

The complaint

Mrs G complains about the quality of a used car that was supplied through a fixed sum loan agreement with CA Auto Finance UK LTD (CAF). Mrs G also believes that the agreement was mis-sold to her.

What happened

In January 2020, Mrs G acquired a used car through a fixed sum loan agreement with CAF. The car was around three years old and had travelled 27,775 miles when it was supplied to her. The cash price of the car was £27,174. Mrs G made an advanced payment of £3,500, so the total amount financed on the agreement was £23,674 payable over 48 months.

Mrs G said in March 2022 she took the car into a manufacturer dealership for a full service. Mrs G complained of a knocking sound coming from the engine around two weeks after the service. However, she said she was told by the dealership that the sound was normal, so She continued using the car.

Mrs G said that on 26 February 2023 the engine failed whilst she was driving on a motorway. The car was recovered to a dealership a couple days later. Mrs G said was advised by the dealership that metal shavings were discovered in the oil, that a new engine would cost around £20,000 and as the warranty on her car had expired, she'd be liable for the costs.

Mrs G said her car was at the dealership for around five months before being taken to a third-party garage for the engine to be stripped and examined. It was suggested by a mechanic that the issue was an oil pump failure.

Mrs G says she is registered disabled, and the stress of this complaint has made things worse for her. She said CAF told her they have no interest in the car due to the agreement being a Motorloan Balloon agreement. Mrs G says she believed she was entering into a Personal Contract Purchase (PCP) hire purchase agreement, and so says the agreement was mis sold to her.

Mrs G says she wants to reject the car and have a refund of what she's paid, so she can purchase a different car.

In April 2024, CAF issued their final response to Mrs G's complaint. In it they confirmed the car was received at the dealership on 1 March 2023, and a review of the error codes suggested a new engine was required. However, that the dealership was unable to confirm the cause of the failure until the engine is stripped which would cost around £1,500. They also confirmed the warranty on the car had expired and that they were unable to assist with the costs.

CAF confirmed the type of agreement meant Mrs G was the legal owner of the car and responsible for all associated costs. However, they offered Mrs G as a gesture of goodwill two options:

- That CAF pay 25% of the costs for stripping the engine to identify the cause
- That they reduce the final settlement of her loan by around £2,204

Unhappy with their decision, Mrs G brought her complaint to our service for investigation.

In October 2023, Mrs G spoke to the investigator to confirm she'd not spoken to CAF about their offer, and had it confirmed by a technician that incorrect engine oil was the cause of the engine failure.

Having reviewed all the information on file, one of our investigators recommended that Mrs G's complaint should not be upheld. The investigator concluded that the onus was on Mrs G to confirm the issue was present at the point of supply. The investigator acknowledged that Mrs G provided evidence the fault was caused through incorrect oil being used and concluded that this meant CAF had no liability as there was no evidence the fault was present or developing at the point of supply.

The investigator also didn't think the agreement was mis-represented to Mrs G because he felt the information on the agreement was clear enough to show it wasn't a PCP agreement. The investigator also felt the mis representation didn't make any difference to the outcome as it was down to Mrs G to prove that the car was supplied to her with an inherent fault.

Mrs G disagreed with the investigator's view. In her response she focused mainly on the issue of being mis sold the agreement, however acknowledged the fault was not inherent but a result of the negligence of the dealership using the incorrect oil during a service.

The investigator responded to say his view remained unchanged, so Mrs G asked that her complaint be referred to an ombudsman for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mrs G complains about a fixed sum loan agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mrs G's complaint about CAF. CAF is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that CAF supplied Mrs G with a used vehicle that had travelled 27,775 miles. With this in mind, I think a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage which may impact its overall quality and reliability, so there'd be an increased likelihood of unforeseen problems surfacing sooner than in a new vehicle.

Having said that, the car was priced at £27,174 which isn't insignificant. At just under three years old, it also wasn't a particularly old vehicle, so, I think it is fair to say that a reasonable person would also expect it could offer a reasonable duration without any major issues, for example, if it has been well maintained and serviced in line with the manufacturer's guidelines.

Although I've not seen any expert evidence confirming a fault exists, for example in the form of diagnostics or job cards, I'm persuaded there was a fault with the car. I'm persuaded by what Mrs G has told our investigator, which has also been supported by CAF in the response to her complaint, for example with their offer made to cover a portion of the costs. Overall, neither party disputes that a fault exists with the engine, and Mrs G has told us she has proof the wrong oil was used during a service.

