

The complaint

Mr G complains about the quality of a car he acquired through a hire purchase agreement financed by Toyota Financial Services (UK) Plc (TFS).

What happened

In March 2020 Mr G acquired a used car through a hire purchase agreement. He returned to the dealership where he acquired the car the same month to investigate a rattle in the engine, which they informed him was due to the fitting of an after-market air filter which had a loose bracket. The dealership also checked the wheel bearings which they said were okay, and a reported bumpy drive, which they said was due to the after-market springs fitted to the vehicle.

In June 2020 Mr G returned to the dealership a second time to investigate a loss of coolant from the engine. There was a repair completed to the radiator, and Mr G is unhappy with damage to the paintwork that he says was caused during this repair. Mr G has also complained that the dealership didn't refit the bumper or lights on the car properly, or he said that the car has been in an accident which has prevented the parts from fitting properly.

The dealership investigated a rattle from the exhaust but said they wouldn't do any further work in respect of this because Mr G has replaced part of the exhaust himself. They checked for a pully noise and found no fault but replaced the alternator belts and tensioner as a gesture of goodwill.

In July 2020 Mr G complained to TFS. He said there was a noise from the engine of the vehicle, vibration through the wheels and the car feels very bumpy, there was a slight pull to the left when driving, a judder when braking and a rattle from the exhaust. Mr G also complained to TFS about damage he said was caused by the dealership when the radiator was replaced.

In August 2020 Mr G told TFS that he'd found water in the boot of the car and believed there was a leak into the boot.

TFS arranged for an engineer to inspect Mr G's vehicle in November 2020. The engineer concluded that it was unknown when the car was lowered and the air filter fitted, but these may be contributing to the running issue, bumpy ride and slight veer. The engineer found no evidence of any accident damage but noted that the radiator replacement would've included removal of the headlights & bumper, and plastic parts don't always sit back in a perfect position when refitted. The engineer noted no performance issues on the test drive, and no water in the boot or spare wheel area.

TFS sent Mr G their final response to his complaint in December 2020. They said there was no evidence of performance issues, and the problems with the feel and handling of the vehicle are likely due to alterations to the vehicle, which either Mr G made himself, or would've been evident on the vehicle when he acquired it, so they didn't think it was of unsatisfactory quality at the time it was supplied. They said the repairs completed by the

dealership were of a fair and expected standard, and the bodywork of the vehicle was in a fair condition for its age.

Unhappy with this, Mr G brought his complaint to this service. Our investigator looked into things for Mr G, she thought the vehicle was of satisfactory quality considering its age and the modifications made, so she didn't think TFS needed to do anything more.

Mr G didn't agree. He said the car was sold to him with the modifications, and he doesn't think the engineer properly inspected his vehicle. Mr G says the inspection didn't cover all of the complaints he raised with TFS, and the vehicle wasn't tested at high speed.

Mr G provided a diagnostic check completed by a garage in June 2021. The garage checked for an engine noise and reported this to be normal. They found misfires on cylinders one and three and recommended that the standard air filter be refitted to the car. Mr G says the report confirms there are faults with the car, and he's unhappy these weren't diagnosed sooner, and that he had to pay for this report.

Mr G has provided videos of the engine running, and pictures of the car's tyres which he has replaced due to uneven wear.

I issued a provisional decision on this complaint in January 2022 recommending that it was upheld. I made the following provisional findings:

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. TFS as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory".

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car acquired was used with a cash price of around £11,000. It was seven years old and had travelled around 42,000 miles at the time of supply.

When a person acquires a used car like Mr G's it's reasonable to say that the expectation of quality is lower than that of a new or younger/lower mileage second-hand car. The price for the vehicle is lower, and this is reflective of the fact that the car is more road worn. The chance of encountering a serious issue sooner, is higher.

The investigation showed no evidence of a leak into the boot area, Mr G said he'd drained this himself before the inspection to prevent any further damage. But I'd expect the engineer to have found some residual evidence of this. I haven't seen any evidence of a further leak into the boot area.

The inspection also notes that the paintwork of Mr G's car is commensurate with its age and mileage. Mr G has provided photos of some damage to the paintwork, but I haven't seen any evidence that these were caused whilst the earlier repairs to the radiator were undertaken.

The car was seven years old when Mr G acquired it, so I'd expect to see some minor damage to the body of the vehicle as can be seen here.

Mr G has said that the suspension had been lowered and the nonstandard air filter fitted before he purchased the car, and he discussed the lowered suspension with the dealership prior to collecting the car. The engineer that inspected Mr G's vehicle said these modifications would've been evident when the car was purchased if they'd been fitted at that time.

Based on the evidence, I'm satisfied that these modifications were made prior to Mr G acquiring the vehicle, and that he was aware of them. Mr G has made a number of other, mainly cosmetic, alterations to the vehicle.

I think, where a person acquires a car with modifications such as these, it's reasonable to expect that they might cause some unusual wear to the vehicle, or some performance issues, and that maintenance or repairs might be needed sooner than would be expected on a vehicle without these modifications.

