

The complaint

Mr B complains about the quality of a car he acquired through a hire agreement financed by ALD Automotive Limited (ALD).

What happened

In August 2019 Mr B acquired a new car through a hire agreement. He said he noticed a problem with the vehicle soon after acquiring it, and contacted ALD. He said they suggested he take the vehicle to a manufacturer garage, because it was now his responsibility and any repairs might be covered under warranty.

The car was inspected by the manufacturer dealership in October 2019, June 2020, February 2021, and March 2021. Mr B said the car was juddering, or hesitant. The manufacturer garage couldn't replicate the fault during test drives, and so they suggested that Mr B test drive the car alongside a master technician to try and identify the fault, but this didn't go ahead.

Mr B complained to ALD about the quality of the vehicle in March 2021, and they arranged for an engineer to test drive it. The engineer reported to ALD that there was a judder in the vehicle when the gears were changed in a specific way, or under certain driving conditions such as revving up to pull out of a junction. The engineer commented that it was difficult to replicate the fault, and they weren't sure of the cause, but it was an annoyance rather than a larger problem.

In June 2021, ALD gave Mr B the option of terminating his agreement early without charge with £400 compensation, or they'd work to arrange repairs to rectify the fault.

Unhappy with ALD's offer, Mr B brought his complaint to us for investigation. He said he wanted to return the car and have his payments refunded.

Our investigator gave their view that the car was of unsatisfactory quality at the time it was supplied to Mr B. She recommended that Mr B be allowed his final right to reject the vehicle, that ALD refund Mr B's advance payment on a pro rata basis, and refund 10% of Mr B's monthly payments to reflect the impaired use of the vehicle.

Mr B said he'd rather ALD repaired the vehicle, because he'd have to wait a number of months for a new car to become available, and he'd face higher prices to enter a new agreement. Our investigator recommended that ALD arrange for the repair of the vehicle, keep Mr B mobile whilst repairs were carried out, and refund 10% of Mr B's monthly payments to reflect the impaired use of the vehicle.

ALD asked for the case to be reviewed by an ombudsman. They said Mr B didn't make them aware of the complaint until March 2021, so they shouldn't be responsible for returning so much of Mr B's monthly payments for a minor issue when they could've inspected the vehicle sooner if Mr B had contacted them. ALD said if they hadn't appointed their own engineer, the outcome would've been different, because the manufacturer had been unable to find a fault.

As an agreement couldn't be reached, the case was passed to me for a decision. I issued a provisional decision on this complaint in April 2022 recommending that it was upheld. I made the following provisional findings:

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's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire agreement – so we can consider a complaint relating to it. ALD have told Mr B that according to the hire agreement, he is responsible for any repairs to the vehicle, including any required as a result of faulty manufacture. I disagree. As the supplier of the goods under this type of agreement, ALD is responsible for a complaint about their quality.

I'm satisfied that The Consumer Rights Act 2015 remains relevant to Mr B's 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 purchase, 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 was acquired new, and with this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be higher than a cheaper, higher mileage, vehicle and that it could be used, free from even minor defects, for a considerable period of time.

Mr B reported problems with the performance of the car in October 2019. The manufacturer garage was unable to replicate a fault on a number of test drives, but the engineer appointed by ALD confirmed there was a fault with the vehicle in the form of a judder under certain driving conditions. They also explained why this might've been difficult to replicate during the previous test drives.

ALD have said if they hadn't appointed an engineer, the outcome would've been different, but I'm not persuaded this is the case. Ultimately, the vehicle had a fault, whether this was diagnosed by the manufacturer garage or not.

So, I'm satisfied that there was a fault with the vehicle. ALD have said that the fault was an annoyance, but I don't think a reasonable person would expect a brand new car to develop a fault like this in such a short space of time, so I find that it was of unsatisfactory quality at the time it was supplied to Mr B.

Having made that finding, I need to decide what, if anything, ALD 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.

Here, it's not known exactly what is causing the juddering to occur, and so it's not clear what is required in order to affect a repair. It's not clear if a repair will be successful, will be long lasting, or how long it might take to complete. So, it's likely that Mr B 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's also not clear if a repair would be cost effective for ALD.

All things considered; I'm satisfied that normally, Mr B is entitled to his final right to reject the vehicle. This would mean that the car is collected from Mr B, the agreement is brought to an end, and Mr B's initial rental is refunded on a pro rata basis.

I understand that Mr B's agreement is nearing an end, and the car is due to be returned to ALD in a few months. So, I don't think it's reasonable to reject the vehicle at this stage. But I do think it's fair that ALD compensate Mr B for having a faulty car for the full length of the agreement.

ALD said that if Mr B had contacted them in 2019 when the fault first occurred, they wouldn't have to refund so much of his payments. Mr B said he did contact ALD, but they told him to take the car to a manufacturer garage because he was responsible for the repairs. Mr B hasn't been able to provide evidence of this phone call. But I don't think it was unreasonable for Mr B to have taken the vehicle to a manufacturer garage in any event. When he did contact ALD, they told him he was responsible for the repairs, so I'm not persuaded that the outcome would've been any different if he'd asked them to inspect the vehicle when he first experienced the fault.