Having considered the car had a fault, it seems to me there are two key issues for me to consider in relation to this complaint:

1. Was the car of satisfactory quality when it was supplied to Mrs G?
2. Was the finance agreement mis sold by misrepresentation?

satisfactory quality

In her complaint form Mrs G confirmed the car failed in February 2023. This was just over three years from when she acquired the car. Following some further investigation Mrs G has confirmed that she has evidence the incorrect engine oil was used during a service of the car in March 2022. In an email to our investigator in October 2023, Mrs G also confirmed she was accepting that the car didn't have an inherent fault when it was supplied to her. In addition, CAF hasn't disputed what Mrs G has said here.

In light of the evidence and information on file, I'm satisfied that the car was supplied to Mrs G in a condition that was of satisfactory quality, and I don't think any party disputes this. So, in the circumstances I've focussed the remainder of my decision on whether I think the finance agreement was mis represented to Mrs G.

misrepresentation

Mrs G told us that she believes the finance agreement was mis sold to her because it was presented as a PCP agreement. Mrs G provided copies of quotations she received for PCP proposals days before the agreement was taken out, which she feels supports her assertion that her intention was always to enter into a PCP agreement rather than a fixed sum loan.

Mrs G feels she was misled into entering a type of agreement she didn't want and so I've considered whether CAF had mis represented the finance agreement to her.

I would consider a misrepresentation to have taken place if Mrs G was told a false statement of fact, that induced her into entering into the agreement when she otherwise would not have.

Having considered the evidence provided I'm not persuaded this was the case here.

I acknowledge the PCP quotations Mrs G showed us. The quotations were dated 19 January 2020 which were a few days prior to her signing the fixed sum loan agreement. Having thought about this I don't doubt that Mrs G may have intended on entering into a PCP agreement. I've also considered that Mrs G has told us she's had many PCP agreements in the past. However, I don't think it's unusual that CAF presented Mrs G with different proposals prior to taking out the finance, I think this is likely to be part of the process of deciding what is most suitable.

The Consumer Credit Sourcebook (CONC), which can be found within the Financial Conduct Authority's (FCA) handbook, says that a business must ensure that a communication or a financial promotion is clear, fair, and not misleading.

CONC 3.3.1 provides some examples which include ensuring that communication is clearly identifiable, is accurate and presented in a way that is likely to be understood, or that does not disguise, omit, diminish or obscure important information.

I've not seen any evidence of the conversations that would likely have taken place prior to Mrs G signing the agreement, however I have seen a copy of the signed agreement which I think is fair to say is clearly titled '*Fixed sum loan Agreement*' on the front page.

On the second page which was signed by both parties, is also a declaration, among other things, that the pre-contract information was received and that an explanation of the features of the agreement was provided.

From the evidence provided I'm satisfied the agreement was presented in a way that a reasonable person would be aware of the type of agreement they were entering into. I've seen no evidence that a false statement was made to Mrs G that would have induced her into entering into the agreement. So, all things considered I don't think the agreement was misrepresented to Mrs G.

In her email to the investigator, Mrs G says she believed with a PCP agreement the onus would have been on CAF as they'd still own the vehicle. However, I've also thought about this and in the circumstances, I'm not persuaded this would have made a difference.

A fixed sum loan agreement, as well as a PCP agreement are types of consumer credit agreements that fall under the consumer Credit act and are regulated by the FCA.

CAF would have the same responsibilities, under both types of agreement, under the CRA to ensure the vehicle was supplied in a condition that was of satisfactory quality. And in the circumstances of this complaint, I think it's reasonable that Mrs G would still have to prove that this wasn't the case, regardless of whether the agreement was a PCP or a fixed sum loan. So, although I recognise Mrs G would have preferred to be in a PCP agreement, I don't see that it would have made a significant difference to the outcome of her dispute with CAF.

As I've concluded that the car was of satisfactory quality at the point it was supplied, and that I don't think the finance agreement was misrepresented to Mrs G, I don't require CAF to take any action in respect of this complaint.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances, I don't uphold Mrs G's complaint about CA AUTO FINANCE UK LTD.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 7 June 2024.

Benjamin John
Ombudsman