

The complaint

Mrs H complains that the car she acquired through Toyota Financial Services (UK) Plc ("TFS") wasn't of satisfactory quality. She wants to reject the car and cancel the finance agreement.

What happened

Mrs H entered a hire purchase agreement in February 2021 to acquire a used car. She paid a deposit of £1,000, and the balance of £4,790 was to be paid through the credit agreement which was set up over a 24-month term. At the time of acquisition, the car had already been driven more than 64,000 miles and was around eight years' old.

Mrs H says she had to return to the dealership within three weeks of purchasing the car; a service light repeatedly illuminated on the dashboard. Mrs H told us:

- she was advised the light was due to a problem with the *diesel particulate filter* (DPF), but that even after two visits to the service centre, the problems with the filter remained and the light continued to illuminate;
- in June the car was taken back to the service centre so that the DPF could be serviced and cleaned. Mrs H says she was told the regeneration of the filter would resolve the matter – but it did not, and the problem remained;
- she was advised she wasn't driving the car enough; sufficiently long enough journeys at a sufficiently high enough speed, so the DPF wasn't clearing itself;
- the car has been returned four times in around six months at great cost and inconvenience and it's currently not driveable because of the problem and she's registered the car as SORN;
- she wants to reject the car and be compensated for her loss of time and money.

TFS rejected this complaint. It says it can't accept Mrs H's rejection of the car because there is no fault with it. It says Mrs H's driving style is the cause of the problem; short journeys at low speeds are the prime cause of blocked DPFs, and regeneration is then necessary to clear out the blockage of exhaust soot.

TFS said it had agreed with the service centre to clean the DPF and that Mrs H would not be charged for the regeneration - the service centre would undertake this as a gesture of goodwill.

TFS says immediately prior to Mrs H acquiring the car, it passed an MOT with no advisories, and this indicates that car was sold of satisfactory quality and it won't agree to Mrs H rejecting it.

Mrs H disagreed and brought her complaint to this Service. She said the problems with the car started within a couple of weeks of her acquiring it, so it couldn't be a result of her driving style. Furthermore, she explained that she drove around 25 miles each day on the school run, and this required her to use two A roads and drive at the national speed limit.

Mrs H also says that, based on her analysis of the car's MOT certificates, the previous owner(s) of the car drove even fewer miles each year.

Our investigator looked at this complaint and said she thought it should be upheld. She said she was satisfied that the car wasn't of satisfactory quality at the point of supply – there was clearly a fault with the DPF – and Mrs H should be allowed to reject the car and end her finance agreement. And she thought TFS should pay her some compensation for the costs and inconvenience it had caused her.

TFS disagreed so the complaint comes to me to decide. TFS says an independent report did not identify a manufacturing fault and so TFS concluded that Mrs H's driving style was the cause of the problem. And it said that for a car of this age and mileage, wear and tear was to be expected. It did offer to pay Mrs H £100 in recognition of the inconvenience she had experienced but it said it wouldn't unwind the finance agreement.

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.

Having done so, I think this complaint should be upheld. I'll explain why.

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

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. This says under a contract to supply goods, the supplier – TFS in this case – had a responsibility to make sure the goods were of 'satisfactory quality'.

Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. 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. In this case, I would consider relevant factors to include, amongst others, the car's age, price, description and mileage.

What I need to consider in this case is whether the car supplied to Mrs H was of satisfactory quality or not. There is clearly some disagreement over whether the car has a fault. Mrs H clearly thinks there is, whereas TFS says it is operating as it should, and the issues Mrs H has experienced with the DPF are a result of her driving style.

But, having considered things most carefully, I, like our investigator, don't think the car supplied to Mrs H was of satisfactory quality at the point of sale. I say this because one of the considerations for whether something is of satisfactory quality is whether or not the item in question has proven to be suitably durable, and in this particular case, the problems with the DPF arose within the first couple of weeks after Mrs H first acquired the car – at this point it had only been driven around 600 miles.

And although issues with DPFs can often be a result of driving style, if this were the cause in this case, it would've been a result of a previous owner's driving style – Mrs H had only had the car a very, very short length of time. Moreover, this is supported by the fact that the mileage recorded on the previous MOTs shows the car had been driven relatively little, and

probably less than TFS says it should be driven to avoid the DPF clogging and requiring regeneration. Finally, Mrs H's testimony is that she drove the car – when it worked – around 25 miles each day on the school run, and this required her to use two A roads and drive at the national speed limit. She's been consistent about her driving style and the daily journeys she made and as a result I find her testimony plausible and persuasive. So, I'm not persuaded that *her* driving style is the cause of the issues with the DPF.

And although the car has been returned to the service centre on several occasions in the first six months so that the DPF can be looked at and repairs undertaken, these do not appear to have been successful – a regeneration performed in June 2021 failed to correct the problem and the warning light re-appeared just two weeks later. So, I'm satisfied that there is a fault with Mrs H's car.

TFS says the car passed an MOT shortly before it was supplied, but the purpose of an MOT is to test important items on the car and to check that they meet the legal standards – it doesn't mean that everything in the car is functioning optimally. And although TFS says that a car of this age and mileage would be expected to be in need of maintenance sooner than a newer car, a statement with which I agree, I don't agree that the development of a fault within a couple of weeks of supply demonstrates anything other than that fault was present or developing at the point of sale, and that the car was not of satisfactory quality when Mrs H acquired it.

In summary, given how soon after getting the car Mrs H describes the issues beginning, I'm satisfied this fault was present when Mrs H got the car. So, I'm satisfied a reasonable person would consider the car to have been of unsatisfactory quality when it was supplied.

I now need to consider what would be fair and reasonable to put things right. Given that the dealership had looked at the car a number of times, it's been unable to provide a long-term remedy to the problem, the car has been off the road for more than a year and isn't currently roadworthy, I don't think any further attempts at repair seem reasonable. So, I think Mrs H should be able to reject the car.

I need to consider that Mrs H has had use of the car. But I do appreciate what she's told us about the worry and anxiety that this fault has caused her since she first acquired the car. And Mrs H has also told us this issue has caused her some inconvenience, and I can understand this; she had to deal with the fault on a regular basis, the service centre couldn't remedy it, and Mrs H or her husband had to take time out to return the car to the dealership several times. So, I think TFS should pay her £250 to reflect this.

Putting things right

I direct Toyota Financial Services (UK) Plc to put things right by doing the following:

- Unwind the credit agreement and refund Mrs H's deposit of £1,000.
- Refund all monthly payments made from the time the car was SORN in December 2021 to the date of settlement. Add 8% simple interest from the time payments were made to the date of settlement.
- Collect the car at no cost to Mrs H at a time and date suitable for her.
- Pay Mrs H £250 for the distress and inconvenience caused.
- Amend Mrs H's credit file and remove any adverse information from it in relation to this agreement.

My final decision

My final decision is that I uphold this complaint and require Toyota Financial Services (UK) Plc to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 13 February 2023.

Andrew Macnamara
Ombudsman