

## The complaint

Ms M is unhappy that a car supplied to her under a hire purchase agreement with Go Car Credit Limited ('GCC') was of an unsatisfactory quality.

## What happened

In February 2022, Ms M was supplied with a used car through a hire purchase agreement with GCC. She paid an advance payment of £480, and the agreement was for £9,515 over 40 months; with monthly repayments of £436.36. At the time the car was almost eight years old and had done 91,378 miles.

Ms M has said that the car developed a noise and she contacted the supplying dealership about this in March 2022. However, the noise went away, and she didn't have it looked at. She's also said that the car broke down in June 2022, and needed a new battery, and then it developed a transmission fluid leak in July 2022. At this point the car had done around 97,000 miles and Ms M says the car has been undrivable since.

Ms M complained to GCC in July 2022, and they offered to inspect the car for any faults that were present at the point of supply. But they said that Ms M would need to arrange for the car to be recovered and taken to the inspection, which she wasn't financially able to do because of the cost. Because of this, GCC didn't uphold her complaint.

Ms M wasn't happy with GCC's response, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said there was a fault with the car, but without an inspection taking place she couldn't say if the fault was present or developing when the car was supplied to Ms M. And she didn't think it was reasonable to say GCC should do something to put things right without any evidence. So, she didn't uphold the complaint.

Ms M didn't agree with the investigator and said that it wasn't reasonable for GCC to expect her to pay to have the car recovered to a location where it could be inspected, and she couldn't afford the cost of recovery as her priority bills were in arrears. She also explained the impact that not having access to a car has had on her and her family.

GCC said they were prepared to reimburse £60 of the cost of any recovery, and Ms M eventually managed to arrange for an inspection of the car to take place in February 2023. And this said the car had a driveshaft oil leak. After sight of this report, GCC said they were willing *"to assist the customer with the cost of the repairs."*

Following this, Ms M had to pay for the car to be transported to a specialist garage, who then repaired the car. And GCC covered the cost of this repair.

The investigator issued a second view. She said that the car had been successfully repaired so Ms M didn't have any right of rejection. And she said that Ms M shouldn't have to pay any payments between the fault being diagnosed in February 2023 and it being repaired in June 2023, and any adverse entries relating to these payments should be removed from her credit

file. But she thought that Ms M should be responsible for the payments between July 2022 and February 2023 because, even though Ms M hadn't had use of the car because it was faulty, she hadn't arranged for the fault with the car to be diagnosed.

The investigator also said that GCC should refund Ms M the £260 recovery and inspection costs she'd incurred (plus statutory interest), pay for the costs of the repair to the car, and pay Ms M £150 for the distress and inconvenience she'd been caused.

Ms M didn't accept the investigator's second view, as she didn't think it was reasonable for her to have to pay for the car while it was undrivable. Ms M has also said that the car has now developed additional faults and she wants to reject the car.

I issued a provisional decision on 3 August 2023, where I explained my intention to uphold the complaint. In that decision I said:

*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. Ms 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, GCC 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 GCC can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Ms M to show it was present when the car was supplied.*

*So, if I thought the car was faulty when Ms M took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask GCC to put this right.*

*In this instance, it's not disputed there was a fault with the car, or that this fault made the car of an unsatisfactory quality when supplied. And GCC have already arranged for the car to be repaired. Given this, my decision will focus on what else, if anything, GCC need to do to put things right.*

*The car developed a fault within the first six months of it being supplied to Ms M and, as a result of this, she was told at the point of breakdown not to drive the car. And this advice was confirmed as correct when the car was eventually inspected by an independent garage. And, as I've said above, given when the fault occurred, the CRA implies the fault was present on supply unless GCC can show otherwise.*

*The issue here is not the fault itself, but the length of time it took for the fault to be diagnosed. And Ms M has explained the pressures on her income, and the fact that she was in arrears with priority bills, which meant that she didn't have the disposable income to pay for the car to be recovered from her place of work (where it broke down) to a garage that*

could inspect the car and identify the fault. Because of this, the car remained at her place of work, unused, from July 2022 to February 2023.

GCC offered to pay £60 towards the cost of recovery, but this offer was made on a reimbursement basis. Which meant that Ms M would still need to find the full cost of the recovery upfront. And, for the reasons given, this was financially beyond her at the time. So, while GCC made this offer, to Ms M at the time it was essentially a non-offer.

When she raised her complaint with GCC in July 2022, Ms M explained that she wanted the car repaired or replaced. And I've noted that section 23 of the CRA says:

- (2) if the consumer requires the trader to replace or repair the goods, the trader must –  
(a) do so within a reasonable time and without significant inconvenience to the customer.

