

The complaint

Mrs M is unhappy that a car supplied to her under a personal contract hire agreement with Ald Automotive Limited (Ald) was of an unsatisfactory quality.

When I refer to what Mrs M has said and what Ald have said, it should also be taken to include things said on their behalf.

What happened

In November 2021 Mrs M was supplied with a new electric car through a personal contract hire agreement with Ald. The contract was for three years and did not include maintenance. Mrs M paid an initial hire payment of £2,241.72 with a further 36 payments of £373.62.

Mrs M is complaining that in November 2023 she took the car in for a routine service. At this time, she was informed that there were two recalls on the car. Initially the garage said that they would require to keep the car for two days. In the end the garage kept the car for eight days. When returned to Mrs M she noticed several faults including soft brakes and software issues. She then returned the car to the garage to have these issues looked into. The garage kept the car for a further ten days. The car was returned to Mrs M with outstanding recall work required as there were no slots available.

Mrs M states that the outstanding issues are impacting on the range of the battery. On both occasions Mrs M was supplied with a courtesy car, albeit not an electric vehicle. Mrs M experienced no issues with the car during the first two years of her hire agreement. As Mrs M was not happy to have a car with outstanding issues and a lower range than that stated by the manufacturer Mrs M complained to Ald on 21 November 2023.

As Ald had not been able to resolve Mrs M's complaint within the statutory time period Mrs M complained to us on 22 January 2024. At the time of complaining to us Mrs M states that the recall work on the battery control module had not been completed and she felt that the issues with soft brakes had not been adequately resolved. As the personal contract hire agreement ran through to November 2024, she was looking to have the agreement terminated without penalty, given the number of issues with the car. She was also unhappy with how Ald had dealt with her complaint.

On 18 March 2024 Ald wrote to Mrs M. They stated that they had spoken to the servicing garage. They confirmed that the vehicle had been in for eight days in November 2023 for a software recall. The garage found that the body control module (BCM) and 12v battery needed replacing. Issues in obtaining parts led to the delays. The car went into the garage for a further ten days in December 2024, where a software issue was dealt with. The delays were as a result of requiring support from the manufacturer. They concluded that they had treated Mrs M fairly. Also, as the garage had supplied a courtesy car to keep her mobile then they would not consider loss of use. They did however offer Mrs M a goodwill payment of £150 in recognition of the inconvenience of having the car off the road.

Our investigator contacted Mrs M to clarify a few issues on 20 March 2024, having seen a copy of Ald's response. She confirmed that the car had been returned to her as stated in the

Ald response. The impact of the work on the BCM not being completed is that the range has dropped from c255miles to c160miles. There were two recalls in place – one for the software update and one for the BCM. She only found out about these when she took the car in for service, despite the recalls being issued eight months earlier. At this stage she confirmed that the software issue appeared to be resolved.

Our investigator stated that whilst the car was not performing as Mrs M would like they did not find that this made the car of unsatisfactory quality at the time of supply. A recall does not necessarily mean that there is a fault with Mrs M's car and recalls can be issued for many reasons. The eight-month delay between the issuing of the recall and Mrs M becoming aware supported the investigator's conclusion that there wasn't an inherent fault. As to the battery life having deteriorated the investigator concluded that they had not seen any evidence that this was linked to the need to replace the BCM. For these reasons the investigator did not uphold Mrs M's complaint.

Mrs M did not accept the investigator's findings and felt that as the car no longer conformed to the manufacturer's description in terms of holding charge that the contract was not being complied with by Ald. There was no timescale for resolving the issue with the BCM. This and how Ald had dealt with her complaint were the biggest issues for Mrs M, so she asked that her complaint be referred to an ombudsman.

Because Mrs M didn't agree and asked an ombudsman to review her complaint this matter has been passed to me to make 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 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.

Mrs M was supplied with a car under a personal hire agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it. Complaint handling is not a regulated activity, so has not formed part of my considerations.

Before I explain why I've reached my decision, I think it's important for me to set out exactly what I've been able to consider here, and how.

The Consumer Rights Act 2015 (CRA) is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". The CRA says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. As the car supplied was new a reasonable person could expect it to be of higher quality than a second-hand car and driven free of defects for a reasonable time.

So, if I thought the car was faulty when Mrs M 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 Ald to put this right.

Even new vehicles will see wear and tear over a period of time and require regular maintenance to keep them in a usable condition. I note that the agreement entered into by Mrs M did not have maintenance included. This meant that within the contract terms Mrs M is responsible for all servicing, maintenance and repairs. I also note that Mrs M enjoyed two years usage of the car without any issues.

The issue came to light when Mrs M took the car in for a routine service in November 2023. At this stage she was informed that there were outstanding recalls on the car. A recall being in place does not necessarily make the car of unsatisfactory quality. There can be many reasons that a recall is issued. The fact that Mrs M had two years fault free use of the car and the recalls were issued eight months before Mrs M becoming aware (and she did not experience any issues in that time) mean that it is unlikely the recalls on their own would cause her car to be unsatisfactory at the time of supply.

That said there is an identified fault with the car as can be evidenced by the email from the dealer to Mrs M on 21 February 2024 "*We checked and confirmed that replacement of the module was required and put a request into the battery competency centre to have the repair carried out*". This shows that there was an underlying fault with the car. Mrs M had been using the car without issue before taking it in for the routine service, with the car having the same fault as identified in the February email. It is therefore difficult to conclude from the evidence presented that the fault identified has had significant impact on Mrs M. Mrs M has not provided any evidence in support of the difficulty she said the car has had holding charge so it's not clear what has changed in terms of the impact on Mrs M since the service in November 2023. I have also considered as to whether the length of time it has taken for Mrs M's car to be repaired does give rise to her being able to reject the car by virtue of the provisions of Sections 23 or 24 of the CRA but again the fact that Mrs M has not proved that the fault has made the car of unsatisfactory quality it would not be right and fair for the car to be rejected on this point.

Mrs M was also unhappy with how Ald has dealt with her complaint. As stated earlier this is an unregulated activity. However, I note that on both occasions her car was in the garage Mrs M was supplied with a courtesy car and Ald have offered a goodwill payment of £150. I can fully understand that Mrs M may well have been upset knowing that her car needed work that had yet to take place. I believe that any distress and inconvenience is reflected in the offer that Ald has made, as they did keep her mobile whilst the car was in for servicing, so I feel the offer of £150 is fair and if not already paid Ald should do so without delay.

Whilst I can empathise with Mrs M that she feels the car no longer meets the terms of the contract and no longer performs as she expects, I do not feel that the faults she has experienced with the car has had enough impact on her to say that Ald should refund any of the rental payments or that Mrs M should be able to reject the car after two years of trouble free usage. The only action I ask Ald to undertake is to ensure that they have paid Mrs M the £150 goodwill offer if they have not already done so.

I therefore find that there is insufficient evidence to uphold Mrs M's complaint. In which case it is open to her to pursue the matter by other means should she wish to do so.

My final decision

My decision is that I do not uphold this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 21 January 2025.

Leon Livermore
Ombudsman