

The complaint

Mr B complains that a car that was supplied to him under a hire purchase agreement with Toyota Financial Services (UK) plc wasn't of satisfactory quality.

What happened

A used car was supplied to Mr B under a hire purchase agreement with Toyota Financial Services that he electronically signed in April 2021. There were some issues with the car so it was returned to the dealer for repairs three times in May 2021 but some of the faults continued so Mr B complained to Toyota Financial Services. It said that it understood that all of the issues had been repaired so it didn't uphold his complaint. Mr B wasn't satisfied with its response so complained to this service.

It then agreed in September 2021 to arrange an independent inspection of the car which took place in January 2022. Our investigator recommended that Mr B's complaint should be upheld. He didn't think that the car was of satisfactory quality at the point of supply so it was fair for Mr B to be able to reject the car. He recommended that Toyota Financial Services should: end the agreement and collect the car; refund Mr B's deposit/part exchange contribution of £1,100 and 20% of the payments made from the first report of the faults to the date of settlement for the impaired use caused by the car not being of satisfactory quality (all with interest); pay him £150 for any distress or inconvenience that he'd been caused; and remove any adverse information from his credit file in relation to the agreement.

Toyota Financial Services has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- it's happy to pay Mr B £150 compensation but feels that it's unreasonable for it to take the car back, settle the finance and refund his deposit considering he's had full use of the car and has been kept mobile with a courtesy car;
- there was a delay in the independent inspection being booked and it's apologised for that;
- the car was more than eight years old and had travelled 30,479 miles when it was supplied to Mr B so it would be expected that it would require repair or maintenance sooner than a car that was younger;
- the dealer would have carried out a pre-delivery inspection which confirmed the car had been fully reviewed prior to handover and no concerns were raised or indicated any issues were present;
- the car's MOT history confirmed that it passed an MOT test in March 2021 at 30,485 miles with only one advisory so it was of satisfactory quality; and
- it's expected that as the car is being used regularly, wear and tear issues might occur and it will need to be reviewed and repaired as part of the maintenance whilst it's in the customer's possession, in line with the terms and conditions of the finance agreement.

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, I agree with the outcome recommended by our investigator for these reasons:

- Toyota Financial Services, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr B - whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it;
- the car that was supplied to Mr B was about eight and a half years old, had been driven for 30,479 miles and had a price of £4,694.50;
- satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on a number of factors;
- Mr B returned the car to the dealer less than four weeks after the car had been supplied to him because of issues with the steering wheel shaking, getting into gear, the exhaust rattling and starting the car – some of those issues were repaired but the job card says: *"No fault found on bad start or gear fault"*;
- the car was again returned to the dealer 24 days later because of a number of issues including the clutch pedal being high and a grinding when changing gear – some repairs were carried out and the job card says: *"Clutch high [advise] new clutch although all [model identified] clutches are high"* and *"[Carried out] all [required] work – gears still a bit sticky but biting point better"*;
- Mr B returned the car to the dealer four days later because there were still issues with the car's gears (and a door handle had broken off) – the job card says that the gears had been repaired and were ok;
- Mr B says that there were still issues with the car's gears so he complained to Toyota Financial Services but it said that it understood that all of the issues had been repaired;
- after Mr B had complained to this service it agreed in September 2021 to arrange for the car to be inspected by an independent expert – it has apologised for the delay in arranging it and the car was inspected in January 2022;
- the inspection report says that the car's mileage was 37,726 and: *"Whilst driving the vehicle the engineer found on a number of occasions but randomly that on attempting to engage second gear either going up the gears or down the gears, that 2nd gear did not engage correctly, this had to be forced to engage. During testing of the vehicle the engineer did also have the same issue in engaging 3rd gear, this was not as frequent as the 2nd gear issue. The engineer also noticed that the clutch bite point is nearly at the top of the pedal travel, and whilst driving with the slightest of pressure on the clutch pedal makes the clutch begin to slip"*.
- Mr B had complained to the dealer about issues with the car's gears three times in May 2020 and, although the dealer had tried to repair the faults, when the car was inspected in January 2021 there were still faults with the gears;
- I consider it be more likely than not that those faults were present when the car was supplied to Mr B and, even though the car was about eight and a half years old when it was supplied to Mr B, I don't consider that it was of satisfactory quality at that time because of those faults;

- Toyota Financial Services says that the dealer checked the car before it was supplied to Mr B and that it had passed an MOT test – but I don't consider that that's enough to show that the car was of satisfactory quality; and
- the dealer has tried to repair those faults but they haven't been successful so I find that it would be fair and reasonable for Mr B to be able to reject the car and for Toyota Financial Services to take the actions described below.

Putting things right

I find that it would be fair and reasonable for Toyota Financial Services to end the hire purchase agreement and arrange for the car to be collected from Mr B – both at no cost to him. I find that it should also remove any information about the hire purchase agreement that it's recorded on Mr B's credit file.

The agreement shows that Mr B paid a cash deposit of £450 and also part-exchanged a car with a value of £650 – so the total deposit that he paid was £1,100. I find that it would be fair and reasonable for Toyota Financial Services to refund that deposit to Mr B, with interest.

Mr B was able to use the car to drive more than 7,000 miles between April 2021, when it was supplied to him, and January 2022, when the independent inspection took place, and Toyota Financial Services says that he was provided with a courtesy car was the car was with the dealer. I consider that it's fair and reasonable for Mr B to pay for the use that he's had from the car so I don't consider that it would be fair or reasonable for me to require Toyota Financial Services to refund to him the monthly payments that he's made under the agreement. But his use and enjoyment of the car will have been impacted by the issues with the car, particularly the ongoing faults with the gears – and I agree with our investigator that it would be fair and reasonable for Toyota Financial Services to refund to Mr B 20% of his monthly payments, with interest, as compensation for that loss of use and enjoyment - but I consider that the refund should apply to the period since the car was supplied to him.

These events have clearly caused distress and inconvenience for Mr B. I find that it would also be fair and reasonable for Toyota Financial Services to pay him £150 to compensate him for that distress and inconvenience.

My final decision

My decision is that I uphold Mr B's complaint and I order Toyota Financial Services (UK) plc to:

1. End the hire purchase agreement and arrange for the car to be collected from Mr B – both at no cost to him.
2. Refund to Mr B the deposit of £1,100 that he paid for the car.
3. Refund to Mr B 20% of the monthly payments that he's made under the hire purchase agreement as compensation for his loss of use and enjoyment of the car.
4. Pay interest on the amounts at 2 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
5. Remove any information about the hire purchase agreement that it's recorded on Mr B's credit file.

6. Pay £150 to Mr B to compensate him for the distress and inconvenience that he's been caused.

HM Revenue & Customs requires Toyota Financial Services to deduct tax from the interest payment referred to at 4 above. Toyota Financial Services must give Mr B a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 April 2022.

Jarrold Hastings

Ombudsman