the quality of the car from the outset. Because of this, and the safety concerns caused by the incident in August 2021 I'm satisfied that rejection of the car is a fair outcome.

As I've decided that the car can be rejected, I would normally ask Honda Finance to ensure the agreement is ended at no cost to Miss S. But that has already been seen to by Honda Finance once Miss S had decided to return the car to them before moving abroad. So, it leaves me to decide that Miss S should receive her full deposit back.

It's clear that Miss S hasn't used the car for long periods of time due to her uncertainty with it and fear of being left without charge. In the year she had it, she had only covered 3,500 miles and it had been her intention to cover more. She insured herself to allow for 10,000 miles. Our investigator has said that Miss S should receive seven finance payments back to reflect the impaired use – I think that's reasonable.

It's also obvious that Miss S has suffered some distress. Being locked in the car would have been distressful – and for the distress caused Honda Finance must pay Miss S £100.

My final decision

For the reasons above, I'm upholding this complaint. Honda Finance Europe Plc must:

- Refund Miss S' deposit of £5,000. Pay 8% simple interest on this amount from the date it was paid until the date this is settled.*
- Refund the final seven finance payments Miss S made to reflect impaired usage of the car due to loss of confidence in it. Pay 8% simple interest on these payments from the date they were paid until the date this is settled.*
- Pay Miss S £100 for the distress she's been caused.

*If Honda Finance Europe Plc considers that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss S how much they've taken off. They should also give Miss S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 8 July 2022.

Kevin Parmenter
Ombudsman