

The complaint

Mr C's complaint relates to problems he had with a car supplied to him by CA Auto Finance UK Ltd under a hire-purchase agreement.

What happened

Mr C entered into a hire-purchase agreement with CA Auto Finance for the supply of a used car. On accepting delivery from the dealership ("D"), Mr C noted some points that needed rectification, including missing screw and dust caps and parcel shelf clips. D acknowledged these though Mr C says he undertook to deal with them himself.

According to Mr C's correspondence, within a couple of weeks the car cut out on two occasions indicating an oil warning light, but D was unable to locate a fault when he took the car in. He says that the problem reoccurred twice more during early 2023 – after he'd had the car for about four months – and he took it back to D for further investigation.

Mr C complained to D, listing other issues he had with the car, which included the description of the audio equipment, sticking door handles and clicking noises present when operating the windscreen washers, heater and electric windows. He later reiterated these concerns to D saying it had failed to respond to him. He added that he was unhappy with the courtesy vehicle D supplied to him, which he says was unsafe, and with D's customer service towards him. In March 2023, Mr C also complained to CA Auto Finance about the quality of the vehicle.

CA Auto Finance responded on 2 May 2023. It said it had liaised with D who had told it the car was brought in on 28 January, and that D had carried out work on the car, which D considered roadworthy as of 8 March. CA Auto Finance offered to reimburse Mr C one monthly payment – an amount of £289.51 – in recognition of the time the car had been undergoing repair with D. CA Auto Finance went on to say that if Mr C still felt the car was faulty, he could supply an independent diagnostic report.

Although Mr C accepted CA Auto Finance's offer of reimbursement he remained dissatisfied with the position and felt he was entitled to reject the car. As I understand it, he didn't collect it from D. In September 2023 he referred his complaint to us.

Our investigator wasn't persuaded that the complaint should be upheld. He noted the relevant provisions of the Consumer Rights Act 2015 ("CRA"), and thought that the fact D had identified fault codes and carried out remedial work on the car pointed towards a lack of satisfactory quality when the car was supplied to Mr C. But the investigator didn't think there was sufficient evidence to support that this persisted after D's remedial work, such that Mr C would be entitled to reject the car or that CA Auto Finance would be in some other way liable to him.

Mr C didn't accept our investigator's conclusions. He felt relevant information hadn't been taken into account, including D's job reports. Mr C believes that he had the right to reject the car when he reported problems in the initial couple of weeks. He has now sold the car and wants CA Auto Finance to reimburse his payments for the time the car was with D.

The matter has been passed to me for review and determination.

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 appreciate I'm going to disappoint Mr C again when I say that I'm not upholding his complaint. I don't doubt his sincerity in bringing it, and I acknowledge that there were clearly issues with the car. Mr C's complaint correspondence references several aspects of his interactions with D that left him dissatisfied.

But I have to be clear that I am not dealing with a complaint about D. There's nothing in the arrangements between the parties that suggests CA Auto Finance bears any responsibility for D's actions, other than those responsibilities it has under section 56 of the Consumer Credit Act 1974 ("CCA") for representations made by D prior to Mr C entering into the hire-purchase agreement. That includes the steps D took in terms of remedial work on the car, and the issues Mr C cited in his complaint that relate to the courtesy car D gave him and the customer service he received from D.

There's no indication that CA Auto Finance instructed D to repair the car – or was even aware of any issues with it – until Mr C contacted it in early March 2023. While Mr C has provided screenshots of his dealings with D, these are prior to him getting in touch with CA Auto Finance, and are of limited value in demonstrating why CA Auto Finance is at fault.

As the supplier of the car, CA Auto Finance does have obligations that arise primarily from the provisions in the CRA. As our investigator set out, one of those obligations – and the key one in the context of this complaint – is that the effect of the CRA is to incorporate into the hire-purchase agreement a term that the car will be of satisfactory quality. According to the CRA explanatory notes, *"the test of whether or not the quality of the goods is satisfactory is determined by what a reasonable person would consider satisfactory for the goods in question, taking into consideration all relevant circumstances including any description, the price and any public statements by the trader or producer or their representatives, such as statements made in advertisements or on the labels of goods."*

Assessment of quality is an objective test. It isn't enough that a customer is dissatisfied with a car. Under the CRA, the quality of goods includes their state and condition and includes aspects such as appearance and finish, freedom from minor defects, safety and durability.

