

The complaint

Mr P complains about a defective car he acquired under a hire purchase agreement financed by Toyota Financial Services (UK) PLC ("TFS").

What happened

In June 2021 Mr P entered into a regulated hire purchase agreement with TFS for a used car. The car was over seven years old and the mileage was 57,589 miles. In August of that year the engine management light (EML) came on, and so Mr P took the car back to the dealer to be investigated and repaired. But unfortunately this happened multiple times. The EML came back on again, and the car was taken back to the dealer, four more times: in October and December 2021, and in February and March 2022.

Finally, in May 2022 the engine seized up and the car could no longer be driven. The dealer told Mr P that the engine would need to be replaced. Mr P complained to TFS.

TFS accepted that the engine needed to be replaced, but it did not accept that this was due to a fault that had been present at the point of sale. As a gesture of good will, it refunded two of Mr P's monthly payments, to cover the time he had been without his car. But it did not agree that it was liable to pay for a new engine. It pointed out that the car had passed its MOT in June 2021 (when he acquired the car) and again in April 2022 (ten months later).

Mr P brought this complaint to our service. At first our investigator did not uphold it, because there are many reasons why an EML can come on, and there was no evidence to show that the reason it had come on the first time had anything to do with the engine seizing up nearly a year later. But following that opinion, Mr P instructed an independent expert to inspect the car and write a report about his findings. That report found that the original and subsequent EML illuminations and the engine seizure were all related and were the result of the same cause. The investigator shared that report with TFS, who asked the dealer to comment. The dealer's response did not address or contradict the findings in the report. So based on that new evidence, the investigator changed her mind and upheld Mr P's complaint. She recommended that the hire purchase agreement be ended with nothing more to pay, that Mr P be allowed to reject the car at no cost to him, that his deposit and all of the monthly payments since the engine seized up be refunded to him, that the cost of the inspection be refunded, and that interest be paid on these refunds at 8% a year. She also recommended that any adverse information about the agreement be removed from Mr P's credit file.

Because TFS did not respond to that revised view, the investigator referred this complaint to me for an ombudsman's 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 have decided to uphold this complaint, for the same reasons as my colleague.

The independent report is credible and I have no reason to doubt what it says. Its conclusions have not been challenged, and so I accept it. It confirms that the engine has seized, and says that repairing it may not be economical. It says that the cause of this fault was likely to have been present at the point of sale, and was likely to have been the cause of each of the EML illuminations. The mileage was 64,250 miles, or 6,661 miles since the point of sale (11 months before the engine seized). So I am satisfied that the car was not of satisfactory quality at the point of sale, notwithstanding that it passed an MOT test at the time.

The report also sets out a number of instances in which makeshift repairs appear to have been made to the car. It isn't clear when these were made or who made them, but I don't think I need to make a finding about that. It's enough to say that the dealer tried to fix the fault five times, and has failed to do so. So I think that rejecting the car and ending the agreement is a fair way to resolve this complaint.

Putting things right

I think that fair redress in this case would be for TFS to put things right in the following way. TFS must:

- End the hire purchase agreement with nothing further to pay, and collect the car at no cost to Mr P;
- Refund his deposit (£99) and part exchange (£700);
- Refund all the monthly payments made since May 2022;
- If Mr P provides TFS with an invoice for the independent report, refund the cost of that report;
- Pay simple interest on all of these refunds at the rate of eight per cent a year from the dates of each payment to the date of settlement;
- Arrange to remove any adverse data concerning the agreement from Mr P's credit file.

My final decision

My decision is that I uphold this complaint. I order Toyota Financial Services (UK) PLC to put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 29 September 2023.

Richard Wood
Ombudsman