

## **The complaint**

Mr X complains that a new car he acquired with finance provided by Toyota Financial Services (UK) Plc (TFS) was of unsatisfactory quality.

## **What happened**

Mr X got this car under a hire purchase agreement (HPA) from TFS in June 2020. Not long after, he had trouble operating climate control as well as issues connecting to the media centre – which would “glitch” at times – and he noticed a rattle coming from a door. Mr X contacted the supplying dealer who didn’t find anything wrong with climate control or the media system but did undertake some work to get rid of the rattle.

Mr X didn’t accept what the dealer said about the media system - he felt this was faulty and complained to TFS, asking to reject the car. After liaising with the manufacturer and the dealer, TFS considered the rattle was fixed and climate control and the media system both worked properly. It acknowledged the media system supports an older version of phone software than the phone Mr X tried to connect, but considered any issues would be resolved when an update became available. TFS offered to pay Mr X £50 as a goodwill gesture but didn’t think it should have to do more.

Mr X declined the offer. Amongst other things, he said the connection issue was still there when he tried to connect an older phone. He felt he was treated unfairly and referred the matter to our service.

One of our investigators looked into Mr X’s complaint. At first, she thought the issues he reported had either been resolved (under the manufacturer’s warranty) or didn’t amount to faults. Then Mr X said the rattle in the door had returned and several other noises had also appeared. He supplied several recordings and, whilst the investigator didn’t think there was enough evidence to safely conclude that the media system was defective, she was satisfied that the rattle reported early on is still present. She said a new car should be fault free at the point of supply and this one was probably of unsatisfactory quality at the outset. As various repair attempts didn’t work, she recommended Mr X should be entitled to reject the car and have his deposit back, plus interest.

Mr X asked if he could have the cost of additional protection he purchased when he got the car refunded as well. But the investigator didn’t think that was fair – she was satisfied he had the benefit of this cover. She didn’t think TFS should have to refund any monthly payments either - because Mr X had the use of a car throughout. She was satisfied Mr X experienced distress and inconvenience as a result of what happened. She found it fair TFS should pay £200 compensation to reflect that - and remove all information about the agreement from Mr X’s credit file.

Mr X accepted the investigator’s recommendations but TFS disagreed and asked for an ombudsman to review the matter. TFS says (in summary):-

- Mr X wanted to reject the car initially because he had trouble connecting his mobile phone to the media centre, this was investigated but no fault was found and TFS

has no control over third-party products such as mobile phones;

- climate control issues reported were also investigated and Mr X accepted this was working as it should after he was advised about how to use it;
- the dealer found a rattle and a squeak in February 2021 so some work was done to rectify the issue and Mr X was happy with the outcome, the dealer investigated rattles again in May 2021 and carried out some more repairs then the car was tested and had no further rattles, in July 2021 Mr X said the rattle was back, the dealer checked again and heard a very slight noise - which wasn't out of the ordinary - so undertook some minor adjustments to reassure Mr X;
- vehicles have many different components and modern technology means adjustments and updates may be required from time to time but any work undertaken by the dealer here doesn't mean this car has a manufacturing defect or was of unsatisfactory quality at the point of supply.

Having considered the available evidence, I was minded to uphold the complaint. My reasons weren't quite the same as the investigator's so I thought it was fair to give the parties the chance to see my provisional findings and respond (if they wanted to) before I made my final decision. I issued a provisional decision on 26 November 2021. I've set out what I decided provisionally - and why - below and this forms part of my final decision.

### **My provisional decision**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances

In considering what's fair and reasonable I must take into account relevant law and regulations, guidance and standards, regulators' rules, codes of practice and what I think was good industry practice at the relevant time.

TFS supplied this car under a HPA so it was required under the Consumer Rights Act 2015 (CRA) to ensure that the vehicle was of satisfactory quality when Mr X got it. The CRA says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory - taking into account any description and the price paid, amongst other things. This means the level of quality that is satisfactory will vary, according to individual circumstances.

In the case of a vehicle, it's generally reasonable to look at the age, cost and mileage at the point of supply. The car Mr X acquired here cost over £50,000 and I think a reasonable person would expect such a car to be fault free at the point of delivery - and parts should last for a reasonable amount of time before they need to be repaired or replaced.

I can see that Mr X raised several concerns about this car within a month or so of collection. The supplying dealer investigated and it looks as if the issues relating to the media centre and climate control were considered not to have been due to any fault or inherent defect. There appears to be no dispute however that a rattle was present in the door at this point.

