

The complaint

Mr C complains that a new car he acquired with a conditional sale agreement (CSA) from Tesla Financial Services Limited (TFS) is of unsatisfactory quality.

What happened

Mr C got the car in November 2020. It cost about £44,000 and the total advance paid was around £15,600 (made up of a £100 fee, a down payment of £12,500 and a grant of £3,000). Mr C agreed to repay the borrowing over four years or so, at nearly £370 a month with a final payment of over £15,000. In January 2021, Mr C noticed an issue with paintwork on the bonnet. He took the car to one of the manufacturer's service centres and the bonnet was resprayed but he was unhappy with the repair.

Mr C arranged for an independent expert to inspect the car in June 2021. The expert thought paint adhesion was poor across the car and he found paint lifted away in some places when a tape test was carried out. He considered *"the general condition of the paint system across the vehicle ...show[s] signs of poor adhesion and a less than expected level of durability and the general condition of the paint system is...less than acceptable"*.

Mr C complained to TFS and it consulted the manufacturer. TFS pointed out the expert found the paint is *'within specification of most vehicle paint systems'* and *'paint levels were found to show reasonable levels across the vehicle with the exception of the bonnet'*. TFS thought it was unsurprising the bonnet paintwork was different - as this had been repaired - and it considered some of the other paint damage present might be down to Mr C's driving style. TFS didn't accept there's an issue with the entire paint finish but offered, as a gesture of goodwill, to respray the bonnet, front wings and front fascia.

Mr C thinks the car needs a complete respray or TFS should supply a replacement. He referred the matter to this service and one of our investigators considered the evidence. She thought Mr C had a reasonable expectation that this new car would be fault free at the point of supply - and for some time after. She was satisfied there are faults present (as the service centre agreed to re-spray the bonnet and the expert found poor paint adhesion and durability) and these were apparent less than two months after Mr C got the car. The investigator thought the car was probably of unsatisfactory quality when it was supplied, albeit there were no mechanical problems and Mr C had the use of the vehicle. She found it was fair for TFS to arrange and pay for the entire car to be resprayed (within a reasonable timescale) and refund the cost of the expert's report (£216) plus interest.

TFS was unhappy with the investigator's recommendations. It said the paintwork issues are restricted to certain panels only. And the damage present doesn't justify the cost of a full respray - which would also be inconvenient for Mr C, who would be without his car for several weeks. TFS offered to have the affected panels resprayed or take the car back, refund the down payment of £15,600 plus the cost of the paint report and pay Mr C an additional £500 compensation for upset and inconvenience.

Mr C didn't think TFS's offer was fair. He says this would mean he loses out financially because the deal in place when he acquired the car is no longer available and it would cost

significantly more to replace. He's also concerned that he'd lose several other benefits acquired through the manufacturer's loyalty/referral programme (that he went to some trouble to build up via social media posts and the like) because these aren't transferable.

Mr C says the car was of unsatisfactory quality at the outset - the manufacturer has acknowledged the presence of similar defects in cars produced around the same time as his vehicle. He sent a video showing paint coming off in the boot (a protected internal area). He thinks paint adhesion is sub-standard across the car and repair attempts haven't resolved things so the only fair solution is a full respray.

Having considered the available evidence, I was minded to uphold the complaint but I was inclined to reach a somewhat different outcome overall. I thought it was fair to give the parties the chance to see my provisional findings and make further submissions (if they wanted to) before I made my final decision so I issued a provisional decision on 26 July 2022. 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 the 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.

I can see that Mr C has gone to some trouble to make very detailed submissions here. I want to assure him, if I don't address every point that's been 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.

Mr C brings his complaint to the Financial Ombudsman Service because he acquired this car with a CSA from TFS. And I should make it clear at the outset that I'm considering TFS's obligations arising under the finance agreement in this decision. It's not within my remit to look into things done (or not done) by the manufacturer or any other third party. I make my decision based on what I think is fair and reasonable overall. In doing so, I'm obliged to take relevant law (amongst other things) into account. I'm satisfied that the Consumer Rights Act 2015 (CRA) is relevant here and TFS was obliged to ensure that this car was of satisfactory quality when it was supplied to Mr C.

The level of quality that's "satisfactory" varies according to individual circumstances. In the case of a 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 new and cost about £44,000. As such, I think Mr C had a reasonable expectation it would be fault free when he got it. I'm satisfied, based on the expert's report and other evidence, that the paint finish on the car is imperfect in places. I think it's likely this issue was present when the car was supplied to Mr C. I don't think a reasonable person would expect a car like this to exhibit such faults so soon. I'm minded to find the car was of unsatisfactory quality at the point of supply. And I've gone on to consider what, if anything, TFS should do to put things right.