What's more, the Financial Conduct Authority's Principle 6 says "a firm must pay due regard to the interests of its customers and treat them fairly."

Given the fact that the breakdown took place within the first six months, that Ms M had reached out to them and explained her vulnerabilities surrounding her children and financial situation, and that GCC were prepared to pay towards the recovery costs; I'm satisfied that by not arranging the recovery GCC didn't follow Principle 6 and were at serious risk of breaching section 23 of the CRA. And, had the car not now been repaired, I would've seriously considered saying that GCC had, by their actions, waived their right for a single chance at repair and that Ms M had the right of rejection.

I'm also aware that Ms M has now said the car has developed a further fault. But I haven't seen that Ms M has raised this with GCC. And I also haven't seen anything to show me if this relates to the initial fault i.e., it's an unsuccessful repair, or whether this is a new fault, and when it was likely present or developing. So, this isn't something I'll address within my decision.

So, for the reasons given, I don't agree with the investigator that Ms M should be responsible for the payments between July 2022 and February 2023 and that she was responsible for the delay in getting the car recovered. The car was unusable, due to a fault that was present at the point of supply, between July 2022 (when it broke down) and June 2023 (when it was repaired). What's more, GCC did nothing to try and keep Ms M mobile during this period. And I don't consider it fair or reasonable that Ms M should have to pay for a car that she couldn't use during this period.

In addition to this, GCC should also refund the costs Ms M incurred in having the car recovered to both the initial garage, and then the specialist garage for the repair work, and the costs of any inspections she had done.

Finally, I'm satisfied that Ms M has been significantly inconvenienced and frustrated by what's happened. Despite the car breaking down within six months of supply, and Ms M advising GCC of this, they continued to ask her to pay for the car to be recovered and inspected before they would consider whether they needed to pay for the costs of repair.

So, I think GCC should:

- refund any payments Ms M has made from August 2022 to June 2023;
- reimburse Ms M the £260 recovery/inspection costs she paid;
- apply 8% simple yearly interest on these amounts, calculated from the date Ms M made the payments to the date of the refund <sup>†</sup>;

- *pay the costs of the repairs done to the car;*
- *remove any adverse entries relating to the above payments on Ms M's credit file; and*
- *pay Ms M an additional £150 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

<sup>†</sup>HM Revenue & Customs requires GCC to take off tax from this interest. GCC must give Ms M a certificate showing how much tax they've taken off if she asks for one.

## **Responses**

Ms M said she wanted to reject the car from the outset, but she was told this wasn't an option. She also raised the issues with the current fault with the car, that she'd been in touch with GCC about this, and that she now feels she's back in the same position as when the car first broke down in July 2022.

Ms M also said that, due to the high interest rate and payments on the agreement with GCC, this resulted in her having no disposable income with which to arrange for the car to be inspected.

GCC responded to my provisional decision, almost a week after the deadline for doing so, asking if Ms M had accepted my opinion. They made no further comment.

## **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.

As GCC haven't said anything to the contrary, I'm taking their comments to mean they don't object to my provisional decision.

I've noted Ms M's comments about her wanting to reject the car. And that the car has now developed a further fault. However, the initial fault with the car has been repaired. While there is a further fault, I haven't seen anything to show me that this is either related to the initial fault (so it would therefore be classed as a failed repair) or whether it's an unrelated fault. And, if it's an unrelated fault, whether this was present or developing at the point the car was supplied to Ms M.

So, while I appreciate Ms M's frustration with the issues with the car, as I explained in my provisional decision, without the above evidence, the second fault with the car isn't something that will form part of this decision.

As such, Ms M's comments don't change my view about what GCC should've done when the car first broke down. And, given this, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision.

## **Putting things right**

Given the above, if they haven't already done so, GCC should:

- refund any payments Ms M has made from August 2022 to June 2023;
- reimburse Ms M the £260 recovery/inspection costs she paid;
- apply 8% simple yearly interest on these amounts, calculated from the date Ms M made the payments to the date of the refund <sup>†</sup>;
- pay the costs of the repairs done to the car;

- remove any adverse entries relating to the above payments on Ms M's credit file; and
- pay Ms M an additional £150 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>HM Revenue & Customs requires GCC to take off tax from this interest. GCC must give Ms M a certificate showing how much tax they've taken off if she asks for one

### **My final decision**

For the reasons explained above I uphold Ms M's complaint. Go Car Credit Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 5 October 2023.

Andrew Burford  
**Ombudsman**