

The complaint

Mr O complains that a car he acquired via a hire purchase agreement with Toyota Financial Services (UK) Plc trading as Lexus Financial Services ("Toyota FS") wasn't of satisfactory quality.

What happened

In September 2020 Mr O acquired a new car via a 36-month hire purchase agreement with Toyota FS. He says that he noticed the car had a rattle as he was driving it home and he contacted the dealer about it straight away.

The car was returned to the supplying dealer in October 2020 for the issue to be investigated. The dealership fitted additional padding to the car's roof. Unfortunately, this only temporarily stopped the noise and it returned.

Mr O says he took the car back again to the dealership for a second time that month and further padding was added but again the issue wasn't rectified. Mr O contacted the supplying dealer and informed it that the rattling noise was still present. He says he was advised that because of lockdown the dealership wouldn't be able to assist for the time being because the investigation wasn't for emergency repairs or maintenance.

Mr O kept the car but says the rattle remained and once lockdown had eased, he contacted the supplying dealership and the car was returned for investigation. In May 2021 the grab handle above the driver's door was replaced but the rattling was still present. Mr O says it is an intermittent fault that appears to be affected by the temperature.

In July 2021 the grab handle was again replaced and then, around two weeks later, the supplying dealership replaced the sunroof. Mr O says the rattle was temporarily fixed but returned and is still present.

Mr O complained to Toyota FS about the quality of the car. Toyota FS didn't uphold his complaint. It said no issues had been raised with them within the first six months from the inception of the agreement. Toyota FS said that there would now be issues arising from wear and tear.

Mr O disagreed with Toyota's response and made a complaint to this service. Mr O said that he had raised the issue of the rattle from the first day he had the car. He also said there had been multiple attempts to fix the car, but the rattle remained, and he wanted to now reject it.

Our investigator recommended that Mr O's complaint should be upheld. She said she was satisfied on the evidence provided that the car had been faulty at the point of supply to Mr O and despite repeated attempts to repair remained so. Our investigator said it would be fair for Mr O to now be able to reject the car, be reimbursed his deposit/part-exchange contribution and for the agreement to be cancelled.

As Mr O had been able to use the car, our investigator said that it would be unfair for Toyota FS to reimburse any of the payments he had made under the agreement. But she said

dealing with the faulty car had caused Mr O distress and inconvenience and she thought that compensation of £50 to him would be fair.

Mr O agreed with our investigator's view, but Toyota FS disagreed. It said that although it agreed with the compensation payment it would be unreasonable for Mr O to now reject the car as he had been able to have full use of it since acquiring it; that he hadn't raised his complaint with it until after the first six months from supply; the car had been fully inspected before delivery to Mr O and had met the required standard; that all repairs had been carried out under the warranty and due to the passage of time the car would have incurred wear and tear and would need to be maintained and repaired in line with the agreement's terms and conditions.

As the parties were unable to reach an agreement the complaint has been passed to me.

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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Mr O is a regulated consumer credit agreement this service is able to consider complaints relating to it. Toyota FS is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 ("the Act") there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

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

Here the car was brand new and would be expected to be fault free. It isn't disputed by the supplying dealer that Mr O has repeatedly raised with it an issue about the car rattling and that this occurs intermittently. The supplying dealer has described that there have been numerous test drives undertaken when sometimes the noise is heard and sometimes it isn't. It also says this issue was raised a short time after Mr O acquired the car.

Mr O says the supplying dealer was very helpful trying to resolve the issue but unfortunately, despite several repair attempts, wasn't able to do so. Mr O has also explained the reason for the gap in the repairs between October and May, this wasn't due to the issue having been fixed but because for a period of time the dealer wasn't able to carry out further investigations because of the lockdown rules in place.

Looking at the evidence, I'm satisfied that the car had a fault from the point of its supply to Mr O. He has been consistent as to the nature of the fault, that it occurs intermittently and is still present. The supplying dealer has also confirmed what Mr O has reported. I therefore don't think the car was of satisfactory quality.

Under the Act the retailer does have an opportunity to repair and I think the supplying dealer has tried to fix the issue, but these attempts have failed. The gap in the repairs wasn't by Mr O's choice, and although he didn't immediately complain to Toyota FS, I think that was a reasonable action on the part of Mr O. He had found the dealership helpful and had fairly wanted to give it an opportunity to rectify the issue. So, I'm not accepting Toyota FS's view that the delay in Mr O's complaint makes it now unreasonable for the car to be rejected.

As the car was faulty at the point of supply and attempts to repair have failed, I think it's fair and reasonable for Mr O to now reject it and for the agreement to be cancelled. As the rattling hasn't prevented Mr O from using the car (though it has affected his enjoyment of it) I don't think it would be fair for his monthly payments under the agreement to be reimbursed. These payments reflect the use he has had from the car and the wear and tear that will have arisen from that. However, he should be reimbursed the deposit/part exchange contribution that he provided when taking out the agreement as the agreement is to be cancelled. In these circumstances it is fair, as far as possible, for Mr O to be put back in the position he would have been had he not entered into the agreement.

I also think it would be fair for Mr O to be compensated for the inconvenience and distress caused to him having to deal with the faulty car. I agree with our investigator that £50 is a fair amount in these circumstances.

So, for the reasons given above, I'm upholding Mr O's complaint.

Putting things right

I'm asking Toyota FS to do the following:

- Arrange for the car to be collected at no cost to Mr O.
- Cancel the agreement with nothing further to pay.
- Reimburse Mr O's deposit/part exchange contribution which totals £12,329. 45 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Pay Mr O £50 compensation for the distress and inconvenience caused by dealing with the faulty car.
- Remove any adverse information recorded on Mr O's credit file in respect to this agreement.

My final decision

For the reasons set out above I'm upholding Mr O's complaint. I'm asking Toyota Financial Services (UK) Plc trading as Lexus Financial Services to do the following:

- Arrange for the car to be collected at no cost to Mr O.
- Cancel the agreement with nothing further to pay.
- Reimburse Mr O's deposit/part exchange contribution which totals £12,329. 45 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Pay Mr O £50 compensation for the distress and inconvenience caused by dealing

with the faulty car.

- Remove any adverse information recorded on Mr O's credit file in respect to this agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 14 July 2022.

Jocelyn Griffith
Ombudsman