

The complaint

Miss B complains that a used car she got with a hire purchase agreement (HPA) from The Car Finance Company (2007) Limited (TCFC) was of unsatisfactory quality. And she doesn't think she should have to pay anything further towards the finance because she rejected the car and it was agreed the finance would be cancelled.

What happened

Miss B got this car in March 2016. It cost nearly £6,000 and she agreed to repay about £12,000 at about £250 a month over four years. Miss B had problems with the vehicle and took it back to the supplying dealer a number of times but issues persisted. She complained to TCFC and says the dealer then agreed she could return the car and the finance would be settled.

Miss B thought that was the end of the matter until she got a call from TCFC chasing payment in 2017 and she was contacted by a third party (that I'll call A) who said she still owed over £9,000 for the car, in 2019. Miss B says she no longer has the car and the dealer was supposed to sort out the finance so it's unfair she's being chased for payment after all this time.

TCFC accepts Miss B got in touch about car quality issues in September 2016 - contact notes from the relevant time indicate she reported the car would rev up without prompting and she'd taken it back to the dealer several times. The same notes say the dealer checked the car and no faults were found and TCFC arranged for an independent expert to inspect in November 2016.

TCFC was unable to supply the expert's report initially but its account notes say he was unable to replicate the issues that Miss B experienced and TCFC told Miss B, in November 2016, that it didn't accept the car was faulty. Miss B failed to collect the vehicle and the car was later repossessed. TCFC sold the car but this wasn't enough to pay off the balance and says Miss B remains liable to pay about £9,100.

Our investigator didn't think the complaint should be upheld. She wasn't persuaded the car was faulty and she didn't think Miss B was entitled to reject it and end the finance agreement. She found it unlikely the dealer had agreed to take the car back and pay off the finance and she wasn't persuaded it would be fair to ask TCFC to waive or reduce the debt. She noted Miss B had concerns about A's actions and she explained that Miss B would need to raise those with A first - and she might be able to bring a separate complaint to our service if she was unhappy with the response.

Miss B didn't think that was fair and she asked for an ombudsman to review the matter. She says (in summary) she never received a final response letter (FRL) from TCFC, she's unclear about why the expert would have inspected in November 2016 - when she took the car back long before that - and it's unfair to charge her the whole amount given the car was sold.

Having considered the available evidence, I was minded to uphold the complaint in part. I

thought it was fair to let the parties see my provisional findings - and make further submissions (if they wanted to) - before I made my final decision. I issued a provisional decision on 12 July 2022 and I've set out below what I decided provisionally - and why. This forms part of my final decision.

My provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconclusive or contradictory - as some of it is here - I reach my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Miss B brings her complaint to our service because she acquired this car under a HPA from TCFC. And I should make it clear at the outset, that I'm considering TCFC's obligations arising under the HPA here. It looks as if TCFC sent its final response to Miss B on 22 December 2016. Miss B didn't refer the matter to our service until February 2021 but TCFC hasn't objected to us looking into the matter so we can consider the merits of Miss B's complaint.

The information supplied to our investigator was somewhat limited – due, in part, to the passage of time. I asked the parties for more information, after the matter was referred to me. Both parties went to some trouble to provide additional evidence and I'd like to thank them for that.

I want to assure the parties, if I don't address every point raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. But, I'm going to concentrate in this decision on what I consider is relevant and material to reaching a fair and reasonable outcome overall. The rules of our service – which provides an alternative to the courts - allow me to do that.

I make my decision based on what I think is fair and reasonable overall but I'm obliged to take relevant law (among other things) into account. I'm satisfied the Consumer Rights Act 2015 (CRA) is relevant here and TCFC was obliged to ensure that this car was of satisfactory quality when it was supplied to Miss B.

Was the car of unsatisfactory quality?

The level of quality that's "satisfactory" varies according to individual circumstances. In the case of a used car, it's generally reasonable to take into account factors such as the age, price and mileage at the point of supply. This car was about six years old with nearly 61,000 miles on the clock and cost just under £6,000. As such, I think a reasonable person would accept it wouldn't meet the same standards as a brand new vehicle – as parts are likely to be worn and need replacing sooner or later – which is reflected in the lower price paid for a used vehicle.

