

The complaint

Mrs B is unhappy that Car Time Motor Company UK Limited (Car Time) mis-sold her a mechanical breakdown warranty policy when she acquired a car.

What happened

In June 2020, Mrs B acquired a used car first registered in December 2015 from Car Time. To acquire this car, she entered into a hire purchase agreement with a company I will call 'C'. Car Time arranged the financing through C for Mrs B. The cash price of the car was around £23,000. Mrs B part exchanged her previous car which Car Time appraised at £6,500. She paid £10,000 cash deposit to Car Time. £7,200 of the cash deposit went towards the advance payment on the finance agreement, and £2,800 went towards a six-year mechanical breakdown warranty package.

Mrs B said that Car Time mis-sold her the mechanical breakdown warranty. She said that she was told that she couldn't get 0% financing if she didn't purchase the warranty, but after the sale she said she found out from C that she didn't need to buy the warranty to be applicable for 0% financing with them. She said that the advertisements, social media, terms and conditions and videos on Car Time's website do not stipulate that one must buy the warranty to be applicable for the 0% financing option when buying a car from Car Time.

On 17 July 2020, Car Time wrote to Mrs B and said that they were offering 0% finance upon the purchase of the full Car Time Guarantee package. They said they do not offer 0% finance without it, and that this was their promotion and not something any third party could advise on. But they said they could offer Mrs B two options: The first option, they could cancel and give Mrs B a refund for the breakdown warranty, but that would mean that they would cancel the entire finance agreement. And as such, they said, Mrs B would need to enter into an alternative finance agreement (which would include APR at approximately 9%), or she would need to pay the remaining balance for the car in cash; The second option, they gave her is to unwind the finance agreement and accept the return of the car. With this option, they said she would need to pay a usage charge at £0.45 per mile travelled.

Mrs B was unhappy with this. She also questioned Car Time why the paperwork she had signed states that the warranty cost is £1,500 on the warranty proposal form, but Car Time have taken £2,800 from her deposit towards the warranty. Mrs B said that within her 14-day cooling off period she asked for a full refund of the warranty cost, so she believes that she should be entitled to a full refund.

In August 2020, Car Time wrote to Mrs B and said that there is an error on the mechanical breakdown warranty proposal form with regards to the cost showing as £1,500, but that the correct amount of £2,800 is noted on a separate sales invoice. In this correspondence they again reiterated that they are happy to cancel the breakdown warranty, but that under this option, the 0% finance would no longer be available as it is offered as part of a complete package. So, they told Mrs B that if she would like to pay the remaining amount for the car in cash, or with an alternative agreement she should let them know.

Mrs B was unhappy with Car Time's responses, so she brought her complaint to this service.

On 22 March 2021, Car Time confirmed to our investigator that they would still consider unwinding the finance agreement.

On 29 March 2021, our investigator wrote to Mrs B and said that he thought the complaint shouldn't be upheld. He was of the opinion that the two options given to Mrs B by Car Time were reasonable offers to resolve her complaint. The investigator also said that Car Time informed him that they can still look into unwinding the finance agreement.

Mrs B disagreed with the investigator's opinion, but she settled the finance agreement by transferring the remainder of the amount due to C by a bank transfer. She has provided our service with a letter from C, dated 18 June 2021, which confirms that the finance agreement has been settled. Mrs B explained that she did a bank transfer to C directly as she didn't feel comfortable bringing such a large amount of cash to Car Time's physical location, especially during Covid-19.

Car Time told us that Mrs B had not mentioned Covid-19 restrictions before and questioned why she has never queried alternative funding arrangements with them directly, if the method of payment was unclear. Also, on 5 November 2021, Car Time wrote to us and said that they would be prepared to provide a pro-rata refund of the warranty to take into account that Mrs B had the benefit of the warranty for over 12 months. So, they said they would be willing to refund £1,866.67 to Mrs B.

Mrs B was not happy with this. So, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 6 December 2021. In the provisional decision I said:

'What I've provisionally 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 considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I also want to acknowledge that I've summarised the events of the complaint. But I want to assure Mrs B and Car Time that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Within 14 days of acquiring the car and the mechanical breakdown warranty, Mrs B contacted Car Time to say that she didn't want the warranty and asked to cancel it. The Financial Conduct Authority (FCA) has set out in the insurance rules (ICOBS) that a consumer has the right to cancel an insurance policy, without penalty and without giving any reason, within 14 days of taking it out. Considering that this mechanical breakdown warranty is a contract of insurance, I think a consumer should be allowed to cancel such a policy within the first 14 days.

