

The complaint

Mr R complains about the quality of a car that was supplied to him by Tesla Financial Services Limited ("TFS") under a conditional sale agreement.

What happened

In September 2021 Mr R was supplied with a brand-new car under a conditional sale agreement with TFS. The cash price of the car was £48,490 and Mr R paid an advance payment of £14,647. Mr R was required to make 36 monthly repayments of £499.01 followed by a final repayment of £19,880.90.

Shortly after receiving the car Mr R said he began to experience problems with it. Over the following 12 months the car was taken to the dealer on several occasions. The problems presented by Mr R and the actions taken in respect of them by the dealer can be summarised with the following information which was taken from the dealer's service department invoices.

December 2021

- Right hand side boot trim misaligned – inspected the boot and found the right-hand side top edge to have a larger gap than the left side as well as the boot being slightly staggered from the c pillar. Carried out adjustments until the boot lid was within manufacturers specification.
- Right-hand side door button gets stuck – carried out several tests on the driver's door panel button but unable to replicate the fault reported.
- Charger port door out of alignment – carried out an inspection and found charge port door to be misaligned. Attempted to adjust charge port door but found door to have excessive movement. Concluded it required replacing to close flush. Inspected rear light unit and found edge of light unit to be bent causing a visual misalignment with the charge port door. Replaced light unit and found charge port now fits flush and no excessive movement in door present.

January 2022

- New driver seat was fitted as the previous one was creasing.
- Insulated low pressure air conditioning pipe following bulletin from manufacturer to do this.
- All four windows are squeaking during operation – confirmed all four windows were squeaking and lubricated the windows.
- Driver door switch not working – tested the function of door switch multiple times, but couldn't replicate the fault.
- Driver door making clicking noise whilst driving over uneven surfaces – road tested the car and confirmed the clicking noise. Found the door seal dry causing glass and door to make a click/creak sound. Lubricated door seal and confirmed it was fixed.

February 2022

- Driver seat wrinkling – Steamed the seat to remove the wrinkles.
- Video entertainment app doesn't load – carried out test and confirmed it was working.
- Speaker doesn't seem loud enough – carried out audio tests and confirmed it was working as designed.
- Xentry mode, Mr R said he couldn't see all the cameras on the app unless he was at home – No faults were found.

May 2022

- Driver B-pillar trim replaced.
- Seat back replaced on driver seat.
- Installed seat back cover following seat replacement.
- Rear driver door trim was damaged following seat replacement.
- Install supermanifold to compressor pipe insulation foam and harness connector cover.
- Passenger side rear window will not fully close – carried out function test but no fault was found.
- Bluetooth not connecting – no fault found. Confirmed the Bluetooth is operating as designed.
- Noise coming from the front and rear doors – tested and confirmed noise was present. Replaced primary door seals on the driver's door.

On 23 June 2022 Mr R wrote to the dealership copying in TFS and asked to reject the car because of the issues he continued to experience with it. I can't see that Mr R received a response to this request.

September 2022

- Installed O-Ring on Trunk Power Strut.
- Driver seat wrinkly – carried out replacement.
- Rear left hand taillight not aligned – incorrect light installed on previous occasion. Replacement installed and now functioning as designed.
- Door seals are discoloured – confirmed concern and replaced all four primary door seals.
- Driver seat belt height adjuster sticking – no fault found.
- Stutter coming from the pedal during operation – no fault found. Acceleration will be limited when an object is detected in 'obstacle aware acceleration' mode.
- Steering wheel feels heavy on comfort setting – no fault found.
- Rear passenger door membrane was wet – no fault found.
- Car rolling forward when parked on occasions – no date/time stamps of the event therefore couldn't diagnose effectively. Basic checks were performed, and the car was operating as designed. No fault found.
- Aircon has little power and cannot be adjusted to aim at face – confirmed concerns, found issues with airflow passing back under dash. Adjustments to dashboard and vents were carried out.
- Key card provided on delivery was scuffed - new key cards supplied.
- Left headlight and front fascia not aligned – carried out adjustments to the headlight.
- Left hand front door sill trim scratched, upper dash trim cracked – replaced.

December 2022

- Xentry mode did not capture image when horn was pressed – found the setting to record 'on honk' was turned off. Turned it on and confirmed dashcam recording and saving to USB.