Mr B has been able to use the vehicle, so I think it's fair that he pays for this use. But he has had to drive the car with a fault present that affects its performance. The hire agreement allows Mr B to travel a total of 24,000 miles in three years, and he'd travelled just over 16,000 miles two years into the agreement. So, he has used the vehicle in line with the agreed mileage and his use wasn't significantly impaired, but it was impaired. ALD should refund Mr B 10% of all of his payments, including the initial rental, to reflect this impaired use, plus 8% simple yearly interest from the date of each payment to the date of settlement.

Mr B responded to my provisional decision to say he'd like the car to be fixed as soon as possible, and he'd then keep it for the full term of the agreement, because otherwise he'd be left without a vehicle due to the delivery time on new cars.

ALD responded to my provisional decision. They said they didn't agree that Mr B had a right to reject the vehicle, because there's no evidence the fault was present when the vehicle was supplied. They also said the dealership is entitled to a chance to repair the vehicle, which hasn't happened.

ALD said they weren't aware of any issues until March 2021, and they instructed an engineer in June 2021 and offered to take control of repairs at that stage, but Mr B declined this offer, and their offer to end the contract. ALD said they would refund 10% of Mr B's payments from August 2019 to June 2021, but they didn't think they should refund any payments after June 2021 as they offered to repair the vehicle or end the finance at this point, but Mr B didn't accept and chose to continue to drive the faulty car.

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.

ALD have said they don't agree that Mr B has a right to reject the vehicle, because there's no evidence a fault was present when the vehicle was supplied. I don't think a reasonable person would expect a fault like this to occur on a new vehicle in such a short space of time, and for the reasons set out in my provisional decision, I'm satisfied that the vehicle wasn't of satisfactory quality when it was supplied to Mr B.

ALD also said they don't think Mr B has a right to reject the vehicle because there should be one opportunity to repair the vehicle. The CRA sets out that any repair should be done in a reasonable time, and without significant inconvenience to the consumer.

As I set out in my provisional decision, it's not known exactly what is causing the juddering to occur, and so it's not clear what is required in order to affect a repair. So, it's likely that Mr B will be put to significant inconvenience, in addition to that which he's already experienced, in arranging a repair.

All things considered; I'm satisfied that normally, Mr B is entitled to his final right to reject the vehicle. But I understand that Mr B's agreement is nearing an end, and the car is due to be returned to ALD in a few months. So, I don't think it's reasonable to reject the vehicle at this stage. But I do think it's fair that ALD compensate Mr B for having a faulty car.

ALD said they weren't aware of issues until March 2021, but as I set out in my provisional decision, I don't think it was unreasonable for Mr B to take the vehicle to a manufacturer garage. And, in any event, when Mr B contacted ALD they told him he was responsible for repairs, so I'm not persuaded the outcome would've been different if Mr B had contacted ALD at the outset.

ALD said they didn't think they should refund any of Mr B's payments after June 2021, because they offered to repair the vehicle or cancel the agreement at that stage, but Mr B chose to continue to drive a faulty vehicle.

As I've set out, I think Mr B was entitled to reject the vehicle, so I don't think it was unreasonable for him to reject the repairs when ALD offered them. ALD say they offered to end Mr B's agreement, but this offer wasn't in line with our expectations for rejecting a vehicle under the CRA. ALD's offer didn't include a pro rata refund of Mr B's initial rental. They also didn't offer to refund any of Mr B's payments for the impaired use of the vehicle. So, I don't think it was unreasonable for Mr B to reject this offer.

Mr B said he'd like the vehicle repaired as soon as possible. For the reasons set out in my provisional decision, I don't think repair of the vehicle is an acceptable remedy under the CRA.

All things being equal, I'm satisfied that Mr B is entitled to his final right to reject the vehicle. If it weren't for the impending end of the contract, I'd be directing ALD to collect the vehicle at no cost to Mr B, refund his initial rental on a pro rata basis and refund 10% of Mr B's monthly payments from the beginning of the agreement to the date of rejection to reflect the impaired use whilst Mr B was in possession of the car.

As it is, Mr B's agreement is almost at an end. So, I don't think it's reasonable to reject the vehicle at this stage. But, for the reasons I set out in my provisional decision, ALD should compensate Mr B for the impaired use of a faulty vehicle for the full length of the agreement, by refunding 10% of all of his monthly payments, plus interest.

My final decision

My final decision is that I uphold this complaint and I require ALD Automotive Limited to refund 10% of all of Mr B's payments, including his initial rental, plus 8% simple yearly interest from the date of each payment to the date of settlement.

If ALD considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr B how much it's taken off. It should also give Mr B 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 B to accept or reject my decision before 12 July 2022.

Zoe Merriman
Ombudsman