Car Time told us that they were offering 0% finance upon the purchase of the warranty and that it was sold and offered as part of a complete package. Due to this they offered to refund the money Mrs B paid for the warranty, but they explained that she would need to pay the remaining amount for the car in cash, or with an alternative finance agreement. So, I've considered whether Car Time's offer was a reasonable way to resolve Mrs B's complaint, but I've also taken into consideration the circumstances of the situation.

Car Time was happy to unwind the finance agreement, and Mrs B was under the impression that she can take them up on their offer, so in June 2021 she settled the agreement by doing a bank transfer directly to C. I don't think Mrs B fully understood the difference between unwinding the agreement (by paying Car Time the remainder of the amount due), versus settling the finance agreement (by directly making a payment to C). Also, she told our service that she did a bank transfer directly to C because she didn't feel comfortable travelling with such a large amount of cash to Car Time's physical location, especially during the Covid-19 pandemic.

Car Time told us that Mrs B had not mentioned Covid-19 restrictions before, and they questioned why she has never queried alternative funding arrangements with them directly, if she thought the method of payment was unclear. I think Mrs B could've questioned this directly with them, but I've considered that Mrs B lost faith and confidence with Car Time because of all the issues that happened when she initially took delivery of the car, so the communication between the two parties became less productive as time went on. I also think that, most likely, Mrs B didn't think that the methods of payment options were unclear, as most likely she just wasn't aware of the different implications of settling vs unwinding a finance agreement. So most likely she thought that making the payment directly to C would've not been any different than making that same payment to Car Time.

Mrs B has told us that, when she called the warranty provider listed in her documents, she was told that they had no details for her. So she thinks Car Time never registered her for this warranty. Car Time has told us that they don't issue policy numbers and use the car registration number. They told us that the package was registered on their system, and that it was noted in Mrs B's documentation. As such, they said, there would've been no issue in the event a claim needed to be made. However, they said that in order to resolve the complaint, they are prepared to provide a pro-rata refund of the warranty to take into account that Mrs B had the benefit of the cover of the package for over 12 months.

I think Car Time should refund the entire amount of £2,800 to Mrs B and not just the pro-rata refund they have recently offered. I think their original offer made to Mrs B of the two options was reasonable. But considering the specific circumstances of this particular case I think it is fair and reasonable that Car Time refund Mrs B the entire amount of £2,800. The main reasons are: Firstly, Mrs B thought that she was taking up Car Time's offer by paying off the remainder of the finance agreement directly to C, as she was not aware of the difference between settling versus unwinding a finance agreement; Secondly, she also didn't utilise any of the warranty package. This is because she never wanted it from the start, and she didn't think she actually had the warranty, as she was under the impression that Car Time haven't purchased the warranty from the provider because when she called the provider, they didn't have her details on their system. As she never utilised any of the warranty package, there was no expense incurred by Car Time and the warranty provider for any repairs or servicing work on the car. Also, shortly after acquiring the car, Mrs B would've potentially had some protection under the Consumer Rights Act 2015, had there been a fault with the car.

Considering all of the above, I want to stress that I'm only deciding in favour of Mrs B, and directing Car Time to provide a full refund of £2,800, because I find that this is a fair and reasonable outcome due to the specific circumstances of this particular case.

Usually in similar circumstances, I would also be asking Car Time to add 8% simple interest per year to the £2,800 amount to compensate Mrs B for being without the funds. But I don't think this would be reasonable in this situation. I say this because, as I mentioned, Car Time's original offer of the two options proposed to Mrs B was reasonable, and I think Mrs B could've mitigated some of her losses if she questioned Car Time on whether physical cash was the only option available, or whether she could do a direct bank transfer to them. So, I think this would've mitigated some of the situation and potentially the complaint could've been resolved much earlier.

My provisional decision

My provisional decision is that I intend to uphold this complaint, and direct Car Time Motor Company UK Limited to cancel the mechanical breakdown warranty, and refund £2,800 to Mrs B.'

I asked both parties to provide me with any additional comments or information they would like me to consider by 20 December 2021.

Mrs B and Car Time accepted my provisional decision and had no further comments or evidence to provide.

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.

Having done so, and considering neither Mrs B nor Car Time had any further comments to make I see no reason to reach a different conclusion to what I reached in my provisional decision (copied above).

My final decision

I uphold this complaint, and direct Car Time Motor Company UK Limited to cancel the mechanical breakdown warranty, and refund £2,800 to Mrs B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 10 January 2022.

Mike Kozbial
Ombudsman