- Rear passenger door not aligned – no fault found and confirmed within factory specification.
- Unhappy that two miles were driven when the car was last with the dealership – explained the two miles were gained when the car was road tested.
- Paint chip on driver wing mirror which wasn't there when the car was dropped off – Inspected mirror and no damage was found.
- Water ingress in both front doors – confirmed water entering the car and re fitted the windows and adjusted the window angles to bring windows tighter to seal. Also calibrated the windows and carried out a water test and found no water ingress into the car.
- Rattle coming from rear – confirmed noise and found rear seat back trim to be causing a rattle. Adjustments made to components and confirmed noise no longer present on road test.
- Drivers door is protruding further out than rear door – Carried out measurements and found within factory specification.
- Noise of air from the front behind the dash – tested and no fault found.
- The car rolled forward again – looked at the data around timestamp given and found that the car rolled forward for about a second and a half when the brakes weren't applied. Vehicle is in 'roll' mode under 'pedals & steering' settings. Changed vehicle settings to 'hold' mode where vehicle will use regen braking to come to a complete stop. Vehicle will also automatically apply brakes when stopped to avoid rolling forwards or backwards (hill stop).

In March 2023 the dealer offered to buy back the car from Mr R as a gesture of goodwill and without any acceptance of liability. It offered to pay Mr R £29,000. Mr R did not accept this offer.

In June 2023 Mr R contacted TFS and complained about a number of issues including the way he had been treated by dealership network and the manufacturer of the car and a number of unresolved quality issues which he said had persisted since his last visit to a service centre. He asked for a full refund of money paid to TFS to date and "fair compensation" for the distress and inconvenience he had been caused.

Having not received a reply from TFS, Mr R brought his complaint to this service in October 2023.

An investigator thought Mr R's complaint should be upheld. She said that attempts to repair the car had failed as Mr R was still experiencing ongoing issues with the car, particularly the air conditioning, which she thought had been attempted to be repaired on three occasions. She thought Mr R was therefore able to exercise his right to rejection under the Consumer Rights Act 2015. She asked TFS to end Mr R's agreement, refund his deposit, refund 10% of his monthly repayments for loss of use and impaired use and pay him £350 for distress and inconvenience.

TFS did not agree with the investigator's assessment and asked an ombudsman to review the complaint. It said none of the issues it had repaired were present on delivery and they were all minor and easily resolved. It said it would be disproportionate to require it to allow the rejection of the car.

TFS said the air conditioning had not been repaired three times. It said the first two records of work on the system were non-critical updates issued in 'bulletins' from the manufacturer rather than responses to any concerns raised by Mr R. It said the one instance of repairs being required to the air conditioning was a minor defect.

Mr R said he was still encountering issues with the car after December 2022 but because he

had been blocked from arranging service visits or contacting anyone from the dealer network, he'd been unable to get any of these looked at.

Because TFS did not agree with the investigator's assessment, the complaint has been passed to me.

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 broadly the same conclusions as the investigator and for broadly similar 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. Where evidence has been incomplete or contradictory, I have reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 R was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means I can consider complaints about it.

The Consumer Rights Act 2015 ("CRA") covers agreements such as the one Mr R entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

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

The car in this case had a cash price of nearly £50,000 and was brand new. This was a significant sum of money so I believe the expectations of a reasonable person would be elevated when measured against a car of lesser value. I've kept this in mind when looking at what happened and deciding what is fair and reasonable.

Mr R took the car to the dealer's service centre on at least six separate occasions within the first 15 months of taking possession of it. On most visits by Mr R the service centre was able to confirm at least one of the issues identified by him and undertook remedial work on those issues.

In isolation, I accept what TFS says about those issues being relatively minor and often the fix involved making small adjustments rather than full replacements. It's also fair to say that more often than not the issues presented by Mr R could not be replicated by the service centre. I've not seen sufficient alternative evidence that persuades me the issues the service centre was unable to identify were in fact present on the car.

That being said and given the price Mr R paid for the car, he would not reasonably have expected to experience these kinds of issues so frequently and so soon after being supplied with a brand new car. For example, Mr R experienced issues with rattles or noises or several occasions which required adjustments or replacements and other parts were falling out of alignment – the result of this being that on one occasion water was getting into the car.

The CRA says that freedom from minor defects and durability are aspects of satisfactory quality. While some of the defects that were repaired happened more than six months after delivery of the car, there was a history of issues with alignment, rattles and noises dating back to within the first three months of delivery. There is a common theme which pervades the history of repairs relating to the build quality of the bodywork and interior trims and sills.

In any event and irrespective of whether the issues were identified within the first six months, I don't think a reasonable person would expect a brand-new car with a cash price of nearly £50,000 to require so many minor repairs within the first 15 months. While I note TFS's disagreement on this point, I do think it suggests the car was not sufficiently durable because it seems normal use was causing some of the bodywork to become misaligned and other parts of the interior and sills to require replacement.

