

## **The complaint**

Miss W is unhappy with a car she acquired using a hire purchase agreement with Toyota Financial Services (UK) PLC ('TFS').

## **What happened**

Miss W has given a detailed history of what happened and the contact between herself, TFS and the dealer involved. I want to reassure her that I've carefully thought about what she said here, but I won't detail all of this in my decision. I'll focus on what I think is the crux of the complaint and the key events.

In October 2018 Miss W acquired a used car, funded by a hire purchase agreement through TFS. The car cost £8,995, was around two and a half years old and had covered around 24,000 miles.

Miss W says when she got the car it was missing a tyre inflation kit and the service book. And she says she found broken glass in it. She also says there was an issue with the reversing light. It appears the issue with the light was put right when the car went in for a service.

In January 2020 the car broke down and needed to be recovered. The breakdown report says the clutch was slipping and it couldn't be repaired at the roadside. The car was recovered to a garage. The car was looked at and Miss W was told it needed a new clutch and flywheel.

Miss W says she couldn't afford to get the car repaired until August 2020. She says because it had been sat unused, the brake pads and discs also needed to be replaced along with the clutch and flywheel. Miss W says the garage told her there was evidence the clutch had been previously worked on and so it had failed prematurely.

Miss W says she later found out that the car had been supplied with incorrect tyres, as these were different sizes, and she had to pay for replacements.

Miss W complained to TFS and it issued a final response in December 2021. It said, in summary, that it thought the car was of satisfactory quality when it was supplied. It said the car was supplied with a breakdown kit. It said the tyres being of different sizes was not a safety issue nor MOT fail, as both tyres on the front and rear axles were the same size. And it said the dealer apologised if there was glass in the car but it didn't know what had happened here.

Miss W remained unhappy and brought the complaint to our service. An investigator issued an opinion and upheld the complaint. She said, in summary, that she wouldn't have expected the clutch to need replacing at the age and mileage it did, so she didn't think the car was durable. She said TFS should refund the cost of the repair to the clutch and reimburse Miss W 10% of the repayments towards the agreement for the time she didn't use the car.

Miss W was happy with this opinion. TFS said it didn't accept it. So, the case has been passed to me to decide.

I sent Miss W and TFS a provisional decision on 2 November 2022. My findings from this decision were as follows:

*Miss W complains about the quality of a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts like this as a lender is a regulated activity, so I'm satisfied I can consider Miss W's complaint against TFS.*

*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. The CRA explains under a contract to supply goods, the supplier – TFS here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. It's important to point out in this case that the CRA specifically explains that the durability of goods can be considered part of whether they are satisfactory quality or not.*

*I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. In this case, Miss W's car was used. So, I think a reasonable person wouldn't expect it to be in the same condition as a new car. But, it was less than three years old and had covered under 25,000 miles. So, I think a reasonable person would've expected it to be free from anything other than very minor faults and would've expected trouble free motoring for some time.*

*Miss W has complained about various things. So, I'll consider these in turn.*

#### Clutch

*Firstly, I'm satisfied there was a fault with the clutch that needed to be repaired. I say this as this is identified in the breakdown report and the invoice for the repair Miss W provided.*

*What I need to consider here is whether this fault meant the car was of satisfactory quality or not when it was supplied.*

*The car was recovered in January 2021, around 15 months after Miss W acquired the car. This meant the car was around five years old at the time the clutch needed repairing. The mileage at this time was recorded on the breakdown report as 37,600, meaning the car had covered around 13,600 miles since Miss W got it.*

*I've considered what Miss W said here. She said the garage that repaired the clutch told her it had previously been worked on poorly which contributed to the failure. But, I haven't seen any evidence of this from this garage, and the invoice is silent on this front. So, I'm not putting much weight on this when forming my opinion.*

*I haven't seen any evidence to suggest the car hadn't been looked after. And I haven't seen anything to suggest Miss W's driving style contributed to the fault. I've very carefully considered the mileage and timeframe here. And I appreciate TFS' point that Miss W had the car for some time and was able to complete a reasonably significant mileage in it before the clutch failed.*

*But, having considered everything here, I think the clutch failed earlier than I would've expected it to. Thinking about the car Miss W got and the price she paid, I don't think a reasonable person would consider it to have been reasonably durable. It follows that I do not think the car was of satisfactory quality due to the clutch.*

### Brakes

*Miss W says the brake pads and discs needed to be replaced when the clutch was repaired, as the car had been stationary for several months.*

*I've carefully thought about this. The invoice doesn't provide any explanation for why these repairs were carried out. And, I haven't seen any testimony from the garage about this.*

*Brake pads and discs are parts of a car that suffer from wear and tear and will need to be replaced as part of routine maintenance. I haven't seen enough to make me think it's most likely these needed to be replaced as a direct result of the clutch going wrong, rather than them reaching the end of their lifespan. So, I don't think TFS needs to take any action on this point.*

