

The complaint

Ms K complains that Toyota Financial Services (UK) PLC trading as Lexus Financial Services won't allow her to reject a car it supplied to her under a hire-purchase agreement. Ms K says the car is not of satisfactory quality.

What happened

In February 2023 Ms K got a car from a dealership "D" using a combination of a cash deposit and finance provided by Lexus Financial Services under a hire-purchase agreement. Soon after taking delivery Ms K became concerned about the quality of the car, specifically in relation to what appeared to be prior accident damage.

D carried out repairs and respraying of the affected area. However, Ms K was still unhappy. She took the car to an independent garage "G", who said there was evidence of past damage, and that the repair hadn't been carried out to a suitable standard. With the assistance of a legal representative, Ms K complained to Lexus Financial Services. She sought to reject the car under relevant provisions of the Consumer Rights Act 2015 ("CRA"), and to recover out of pocket costs she'd incurred.

Lexus Financial Services didn't uphold Ms K's complaint, as it didn't agree the car was not of satisfactory quality. It did offer to pay her £200 as a gesture of goodwill, but said D had told it there was no report of damage, insurance claims or write-off in relation to checks D had undertaken, though the car had been involved in "*a minor scrape*" requiring cosmetic repair.

D also told Lexus Financial Services that repair had been carried out poorly, and that it had improved this when it took the car in for repair after Ms K raised her concerns. Lexus Financial Services said D had told it its repair was up to acceptable standard. It further noted D had offered Ms K a further repair or a replacement vehicle, which she had declined.

Our investigator didn't think Lexus Financial Services had dealt fairly with Ms K in declining to meet her claim. Noting the CRA provisions in relation to satisfactory quality, including appearance and finish, the investigator considered Ms K ought to have been permitted to reject the car and be reimbursed for her costs, less a deduction for use. He found the £200 compensation to be a fair reflection of Ms K's distress and inconvenience Ms K.

Lexus Financial Services didn't accept the investigator's recommendation. It's asked for this review, as it's entitled to do under our rules.

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.

The hire-purchase agreement in this case is a regulated consumer credit agreement, which means that complaints arising from are covered by our service. As our investigator noted, Lexus Financial Services is the supplier of the car under this type of agreement and it carries responsibility for matters such as whether the car was of satisfactory quality.

For clarity, the CRA says that a contract to supply goods to a consumer is to be taken as including a term that the quality of the goods is satisfactory. Whether goods are of satisfactory quality is determined by reference to whether they meet the standard a reasonable person would consider satisfactory, taking account of matters such as price and description, and includes (among other things) matters such as appearance and finish, freedom from minor defects, safety and durability.

Ms K's claim is that the car Lexus Financial Services supplied to her failed to meet at least some of these requirements, and therefore that it was not of satisfactory quality.

I'm conscious that the car was less than a year old when Ms K got it, and this appears to have been reflected in its price. It doesn't seem to be suggested that the issues Ms K identified with the car could be attributed to ordinary wear and tear or the general deterioration that comes with vehicles as they get older. As such a reasonable person would expect the car Lexus Financial Services supplied to Ms K be in near-perfect condition.

Clearly that wasn't the case, according to the issues identified as concerns by Ms K and to the correspondence between D and Lexus Financial Services. The latter, in particular, says that the car had suffered cosmetic damage, hadn't been suitably repaired, and that D had carried out work intended to remedy this. All of this points towards a lack of satisfactory quality when the car was supplied, and I see no reason to reach a different finding.

The CRA sets out a range of potential remedies under section 19(3), in addition to other remedies that might be open to Ms K to seek. As I understand it, Ms K raised her concerns more than 30 days after she took delivery of the car, so the CRA short-term right to reject isn't at play here. In those circumstances section 23 of the CRA affords Ms K the right to require a repair or replacement, so that the car can be made to conform to contract.

Ms K sought a repair, which D attempted during April and May 2023. She was dissatisfied with D's efforts at repair, and obtained from G an inspection and report dated 18 May 2023, after the car was returned by D. G's report supported Ms K's concerns over the repair. It included photos of the affected area, and said:

"On vehicle inspection there is evidence that the vehicle was damaged at some point in the past, which seems to be isolated in the rear right corner of the vehicle, around the rear passenger door/wheel arch zone. The poor "repairs" that were carried only confirm this further. Any dents and bends are difficult to capture on photo as they have been patched, but below there are photos attached which show that work has been done on the vehicle, although again, to an incredibly poor standard."