The inspection of the vehicle noted that no performance issues were found, and the vehicle pulling to the left could be as a result of the lowered suspension.

Mr G has provided evidence of some misfires on cylinder one and three more recently. I haven't seen any evidence that these are linked to the early issues that Mr G raised with TFS. And the garage recommends that the standard air filter is refitted to the vehicle prior to further testing.

The evidence provided by Mr G following our investigator's view shows he's had to replace the tyres as a result of uneven wear. It seems that this can be a consequence of lowered suspension.

Based on the evidence, I'm persuaded that the majority of the problems Mr G is experiencing with the vehicle, such as the wear to the tyres and the noise from the engine, are likely to be a consequence of the modifications made. Where non-standard parts are fitted to vehicles, it is possible for these to affect the handling and performance of the vehicle.

That said, I think a reasonable person buying a car with these modifications would still expect it to operate in a safe manner, and without the modifications causing significant fault.

The evidence of the car veering to the left is a concern in terms of safety, and I don't think a reasonable person would expect this to occur in a vehicle of this age and mileage, even with the modifications that've been made.

Whilst a non-standard air filter might be expected to result in unusual noise or vibration to the vehicle, the misfire of the engine is a fault that I don't think a reasonable person would expect to be caused by a non-standard air filter.

The issues don't appear to be one of normal wear and tear, even when the modifications are considered, nor have I seen any evidence that they were caused by driving style or third-party damage.

All things considered, I find that, on the balance of probabilities, it is more likely than not that Mr G's car was of unsatisfactory quality at the time that it was supplied.

Having made that finding, I need to decide what, if anything, TFS should do to put things right.

The Consumer Rights Act sets out the remedies available where goods are considered not to be of satisfactory quality and one of the remedies is to allow an opportunity to repair the goods. That repair should be done in a reasonable time, and without significant inconvenience to the consumer.

Mr G has returned his vehicle for repairs to parts identified as being faulty previously and is still experiencing faults with the vehicle. There is a suggestion that returning the car to its standard specification might resolve the faults that make it of unsatisfactory quality, but it's not clear exactly what repairs are needed, if they will be successful, will be long lasting, or how long they might take to complete. So, it's likely that Mr G will be put to significant inconvenience, in addition to that which he's already experienced, in arranging a repair when it's not clear that it will be successful and further work and time might then be required to return the car to a satisfactory state. It would also mean that Mr G has to wait for an unknown period of time before he is able to drive his car again.

All things considered; I think Mr G should be allowed his final right to reject the car. This means that the car is collected from Mr G, the finance agreement is brought to an end, and the agreement and any adverse information should be removed from Mr G's credit file.

Mr G has been able to use the vehicle throughout the complaint, so I think it's fair that Mr G pays for the use of the vehicle. I think his monthly rental payments reflect this use, and so it's fair for TFS to keep these.

I've seen evidence that Mr G paid £118 for the report diagnosing the misfires on cylinders one and three. TFS should reimburse Mr G for this, plus interest.

Finally, Mr G has been put to the inconvenience of having to arrange for repairs and inspections to his car, TFS should pay Mr G £100 compensation in recognition of this.

Mr G responded to my provisional decision. He said he's had to spend money maintaining the car because of the faults. The work completed includes:

- 3 sets of new tyres due to uneven wear caused by the lowered suspension
- Replacement of sparkplugs to attempt to fix the misfire
- Replacement of the front and rear badges due to corrosion
- Repair of the exhaust
- Replacement of the door seal and door protectors.
- Replacement of the front and rear brakes which were pitted and unevenly worn (£200)
- Two services and two MOT's because the dealership couldn't book him in, even though he'd paid for a service plan
- Replacement of two stabiliser bars on the rear of the car which should've been covered under autocare.

Mr G said he's spent money customising the car to his own liking, because he thought it would be his to keep, and now he'll be out of pocket for these items.

Mr G would like a full refund of his monthly payments, or at least two thirds of them, as the dealership had three attempts to fix the car and he wouldn't have had it for this long had TFS agreed to rejection sooner. He'd like a refund for the repairs he's completed, £118 for the

diagnostic report, compensation for massive inconvenience and a reimbursement for the upgraded mirrors, headrests, and arm rest that he can't remove if he gives the car back.

Mr G also said he couldn't get the same specification of car now, due to the increase in market prices. He said he'd consider keeping the car if all his payments to date were refunded and he could use this to repair the car.

TFS responded to my provisional decision. They said not all of the work completed by Mr G was cosmetic in nature, such as the replacement of part of the exhaust. They said in order to accept rejection of the vehicle it would need to be returned with any modifications removed and repairs to the exhaust completed, otherwise the re-sale value of the vehicle might be affected.

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.