I've very carefully weighed all of this up and overall, given the accumulation of minor issues over a considerable period of time, I do think the car had reached a point by December 2022 where a reasonable person would consider enough was enough. At this point one might reasonably conclude the car was not of satisfactory quality when it was supplied.

I recognise that according to the service centre's records, the issues Mr R presented were all fixed. Mr R said there are several other issues now, including some that have been fixed previously. While I don't intend to go into the reasons for Mr R being blocked from attending service appointments, it has nonetheless made it more difficult for Mr R to get these new issues looked at. Mr R has nonetheless provided some evidence of the ongoing faults, including photos showing water ingress on the inside of the car. Looking at this and given there is a history of faults confirmed by the service centre when presented by Mr R, it seems likely to me that at least some of the things he's said are still wrong, may indeed be faulty.

It's clear Mr R asked to reject the car as far back as June 2022 and he's maintained this position all along since then. TFS should have accepted Mr R's request after December 2022 as the car was not of satisfactory quality and attempts at repair had already been made on several occasions.

I recognise that Mr R has been driving the car since the last time it was looked at by a service centre in December 2022. Mr R said this was because it was costing him so much money every month and as no one was prepared to let him reject the vehicle, he felt he had no other choice but use it – albeit as sparingly as possible. With all of this considered, I don't find in this particular case that it would be fair if Mr R was denied his right to reject the car in this case because he continued to use it.

I am conscious Mr R's agreement has now run to term and the final payment is due. However, all things considered, I find the fairest way of putting things right in this case would be to allow Mr R to reject the car still.

Mr R has said that when the car was supplied to him, it was his intention to keep it and pay the final payment at the end of the agreement. Seeing as Mr R will be losing the equity he'd been putting into the car if he rejects it, I don't think it would be fair if Mr R had to effectively start again without the deposit he paid towards the car also. So, I think it's fair in the

circumstances of this case that TFS returns his deposit.

The CRA says when a consumer exercises their final right of rejection, a deduction can be made from the refund to take account of the use the consumer has had of the goods in the period since they were delivered. It doesn't set out how to calculate fair usage and there's no exact formula for me to use. There's not an industry standard mileage figure. So I've thought about what a fair deduction would be and have taken into account relevant guidance on what fair usage should be, such as the guidance set out in the "Consumer Rights Act: Guidance for Business" published by the Department for Business, Innovation and Skills. I've been mindful of the following elements of the guidance which would be relevant to this complaint such as that fair usage should reflect the use the consumer has had from the goods. Deductions shouldn't be made for the time the goods were being repaired or having faults assessed. Considerations can be made for all relevant information when assessing how much use the consumer has had and what level of deduction would be appropriate to reflect this and relevant information can include, for example, the type of goods, the intended use, expected lifespan etc.

Taking everything into account, I think a fair deduction for use in this case broadly equates to the monthly payments Mr R was making towards the car, less any refund for loss of use or impaired use which I will now go on to consider.

Mr R said he was in and out of hire cars while the car was with the service centre, but these were not always provided and there were times when travel vouchers were issued instead, or he simply went without a car. So, it appears Mr R may have experienced a small amount of loss of use between December 2021 and December 2022. Mr R's use of the car has also been impaired because he's been driving it with the several faults that were identified by the service centre, and because in all likelihood, he's had to continue driving it with some faults since the last time it was looked at by the service centre. The investigator said an appropriate refund for this was 10% of Mr R's monthly repayments from December 2021 – which is the first record of Mr R's concerns being confirmed by a service centre. I find this to be reasonable in the circumstances.

I've also considered the impact matters have had on Mr R and the distress and inconvenience he was caused. As the investigator explained, TFS is a separate legal entity from the dealer and the manufacturer. So, whether all those decisions taken by the dealer to block or limit Mr R's access to their premises were justified or not, TFS was not responsible for them. I accept nevertheless that Mr R was caused distress and inconvenience in the course of the supply of the car to him by TFS. He had to keep taking the car to a service centre which was no doubt inconvenient and it will have been distressing that such an expensive car kept developing issues. I assess fair compensation for this at £350.

My final decision

My final decision is that I uphold Mr R's complaint. To put things right Tesla Financial Services Limited must:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Mr R;
- refund Mr R's deposit of £14,647;
- refund 10% of Mr R's monthly repayments from December 2021 until the date of settlement for loss of use and impaired use of the car;
- pay interest of 8% simple per year on all refunded amounts from the date of payment until the date of settlement*; and;
- pay Mr R £350 for any distress or inconvenience.

* If Tesla Financial Services Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 November 2024.

Michael Ball
Ombudsman