

The complaint

Miss M complains about a car she acquired under a hire purchase agreement with Toyota Financial Services (UK) PLC.

What happened

In September 2022 Miss M entered into a regulated hire purchase agreement financed by Toyota Financial Services, in relation to a nine year old used car. Its mileage was nearly 70,000 miles. In October and November that same year, Miss M discovered various faults with the car, which were repaired under warranty.

In December, the rear wiper jet stopped working; this does not appear to have been repaired. Then in May 2023, further faults developed. This time, the dealership did not agree that it was liable to repair the car, and Miss M paid for this herself (nearly £700). But only a few days later, another fault was diagnosed with the driveshaft. The dealership offered to contribute towards the cost (£800) as a gesture of good will. (There is a dispute about whether it offered to pay 50% or only 20%.) But Miss M decided that she could not afford to pay for this repair, and she contacted Toyota Financial Services for help.

Toyota Financial Services told Miss M that she was responsible for the cost of repairing the driveshaft, and for the repairs that had been carried out in May. But as a gesture of good will, it offered to pay her £100 and also to refund her latest monthly payment (£162). And to help her find the money to pay to fix the driveshaft, it offered to defer the next two monthly payments.

Miss M rejected that offer, and brought this complaint to our service. But our investigator did not uphold it. She said that the faults in 2022 had been repaired at no cost to Miss M, and there was no evidence to show that the later faults had been present when the car was delivered to Miss M. The length of time since then, and the mileage, each suggested that these faults had developed later. That meant that Toyota Financial Services was not liable for them, and the investigator thought that its offer was more than fair.

Miss M asked for an ombudsman to review her case.

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 do not uphold it, for broadly the same reasons as the investigator.

Legally, Toyota Financial Services is only responsible for any defects (other than reasonable wear and tear) that the car already had at the time it was delivered to Miss M. It isn't liable for any new problems that may arise after that, unless it can be established that they were present all along. Under section 19 of the Consumer Rights Act 2015, any fault which is discovered within six months is presumed to have been present at the time of delivery, unless that can be disproved; but after that, it is for Miss M to prove that the fault was

present when she got the car.

In deciding what counts as a fault, it is necessary to take into account the age and mileage of the car. That is because it is reasonable to expect a certain amount of ordinary wear and tear on an older, used car, in contrast to a brand new one. As I've said, this car was nine years old and had been driven nearly 70,000 miles.

When it is proved that a car does have a fault, then Toyota Financial Services (or the dealership) are entitled to one attempt at repairing it. Only if that fails does Miss M have the right to reject the car.

It is not in dispute that the car had some issues which needed to be repaired in October and November 2022, within six months of when Miss M got the car. So it may be presumed that Toyota Financial Services was liable for those issues at the time. But, as I've said, those problems have been repaired, and Miss M didn't have to pay for those repairs. So Miss M doesn't have the right to reject the car based on those issues.

The problems diagnosed in May 2023, more than six months after the car was delivered, were not recurrences of the original problems. These were new issues. So there needs to be evidence showing that they were present all along. The fact that they did not become apparent until about eight months later tends to suggest that they were not, although this is not conclusive. The fact that the car passed its MOT in September 2022, shortly before Miss M acquired it, with no advisories, also suggests that these faults had not yet developed, although this is also not conclusive, because the MOT did not pick up on the problems which were found in October and November 2022.

By the time the car was taken to the garage in May 2023, Miss M had driven it over 8,000 miles. The main issues identified then were that the front brake discs and pads needed replacing, a glow plug was faulty, and one CV Boot inner clip needed replacing. I think that all of these problems are more likely to have developed as wear and tear since Miss M acquired the vehicle, than to have been already faulty eight months earlier. And I think the same thing about the driveshaft, as it's a constantly moving part. I am therefore satisfied that these are not things for which Toyota Financial Services is liable.

My final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 28 February 2024.

Richard Wood

Ombudsman