I set out in my provisional decision that I found the car to be of unsatisfactory quality as a result of the misfire. Neither party has disputed this, so I see no reason to change my mind on this point. Both parties have presented additional evidence concerning how the complaint should be resolved, and I've thought about these carefully.

Mr G has asked to be reimbursed for a number for repairs he's completed to the vehicle and I've considered these in turn.

Mr G has replaced the tyres due to uneven wear. As I set out in my provisional decision, this is a possible consequence of the modifications made, which Mr G knew about prior to purchasing the vehicle, and I don't think TFS are responsible for this.

Mr G has replaced the spark plus, in an attempt to correct the misfire on the vehicle. I think this was a reasonable step to take, and as I found this fault made the car of unsatisfactory quality, TFS should reimburse Mr G for this cost. I've seen evidence that he paid £34.70 to replace the spark plugs.

I've seen evidence that Mr G has replaced the front and rear badges due to corrosion and the brakes due to them being pitted and worn. He said he's also replaced the door seal. On a car of this age, I think a reasonable person might expect to need to make repairs to the vehicle, and these items appear to be a case of normal wear and tear, so TFS aren't responsible for these costs.

Mr G said he's had to replace two stabiliser bars that should have been covered under his Autocare cover but he was told by TFS to wait until our investigation was concluded, and so the cover expired. I haven't seen any evidence that TFS told Mr G to wait for any repairs, and he could've approached the provider of his warranty cover if he felt he had a claim to make. So TFS aren't responsible for this cost.

Mr G said he's paid for two MOT's and two services which should've been covered under his service plan. I haven't seen any evidence that Mr G was refused an MOT or a service by the dealership. I understand Mr G was unhappy with the possibility of non-genuine parts being used during a service, but I don't think this is unreasonable for a second-hand vehicle. So, TFS aren't responsible for these costs.

Both Mr G and TFS have commented on the modifications that Mr G has made to the vehicle. TFS say these should be removed prior to the rejection taking place otherwise the

re-sale value of the vehicle might be affected. Mr G says he made the modifications because he expected to keep the car once the agreement had ended, but because it's faulty he'll now lose out on the cost of modifications made. He asked to be reimbursed for the modifications which can't be easily removed.

Under the agreement, TFS remains the owner of the vehicle until Mr G has made all repayments. But I haven't seen anything in the agreement that prevents Mr G from modifying the vehicle. The vehicle was already modified when Mr G acquired it, by way of lowered suspension and an after-market air filter. So, I don't think it was unforeseeable that Mr G might want to make further changes to the vehicle to suit his taste.

I accept that modifications might reduce the resale value of a vehicle. But it is possible that they might increase it too. Modifications might narrow the audience interested in a vehicle, and so affect its value. But as Mr G's vehicle already had some mechanical modifications prior to supply, I don't think that would be the case here.

Mr G made modifications to the vehicle with the intention of owning it once the agreement with TFS came to an end, and it is being returned only because there was a breach of contract, as the vehicle wasn't of satisfactory quality at the time it was supplied. So, I think it would be fair for TFS to reimburse Mr G for the modifications which cannot be easily removed which are the mirrors, headrest, and armrest, upon receipt of invoices for this work.

I asked Mr G and TFS for any further comments or evidence in respect of this reimbursement for the modifications made to the vehicle.

TFS didn't respond with any further comments or evidence.

Mr G said he'd be happy to get these costs back, but he should also have his monthly payments made to date refunded, because the car wasn't worth its sale price, and he's only had it for so long because a rejection wasn't agreed sooner.

Whilst I appreciate that Mr G wouldn't have had the car for as long as he has if a rejection had been agreed sooner, he has continued to use the vehicle. And if he didn't have use of this vehicle, he'd have needed to pay for some other way to stay mobile. I think the monthly payments agreed at the outset reflect a fair cost for use of the vehicle. So, I find that TFS can retain the monthly payments made to date to reflect the use of the vehicle.

Mr G said if TFS would reimburse him for his payments already made, he'd pay the rest of the finance amount and keep the car, because it would cost him more to replace it now. If Mr G wants to approach TFS to negotiate a different outcome, he is able to do this. But for all of the reasons set out above, I'm satisfied that rejection of the vehicle is the appropriate remedy having regard to the relevant law and regulations.

My final decision

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

- End the agreement and collect the car at no further cost to Mr G
- Refund Mr G £118 for the diagnostic report, plus 8% simple yearly interest, calculated from the date of payment to the date of settlement
- Refund Mr G £34.70 for the replacement spark plug, plus 8% simple yearly interest, calculated from the date of payment to the date of settlement

- Refund Mr G for the modifications to the mirrors, armrest, and headrest, upon receipt of invoices for this work, plus 8% simple yearly interest, calculated from the date of payment to the date of settlement
- Pay Mr G £100 compensation to reflect the distress and inconvenience caused
- Remove the agreement and any adverse information from Mr G's 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 G how much it's taken off. It should also give Mr G 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 G to accept or reject my decision before 13 June 2022.

Zoe Merriman
Ombudsman