Putting things right

The CRA sets out a number of possible remedies in this situation, including repair, replacement, reduction in price and rejection. By the time the matter was referred to me a number of repairs had already been undertaken - the bonnet was repainted initially. I'm

satisfied this repair wasn't to a satisfactory standard, based on the expert's findings. It looks as if TFS then arranged for the bonnet, front bumper and front wings to be re-sprayed. I've spoken to Mr C and he confirmed that these repairs seem satisfactory but he's concerned that paint is still coming off elsewhere – it's flaking inside the boot, for example – and he's worried about durability overall.

I'm satisfied the expert expressed some concerns about the durability of the paint "system". And I think it's understandable that Mr C is worried about more areas of paint degrading and the impact of this on the paint finish overall. TFS has offered to take the car back and provide a refund and compensation to (essentially) put Mr C back in the position he would have been in if he had never acquired the car. And I'd usually consider that was reasonable remedy in this sort of situation.

Mr C feels it's unfair in these particular circumstances however as this doesn't take all of his losses into account. He says he can't afford to buy the same model again because of the increase in price. And he'll also lose several significant benefits that he took the time and effort to build up under a scheme operated by the manufacturer. Ideally, he'd prefer to keep the car and have a full re-spray but he said he would also consider a price reduction. The investigator put that to TFS and it considers the cost of a respray would be disproportionate and amount to a significant proportion of the car's value. TFS said it would consider a price reduction but didn't indicate how much and thought this might prove difficult to process.

I've got to weigh up what's fair and reasonable in all of the circumstances here. I don't have much information about how the manufacturer's reward system works. Mr C told us he can't keep the rewards he has accrued if he hands the car back which means he will lose the equivalent of thousands of free miles – not to mention how much more it would cost to buy the same model now. I don't think it's fair that Mr C should lose out because he was supplied with this faulty car. We asked TFS to provide an estimate of the likely cost of a full respray and it said this would be around £7,400. That's about 16% of the cost of the car. And I don't think it's disproportionate or unreasonable overall – considering the likely cost associated with taking the car back as well.

So, on the evidence I have at present, I'm minded to find it's reasonable for TFS to arrange for the car to have a full respray. It remains open to the parties to propose and/or agree an alternative solution – such as a reduction in the price of the car. In addition, I'm minded to find Mr C should be kept mobile while the car is being resprayed. If that's not possible then TFS should refund any monthly payments made towards the finance for the time Mr C is without a car.

TFS seems to accept that Mr C has experienced a fair amount of inconvenience and upset here. It offered to pay him £500 to reflect that and I think this sounds fair. I also find it fair that Mr C should have the cost of the expert's report refunded plus interest.

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 23 August 2022. I said I'd look at all the evidence available after that and make my final decision.

Mr C accepts my provisional conclusions. He supplied a photograph of further damage and says paint continues to detach from the vehicle in the usual "map like" pattern which shows the adhesion issue is ongoing.

TFS says (in summary) it's keen to resolve the matter but the cost of repairs outweighs any lost enjoyment. It points out about £1,900 has been spent on repairs already and the cost of the respray would increase this to over £9,000. TFS considers this is a significant proportion of the car's value (more than I mentioned in my provisional decision) and should be taken into account.

I've considered what TFS says but I don't think loss of enjoyment is the really the issue here. For the reasons I've explained, I'm satisfied the car was likely of unsatisfactory quality when it was supplied – in breach of TFS's obligations under the CRA. And, weighing everything up, I've got to decide a fair and reasonable way to put things right.

The circumstances are somewhat unusual. Mr C went to some considerable trouble and effort to build up significant benefits associated with his use of this car throughout the time he had it and he'll lose all of that if TFS takes the car back now. I note what TFS says about the cost of previous repairs. But, I think these seem to have been undertaken on a somewhat piecemeal basis, so it's perhaps not surprising they didn't work. And I've seen nothing to show that a full re-spray won't resolve the problem satisfactorily.

Taking into account everything that's happened, I remain of the view it's not fair for Mr C to lose out because he was supplied with this new car with such poor paintwork. I'm not persuaded that the cost of the repairs required to fix the issue is unreasonable or disproportionate, in all of the circumstances. And I find it is fair and reasonable for TFS to take the steps set out below to put things right.

My final decision

For the reasons I've set out, my decision is I uphold this complaint and I require Tesla Financial Services Limited to:-

1. arrange for the car to have a full respray at no additional cost to Mr C;
2. keep Mr C mobile while his car is off the road for repairs - or refund the relevant monthly payments made pro rata;
3. refund the cost of the independent report Mr C paid for plus interest at 8% simple a year from the date of payment to the date of settlement: and
4. pay Mr C £500 compensation for the upset and inconvenience he's experienced.

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 C how much it's taken off. It should also give him 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 C to accept or reject my decision before 6 October 2022.

Claire Jackson
Ombudsman