### Tyres

*Miss W is unhappy with the tyres supplied with the car. She says the dealer told her these were the wrong size. It doesn't seem in dispute here that the tyres were of differing sizes on the front and rear axles. So, I've considered if this means the car wasn't of satisfactory quality.*

*I've seen an email from the dealer to TFS about this. This says:*

*"This is not a safety issue nor an MOT failure as the tyres were fitted to the same axle"*

*"We have a duty of care to all of our customers to highlight any issues we find. The decision to replace the tyre lies with the customer."*

*Thinking about this, it seems to me that, ideally, the car would've been supplied with the same size tyres all round. But, it appears the tyres fitted were road legal and, more importantly, safe. Given Miss W's car was used when she acquired it, I don't think this meant the tyres made the car of unsatisfactory quality. It follows TFS don't need to take any action here.*

### Sealant kit

*Miss W says a tyre sealant kit wasn't included with the car when she got it – which it was supposed to have. TFS said it believed this was supplied.*

*I've seen a copy of a "Visual Safety Report" from a few days before the car was supplied to Miss W. This says:*

*"No inflator or gunk in boot"*

*So, I think it's likely Miss W is correct here. And I think it's most likely she was told this would come with the car. But, that being said, I can't see this has had too much impact on Miss W, other than causing her frustration to realise it wasn't present. But I'll consider this when thinking about a payment for distress and inconvenience which I'll come on to.*

### Glass

*Miss W says she found glass in the car. I believe she said this was both when the car was collected and following a service.*

*I'm not sure what happened here. If this is correct, I appreciate this would've been somewhat upsetting for Miss W. But, either way, I can't see this had too much impact on her – for*

*instance it doesn't appear the glass injured anyone and presumably Miss W just had to remove it from the car. The dealer has apologised for this. I think this is enough here and TFS don't need to take any further action.*

#### *Putting things right*

*As I explained above, I'm satisfied the car wasn't reasonably durable because the clutch failed prematurely. Thinking about what the CRA says, Miss W was entitled to a repair. This has been completed – so broadly her rights have been met. But, I don't think it's reasonable she should pay for this. So, I think TFS should reimburse her the cost.*

*I've seen a copy of the invoice from the garage dated 21 August 2020. This is split, so I can see the cost of the clutch and flywheel, including labour, separated out from the discs and pads. The relevant cost here is £684.*

*I've also considered here that Miss W says she didn't use the car from when it broke down on 12 January 2020 to when it was repaired on 21 August 2020. Looking at the mileages here, the car was recorded as having covered 37,600 when it broke down and 37,773 when it was repaired. This is a very minimal increase for the time period – so I'm persuaded by what Miss W said.*

*Our investigator said she thought 10% of the repayments should be reimbursed for this period to reflect the impaired usage. But, given Miss W didn't use the car at all, this approach doesn't feel fair to me.*

*I have considered if Miss W mitigated her losses here. There are two things to consider.*

*Firstly, if it was reasonable to delay the repair. Miss W has provided some detailed testimony about her finances at the time and why it took several months to save up the money for the repair. And she has explained family or friends couldn't have helped out. So, I'm not sure what else she could've done here.*

*Secondly, I've considered that Miss W only complained to TFS after the car was repaired. Had she complained earlier, it's possible the repair could've been completed in a shorter timeframe. But, I need to consider that TFS didn't uphold Miss W's complaint as it believed the car was of satisfactory quality when supplied. There's no evidence to suggest this would've been different had Miss W complained earlier – I think it's likely TFS would still not have upheld the complaint if it was made aware of the issue at the time. So, ultimately, I don't think this would've made any difference.*

*So, considering all of this, I think it's reasonable that Miss W is reimbursed all of her repayments for this period.*

*I'm also satisfied that Miss W has suffered distress and inconvenience because of what's happened. It must've been upsetting for the car to breakdown and need a repair. And the car wasn't supplied with an inflator kit. So I also think TFS should pay her £100 to reflect this.*

*I gave both parties two weeks to come back with any further comments or evidence.*

*Miss W responded and said she was happy with the provisional decision.*

*TFS responded and said Miss W had now handed the car back. It requested I consider this when making my final decision.*

## **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've carefully thought about what TFS said in response to my provisional decision. But, having done so, I don't think the fact Miss W handed the car back makes a difference to what I think is fair and reasonable here, nor what I initially thought TFS should do to put things right.

I've thought about all of the other information and evidence on this complaint again. Having done so, I still think it should be upheld. This is for the same reasons I explained in my provisional decision and set out above.

## **My final decision**

My final decision is that I uphold this complaint. I instruct Toyota Financial Services (UK) PLC to put things right by doing the following:

- Reimburse Miss W the cost of the repair to the clutch - £684 – from 21 August 2020\*
- Reimburse Miss W all repayments made towards the agreement from January 2020 to August 2020\*
- Pay Miss W £100 to reflect the distress and inconvenience caused

\*These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If TFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Miss W how much it's taken off. It should also give Miss W a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 27 December 2022.

John Bower  
**Ombudsman**