It looks as if Miss B complained to TCFC in September 2016 because she was unhappy with the car. This was around six months after supply but I think Miss B probably started to have some problems before that. This is reflected in TCFC's contact notes and most people, in my experience, tend to contact the supplying dealer first in this situation. That's what Miss B says happened here – she took the car back to the dealer initially but problems persisted so she contacted TCFC.

TCFC arranged for an independent expert to inspect the car in November 2016. I think this was reasonable. TCFC was able to locate the expert's report after our investigator provided

her view. We sent a copy of this to Miss B and I have considered the report carefully. I can see the car had covered nearly 68,000 miles when the expert took it for a test drive - so it looks as if Miss B was able to travel over 7,000 miles after supply.

The expert couldn't replicate the revving issue that Miss B reported but he thought the most likely cause of this was the diesel particulate filter (DPF) regenerating. He said this is a process the car is supposed to undertake, not a fault. And he didn't think the car was of unsatisfactory quality when TCFC supplied it to Miss B. The expert did identify two faults - he found issues with wheel alignment/steering geometry and a wheel bearing. But, he considered these were likely due to wear and tear and not the responsibility of TCFC.

I think the expert seems to have appropriate qualifications and experience. I find his report to be fairly detailed and the conclusions seem to make sense. I think it's reasonable to give some weight to what the expert says. I'm not persuaded the car was of unsatisfactory quality, on the current evidence. And I can't reasonably conclude that TCFC should have allowed Miss B to reject the car and end the finance in 2016 - or that it should do so now.

Should TCFC have allowed Miss B to end the agreement another way ?

TCFC's contact notes suggest that a case handler spoke to Miss B about her options in November 2016. I think it would have been fair for TCFC to remind Miss B that it was open to her to end the agreement by way of a process known as voluntary termination (VT) at this time. I asked Miss B if this was discussed but she couldn't remember. On balance, I think it probably was - I can see TCFC referred to the right to VT the HPA in the FRL sent a month later. In any event, Miss B she told me she wouldn't have taken the VT option if it was raised and I can't fairly find TCFC did something wrong in this respect.

Did TCFC agree that Miss B could reject the car and cancel the finance?

I can see that Miss B feels strongly that she should have no further liability under the HPA because the dealer said she could hand the car back and the finance would be settled. TCFC denies any agreement to allow Miss B to do so. And, while I can't be certain what Miss B discussed with the dealer at the time, I'm not persuaded it's likely that TCFC agreed to take the car back and end the HPA.

I say this because I can see, (from DVLA records) that Miss B was the vehicle's registered keeper until mid-October 2016. This is consistent with the time she told us she took the car back to the dealer because she wanted to reject it. And it's about a month before the expert's inspection took place. I think it's unlikely TCFC would have arranged and paid for an expert's inspection if it had already agreed that Miss B could reject the car the previous month. I find it more likely than not Miss B returned the car without TCFC's agreement.

I've also considered contact records that TCFC supplied - which seem to be contemporaneous with events. These say Miss B was asked to collect the car after the expert's inspection, because no faults had been found. And she was told this in writing as well around the same time. Miss B has confirmed that TCFC contacted her by phone in the early part of 2017 about the outstanding balance - which is what I'd expect to happen if the finance wasn't cancelled. And I think TCFC probably would have written to Miss B about the debt around this time as well.

Miss B says she didn't receive correspondence from TCFC after she handed the car back. But she also told us that she moved house in the middle of December 2016 and didn't tell TCFC about her new address. I'm satisfied it was Miss B's responsibility to keep her contact details up to date. I appreciate she says she didn't think she needed to keep TCF informed - because as far as she was concerned - the finance had ended. But, I'm not persuaded

that's reasonable in the circumstances.

I'm satisfied the HPA Miss B signed makes it fairly clear that TCFC owned the car and Miss B recognised it was TCFC she needed to contact when she had quality concerns and wanted to reject the vehicle. I think Miss B was made reasonably aware at the outset of her obligations to keep the car in good condition and return it to TCFC (if she didn't make the final payment) under the terms of the HPA. I'm satisfied TCFC likely informed Miss B that it didn't agree she was entitled to reject the car. So, even if the dealer proposed an alternative solution, I think it would have been reasonable for Miss B to check that with TCFC. I've seen nothing to suggest that she did so – either when she handed the car back or after receiving a phone call from TCFC a few months later. I'm not persuaded I can reasonably conclude that TCFC agreed to take the car back and cancel the HPA.

