

The complaint

Mr E is unhappy that a car supplied to him under a conditional sale agreement with Tesla Financial Services Limited trading as Tesla Financial Services was of an unsatisfactory quality.

What happened

In September 2020, Mr E was supplied with a new car through a conditional sale agreement with Tesla. He paid an advance payment of £10,100 and the agreement was for £76,330 over 49 months; with 48 monthly payments of £1,149.94 and a final payment of £31,979.10.

Mr E had some minor issues with the car relating to the charging system, and some cosmetic issues. But, from October 2020 onwards, he complained about a grinding noise. However, he was told this was because he was braking and steering at the same time.

The car broke down in January 2022 due to an issue with the suspension. Mr E asked to reject the car, but Tesla insisted on a repair, which was completed in February 2023. But they offered Mr E £500 for the distress and inconvenience he'd been caused. Mr E wasn't happy with what'd happened, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said the car was faulty and it wasn't sufficiently durable when it was supplied to Mr E. And this made it of an unsatisfactory quality. But taking into consideration the repair to the car, and Mr E being provided with a courtesy car and free charging while the repairs were taking place, the investigator said that Tesla should refund Mr E 5% of the payments he was making before the car was repaired, as well as paying the £500 compensation they'd offered.

Tesla asked if the award could be applied against the arrears on Mr E's account, but Mr E didn't agree to this. And he thought the *"offer made [by the investigator] is not acceptable."*

Mr E also didn't agree that repair was a reasonable option in the circumstances and said that he should've been offered a replacement car instead. He explained that, in the late 1990s / early 2000s, he'd been offered a replacement car by a manufacturer when the car he was supplied with was faulty. And he thought Tesla should be able to do this. So, he's asked for an ombudsman to make a final decision.

Mr E also said that he was experiencing further problems with the car, but that he hadn't made Tesla aware of these yet. The investigator explained that Tesla need to have the opportunity to resolve these new issues before we can become involved. So, these additional issues weren't something we were able to consider as part of this complaint.

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 E was supplied with a car under a conditional sale 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, Tesla 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 Tesla can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr E to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr E 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 Tesla to put this right.

Based on the evidence I've seen it's not disputed there was a problem with the car. Not only did Mr E have some initial cosmetic issues and a problem with the charger that was resolved, there was also an issue with a grinding noise from the front of the car. And he's supplied a video which shows this noise when he was turning the steering wheel at low speed. As a result of this, Mr E wasn't confident in the safety of the car when he drove it.

The car broke down in early 2022 when there was a failure in the suspension. This may or may not have been related to the grinding noise Mr E was complaining of, but I don't think this is relevant. I don't think that anyone would reasonably expect a new car to fail in such a way after around 18-months, so I'm satisfied the car wasn't sufficiently durable, and this makes it of an unsatisfactory quality when supplied.

Mr E has said that he should've been given the opportunity to replace the car once it had broken down. And this is what happened when he had problems with a car he owned some 20-years earlier. However, the CRA came into effect on 1 October 2015, and this allows Tesla the chance of repair before any rejection or replacement. As such, I don't think the solutions offered to Mr E by another company before the CRA came into effect means that Tesla have done anything wrong by not immediately offering replacement under the CRA.

Tesla repaired the car, and I haven't seen anything to show me that these repairs have failed. While Mr E has now said there are further issues with the car, he hasn't raised these with Tesla. And I haven't seen anything to show me these issues either related to the failure of the repair Tesla carried out, or that the issues were present or developing when the car was supplied to Mr E. As such, I'm satisfied that Tesla acted reasonably by repairing the car. And I won't be asking them to now offer Mr E the right to either replace or reject the car.

However, this doesn't mean that Tesla don't still need to do something to put things right.

Putting things right

Mr E has been able to use the car while it's been in his possession. And while it was being repaired, he was also provided with a courtesy car to keep him mobile. Because of this, I think it's only fair that he pays for this usage.

However, given the issues with the car, especially the grinding noise, I'm also satisfied that Mr E's usage and enjoyment of the car has been impaired. Because of this, I also think it's fair that Tesla refund some of the payments Mr E made. And I think 5% of the payments made before the repair fairly reflects the impaired use caused by the car not being of a satisfactory quality.

As this refund relates to payments Mr E made, Tesla can apply this against any outstanding payments on Mr E's account.

It's clear that Mr E has been inconvenienced by what's happened – he was concerned about being able to drive the car safely before it was repaired, and he was without the car he was supplied with for around a year while it was being repaired, during which time he was supplied with a number of courtesy cars which had a different spec and/or were older with a higher mileage. So, I think Tesla should compensate him for this. Tesla have offered £500, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

However, as this payment is to compensate Mr E for the trouble and inconvenience he suffered, and isn't related to the payments, then Tesla cannot apply this against any outstanding payments on Mr E's account, unless Mr E agrees for them to do so.

Therefore, Tesla should:

- remove any adverse entries relating to this agreement from Mr E's credit file;
- refund 5% of the payments Mr E made between being supplied with the car and when it was repaired and returned to him in February 2023;
- apply 8% simple yearly interest on the refund, calculated from the date Mr E made the payments to the date of the refund[†]; and
- pay Mr E an additional £500 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 Tesla to take off tax from this interest. Tesla must give Mr E 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 E's complaint about Tesla Financial Services Limited trading as Tesla Financial Services. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 31 October 2023.

Andrew Burford
Ombudsman