

The complaint

Mr M is unhappy that a car supplied to him under a hire purchase agreement with Toyota Financial Services (UK) Plc trading as Redline Financial Services ('Redline') was of an unsatisfactory quality.

Mr M is being represented in this complaint by Miss K. However, for ease of reference, I'll refer to any actions or comments by either Mr M or Miss K as being by Mr M.

What happened

On 6 August 2022, Mr M was supplied with a used car through a hire purchase agreement with Redline. Mr M paid a deposit of £4,650 (which included a £1,150 part-exchange value of his existing car), and the agreement was for £17,654 over 48 months; with 47 monthly repayments of £282.90, and a final payment of £8,392.50. At the time the car was just over six and a half years old and had done 71,829 miles.

Mr M collected the car on 7 August 2022 and, when driving home, an engine warning light came on and indicated a gearbox fault. He reported this to the supplying dealership, who arranged for the car to be taken to a local manufacturer's dealership for investigation. A diagnostic was completed on 30 September 2022, for which Mr M paid £119.58. A gearbox fault was diagnosed, but the supplying dealership said the repair costs were too high and didn't authorise the manufacturer's dealership to repair the car. The car was returned to Mr M on 16 October 2022.

The supplying dealership then arranged for the car to be repaired by another manufacturer's dealership on 22 October 2022. And Mr M was supplied with a courtesy car. However, Mr M wasn't happy with the courtesy car as it was much smaller than his car, and this was causing him difficulties carrying out normal day to day family activities.

Mr M was told the repairs were completed and, on 12 December 2022, he collected the car. However, on driving the car home, warning lights illuminated again, and the car was returned to the second manufacturer's dealership the same day. And Mr M was given back the same courtesy car he'd previously been using.

Due to the issues with the car, and the delay in the repair, on 16 January 2023 Mr M asked Redline to reject the car. Redline responded on 27 March 2023, saying that the supplying dealership had offered to repair the car (if Mr M covered 50% of the costs), and he would need to contact the second manufacturer's dealership to arrange for this. Mr M wasn't happy with how he'd been treated, and he brought his complaint to us for investigation.

Our investigator said that both Redline and the supplying dealership accept there is a problem with the gearbox on the car. And, this made the car of an unsatisfactory quality at the point of supply. As the first attempt to repair this fault failed, the investigator said Mr M has the right of rejection.

So, the investigator said that Redline should end the agreement and collect the car; refund the deposit Mr M paid, as well as any payments he'd made when he didn't have use of the

car or a courtesy car; refund 25% of any payments Mr M made while he had the courtesy car, due to its size and unsuitability; refund the cost of the diagnostic report Mr M paid for; pay statutory interest on all of these refunds; and pay Mr M an additional £150 for the trouble and upset he'd been caused.

Redline didn't respond to the investigator's view and have instead continued to ask Mr M to arrange for repair. They've also told him they are going to remove the insurance from the courtesy car so Mr M can no longer use this. As such, this matter has been passed to me to make a 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr M was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Redline are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Redline can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr M to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr M took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Redline to put this right.

Based on the evidence I've seen I'm satisfied there was a fault with the gearbox on the car when it was supplied to Mr M. And this is confirmed by the diagnostic report on 30 September 2022. I'm also satisfied that the gearbox fault made the car of an unsatisfactory quality when it was supplied.

In circumstances like this, the CRA allows for a single chance at repair. And the car was being repaired from 20 October to 6 December 2022. I've seen an invoice from the second manufacturer's dealership to the supplying dealership, dated 6 December 2022, which confirms that the gearbox repair had been completed.

However, when Mr M collected the car on 12 December 2022, the gearbox fault reoccurred the same day. And the car was returned to the second manufacturer's dealership for repair. An estimate dated 16 February 2023 shows that further repairs to the gearbox were required. As such, I'm satisfied that the single chance of repair allowed by the CRA failed, and the car remains faulty.

As such, the CRA allows Mr M the right to reject the car. And, as he's now been asked to cover 50% of the costs of repairing the faulty gearbox, Mr M wants to reject the car. Given these circumstances, I'm satisfied that Mr M should now be allowed to reject the car.

Putting things right

When the fault with the car first occurred, given that this was the day Mr M collected the car, I'd expect either the supplying dealership or Redline to investigate what was wrong, and cover the costs of the investigation. However, in this instance, Mr M had to do and pay for this. He was also without the use of the car (or any courtesy car) from 30 September to 16 October 2022 as a result. As such, I think it's reasonable that Redline both reimburse Mr M for the cost of the diagnosis, and refund him 50% of one payment to compensate him for the period of time he was paying for a car, but was left without transportation.

When the car went in for repair on 20 October 2022, Mr M was provided with a courtesy car. And it's my understanding that Mr M still has use of this courtesy car. Given this, as he was provided with alternate transportation, I don't think it's fair to ask Redline to refund all the payments Mr M has made since 20 October 2022.

However, it's clear from Mr M's correspondence that the courtesy car wasn't suitable for his needs – it wasn't big enough for his family. As such, I think it's reasonable that Redline refund some of the payments Mr M made (while he had the courtesy car) to recognise this.

The investigator has recommended Redline refund 25% of these payments, and this is in line with what I would've directed had no recommendation been made. As such, I intend to adopt this as part of my final decision.

Finally, I'm satisfied that Mr M has been inconvenienced by what has happened. He's had to arrange for the diagnostic himself, and he's had to travel to and from the second manufacturer's dealership (which is quite some distance from his home) to collect a car that hadn't been repaired correctly. Mr M has also explained that he's been unable to plan any holidays due to the uncertainty about whether he will have a working car. Because of this, I'm also satisfied that Redline should compensate Mr M for the inconvenience caused.

So, Redline should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr M;
- remove any adverse entries relating to this agreement from Mr M's credit file;
- refund the £4,650 deposit Mr M paid;
- refund 50% of the September 2022 payment to Mr M, to compensate him for the period he didn't have use of the car;
- refund 25% of all payments Mr M made after 20 October 2022 (but before the return of the courtesy car, if applicable), to compensate him for being provided with an unsuitable courtesy car;
- reimburse Mr M for the £119.58 diagnostic report he paid;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr M made the payment to the date of the refund †; and

- pay Mr M an additional £150 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

†HM Revenue & Customs requires Redline to take off tax from this interest. Redline must give Mr M a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr M's complaint and Toyota Financial Services (UK) Plc trading as Redline Financial Services should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 June 2023.

Andrew Burford
Ombudsman