Outstanding liability

It looks as if the account defaulted in June 2017. The car's MOT history suggests it was in use by someone in August that year and I think it's reasonable to conclude that TCFC had sold the car by then. Under the terms of the HPA, Miss B remains liable for the balance in this situation - less an amount equal to the "actual" proceeds of sale taking off any costs involved, such as repossession.

We asked TCFC but it hasn't been able to provide details of the sale proceeds. Instead, TCFC says it was policy to allow the customer the current CAP value for the vehicle regardless of condition and deduct the cost of bringing the car back to useable condition and repossession. So Miss B's account was credited with the CAP value of around £2,800 less £250 for repossession and £1,150 for bringing the car back to useable condition.

I've given some thought as to whether this is fair and reasonable. The CAP value is an average price, according to an industry guide. I can see TCFC provided evidence of the CAP value of the vehicle at the start of the HPA and this amount was about halfway between the retail price and trade value at that time. I'm minded to find the CAP value of £2,800 probably represents a realistic estimate of the price this car is likely to have achieved at auction. So I can't fairly say it's unreasonable to apply this amount to reduce the balance owing.

I don't think £250 seems an unreasonable charge for the cost of repossession – it's in keeping with what I've seen in other similar cases. But, I've seen nothing to show why it was necessary to charge £1,150 for re-conditioning. I acknowledge Miss B was obliged to keep and return the car to TCFC in good condition - under the terms of the HPA. But I've seen nothing to show what this cost was made up of exactly or why this work was needed. And I don't think it's unreasonable to expect a car finance company like TCFC to evidence this sort of charge.

I accept the expert found some outstanding maintenance issues that would have been Miss B's responsibility when he saw the car in November 2016. But, I don't think putting those right is likely to have cost more than £150. I can see the reconditioning cost was applied in March 2017 – less than four months later. It seems unlikely the car would have been stored in poor conditions, given Miss B left it at the dealership – which looks (from the finance paperwork) to be part of the same group of companies as TCFC. I'd expect TCFC to take reasonable steps to mitigate its losses in this situation. I don't think it would have been too difficult for TCFC to ensure the car was stored properly, in these particular circumstances. And, in the absence of further evidence, I'm minded to find the balance owing should be reduced by £1,000.

Summary of my provisional conclusions

For the reasons set out, I'm not persuaded (on the current evidence) that this car was of unsatisfactory quality when it was supplied. And I think it's unlikely TCFC agreed that Miss B should be entitled to reject the car and end the finance. I'm not persuaded that TCFC acted unfairly in terminating the finance in the way that it did and repossessing the car. But, I'm upholding the complaint in part because I'm minded to find it would be fair and reasonable for TCFC to reduce the amount owed by £1,000 as I've explained above.

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 invited the parties to consider my provisional findings and let me have any further comments or new evidence by 9 August 2022. TCFC has accepted my provisional findings and taken steps to reduce the amount owed in line with my provisional conclusions. Miss B acknowledged receipt of my provisional decision and she hasn't raised any objections or provided any new information. I see no reasonable grounds to depart from my provisional findings in the circumstances.

For the reasons I've given, I'm not persuaded that the car was of unsatisfactory quality when it was supplied. I find it unlikely TCFC agreed that Miss B should be entitled to reject the car and end the finance. And I don't think TCFC acted unfairly in terminating the finance in the way that it did and repossessing the car. I uphold the complaint in part however because I consider it would be fair and reasonable for TCFC to reduce the amount owed by £1,000 as set out above and amend Miss B's credit file accordingly.

My final decision

My decision is I uphold this complaint in part and (if it hasn't done so already) I require The Car Finance Company (2007) Limited to reduce the amount Miss B owes by £1,000 and arrange for this reduction to be reflected in any information it has recorded about the HPA on her credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 28 September 2022.

Claire Jackson
Ombudsman