It's not clear to me why Lexus Financial Services appears to have preferred over G's report the statement from D that its work had been done to a suitable standard. That is, after all, what D might be expected to say. I think in order for Lexus Financial Services to show that it had a reasonable basis for relying on this assertion, it would need to comment on why it didn't agree with G's analysis, or possibly commission an independent report that might provide an objective assessment, as Ms K did.

I've not seen anything in Lexus Financial Services' submissions that shows it took such steps. Consequently I'm satisfied that G's report provides a suitable independent assessment of the car's current condition, and that it supports Ms K's case that despite an attempt at repair, the car still doesn't conform to contract in terms of being of satisfactory quality.

I'm aware that Lexus Financial Services has said that D has offered to attempt a further repair and has also suggested replacing the car. While Ms K could accept either proposal if she finds it acceptable, the CRA makes clear she isn't under any obligation to do so. Under section 24(5)(a), Ms K is entitled to exercise her final right to reject the car where, after one repair or one replacement, it doesn't conform to contract. Given that the evidence supports that this is the position, it follows that Lexus Financial Services has not treated Ms K fairly by not permitting her to exercise a right she's entitled to exercise in law.

Putting things right

Section 20 of the CRA says that when the right to reject goods is exercised, the trader (in this case, the supplier Lexus Financial Services) has a duty to give the consumer a refund without undue delay. Section 24(8) provides that such a refund may be reduced by a deduction for use. Section 19(9-11) makes further provision for other remedies either instead of, or in addition to, those specified elsewhere. This includes matters such as damages arising from the breach.

I think that position is broadly reflected in the resolution proposals put forward by our investigator. They seem to me to offer a fair way to settle the dispute between Ms K and Lexus Financial Services. For clarity, those proposals are:

1. end the hire-purchase agreement with no further payment due from Ms K, save for any damage or excess mileage charges she might be liable to pay
2. collect the car (if this has not been done already) at no cost to Ms K
3. remove any adverse information that Lexus Financial Services might have recorded on Ms K's credit file in relation to the hire-purchase agreement
4. pay Ms K £10,002, representing a refund of the deposit she paid at inception
5. refund 10% of all monthly payments Ms K made under the hire-purchase agreement, to reflect a deduction from a full refund in light of the use she made of the car
6. pay 8% simple annual interest on the amounts in 3. and 4. from 19 July 2023, being the date on which Lexus Financial Services declined Ms K's rejection of the car, until the date it pays this settlement. If Lexus Financial Services deducts tax from this interest, it should provide Ms K with an appropriate tax deduction certificate, if she asks it to; and

I'm conscious that in bringing her claim Ms K sought reimbursement of additional costs she incurred in obtaining the inspection and report from G and in using the services of her legal representative. According to Ms K's representative, those costs total £800.

I can understand why Ms K found it necessary to obtain the report from G. Given that it's of key importance in establishing the liability of Lexus Financial Services for the breach of contract, I think it's only fair that she's not out of pocket in this respect. I can also see why she engaged the services of a legal representative to assist her with her claim, though I'm not persuaded that obliges Lexus Financial Services to cover those costs in full.

Our investigator's proposal was that Lexus Financial Services pay Ms K £200 to compensate her for distress and inconvenience she's been caused by its actions. There was no mention of her costs, though it's clear these formed part of her claim to Lexus Financial Services. Noting that Ms K's inconvenience was to some degree offset by her engagement of the legal representative, I'm instead awarding £400 to encompass a contribution towards the costs mentioned and the level of distress Ms K experienced.

My final decision

For the reasons I've set out, my final decision is that I uphold this complaint. To settle it, I require Toyota Financial Services (UK) PLC trading as Lexus Financial Services to take – within 28 days of receiving Ms K's acceptance – the steps I've set out in the above section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 15 August 2024.

Niall Taylor
Ombudsman