I've seen a job card from July 2020 that says the left front door card was removed and adjusted to fix the problem. I'm satisfied that more work of a similar nature was undertaken by another main dealer to try and resolve the rattle in February and May 2021. As far as I

can tell, from the information I have at present, those repairs seemed to rectify the issue initially but the noise would return not long after.

I can see that Mr X took the car back to a dealer again in July 2021 complaining about the same noise. And it looks as if the dealer acknowledged there was a sound present – as the door was padded out once again. I appreciate TFS says the noise that was present in July 2021 was not “out of the ordinary” and the dealer only undertook the last repairs in an effort to assure Mr X. But, whilst I’m not sure what the dealer heard exactly in July 2021, having reviewed several videos that Mr X supplied (which have also been provided to TFS) I’m satisfied there is still a very audible rattle in the door area.

I accept most cars will make noises during the course of normal operation - and different models and makes will have different characteristics. But, I think a reasonable person would expect even an averagely priced used car to operate *without* this sort of sound. And I’m not persuaded it’s normal - or reasonable - for a new vehicle, like the one Mr X acquired here, to make this noise.

I’m satisfied that it’s more likely than not the rattle appeared within the first six months of supply. I have limited information about the cause of the noise but I’ve seen nothing to suggest it’s likely to have been due to wear and tear - or anything that Mr X did. It’s difficult to see why two main dealers (who I’d expect to be reasonably familiar with this make and model) would carry out the sort of remedial work undertaken on several occasions here under the manufacturer’s warranty if this sound was normal. I also note that the supplying dealer has since offered to take the car back (but not to refund the deposit) on the grounds the vehicle has manufacturing faults and “*build quality issues*”.

On balance, I think it’s more likely than not this car had an inherent defect present from the point of supply. I can’t be certain what the issue is exactly - but I don’t need to diagnose a specific defect to reasonably conclude that the car is probably faulty. And, taking into account this car was new when Mr X got it, I’m minded to find it’s of unsatisfactory quality.

The CRA sets out a number of remedies in this situation including allowing one chance to repair. I’m satisfied that Mr X has taken the car back to the dealer several times already and provided a number of opportunities for the issue to be fixed. For the reasons I’ve set out above, I find the dealer’s efforts were unsuccessful - the rattle’s still there. Given the number of unsuccessful repair attempts, I can’t be certain that this fault is capable of being resolved satisfactorily. And, considering the time that’s passed and the impact of this ongoing issue on Mr X, I don’t think it is fair or reasonable to expect him to wait any longer. I consider he should be allowed to reject the car now and receive his deposit of £5,132.07 (paid by way of part exchange) back, plus interest.

It looks as if Mr X has been able to use the car throughout (or he was supplied with a courtesy car when his was off the road). I think it’s fair he should pay for that use so I can’t fairly find TFS should refund any monthly payments. I’m satisfied that Mr X was stressed and inconvenienced as a result of this fault being present – he had to go back and forth to the dealer several times and I have no doubt it’s been frustrating and annoying to drive the car with the rattle present. Having considered what happened carefully, I think it is fair and reasonable overall for TFS to pay Mr X £200 compensation to reflect that.

It looks as if Mr X may have incurred some costs for diagnostic checks and the like progressing this complaint. It’s unclear if these costs were incurred investigating the inherent quality issue identified above (the rattle). If I’m satisfied that they were, then I would probably be minded to find TFS should reimburse that cost as well. So, Mr X should let me know (in response to this provisional decision) if he has incurred any additional expenses and supply relevant paperwork (such as invoices).

I invited the parties to provide any further comments and evidence by 10 December 2021 and explained that I would look at all the evidence available then and make my final 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.

Both parties have responded to my provisional findings. Mr Y accepts my provisional decision and he hasn't supplied any further evidence or comments. TFS disagrees with my provisional conclusions. I have considered what TFS says carefully but it hasn't provided any new evidence that's persuaded me to change my mind.

Having considered all of the comments made by the parties, and reviewed all the available evidence, I remain of the view that this complaint should be upheld. And I find Mr X should be allowed to reject this car and receive a refund and compensation as set out in my provisional decision.

### **My final decision**

My decision is I uphold this complaint and require Toyota Financial Services (UK) Plc to:-

1. cancel the HPA and arrange to take the car back, at no additional cost to Mr X;
2. refund the deposit paid of £5,132.07 plus interest at 8% simple a year from the date of payment to the date of settlement;
3. pay Mr X £200 compensation for distress and inconvenience; and
4. remove any adverse information recorded on his credit file.

If TFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr X how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr X to accept or reject my decision before 11 January 2022.

Claire Jackson

**Ombudsman**