Here, it's not in dispute that Mr C identified some issues with the car on taking delivery. His evidence is that he didn't seek to reject the car on this basis, and the nature of those issues might in any event fall some way short of entitling him to do so. They could be considered to be matters consistent with the car's age, which was three years old by that point, and with the price Mr C paid for it.

The key issue here is the problems Mr C says he had with the car 'cutting out' and the oil light illuminating. Mr C says that this first manifested within two weeks of him taking delivery of the car. He says he informed D of this and so was entitled to reject the car at that point. I don't agree with his analysis of the CRA in this respect, for the following reasons.

Firstly, I've not seen anything to show that Mr C was entitled to exercise the short-term right to reject the car on the basis of this problem. The reason for the car cutting out doesn't appear to have been established at that point, and the CRA doesn't provide that mere notification of a problem is sufficient to amount to a failure to conform to contract.

For example, many cars are fitted with engine management systems designed to limit operation in the event of an error code. That isn't itself a fault; rather, it's an indication that further investigation is required. I don't suggest that this was the case with Mr C's car, but I mention it because it is relevant to whether the evidence is sufficiently persuasive of a lack of satisfactory quality.

Secondly, the requirement under the CRA is that the right to reject *"is exercised if the consumer indicates to the trader that the consumer is rejecting the goods and treating the contract as at an end. The indication may be something the consumer says or does, but it must be clear enough to be understood by the trader."*

Mr C hasn't provided supporting evidence that he gave this clear indication. Indeed, his communication with D dated 24 January 2023 suggests that he did not. He said *"You were first made aware of the initial problem within the first 30 days and subsequent problems within the first 6 months. By law you are required to get 1 opportunity to fix the problem. I had the right to reject the car within the first 30 days but I gave you the opportunity."* To me, that suggests that rather than giving a clear indication that he was rejecting the car within the relevant 30-day timescale, Mr C did not exercise that right.

There is, however, a more fundamental difficulty, which is that the CRA incorporates terms into the contract between the trader and the consumer. The contract in question here is the hire-purchase agreement between CA Auto Finance and Mr C. Any reference to the trader in the CRA must necessarily mean CA Auto Finance, rather than D. As I've already noted, the relationship between CA Auto Finance and D doesn't make the latter responsible for, or the agent of, the former. So even if Mr C did inform D of the problems with the car and seek to exercise right of rejection, for the purposes of the CRA he would need to have done so to CA Auto Finance.

There's no indication Mr C did this prior to March 2023. At that point, CA Auto Finance was entitled to take a view on whether to agree Mr C's claim or to defend it. As this was still within six months of Mr C taking delivery of the car, if the car was at that point defective the CRA presumption would still be that it was so at the point of supply. So I'd expect to see that CA Auto Finance took suitable steps to assess the condition of the car before taking a position on its potential liability. It did this by contacting D and asking for information on the condition of the car.

Given the nature of the underlying dispute between Mr C and D, there were other courses of action open to CA Auto Finance that might have avoided any potential conflict of interest, such as an independent inspection. But I can see that CA Auto Finance did suggest that proposal, offering to cover the cost in the event that this diagnostic evidenced faults. In the circumstances of this particular case, I don't consider CA Auto Finance's response was unreasonable.

Because no such independent report was obtained, it is now not possible for me to ascertain with any degree of certainty any underlying cause of the car cutting out, and whether that suggests a defect that might point to the car failing to meet the test of satisfactory quality. I can also see that CA Auto Finance might be able to defend such a claim, or liability for it, by pointing to the CRA provisions that permit it to attempt a repair before Mr C might be entitled to exercise a right of rejection.

Although Mr C clearly sought to have D attempt repair, I'm conscious that this wouldn't necessarily amount to an attempt by or on behalf of CA Auto Finance. Mr C's sale of the car prevents it from being able to take such action. Overall, while I appreciate Mr C's position,

I'm not persuaded I can fairly require CA Auto Finance to do more than it already has in reimbursing the payment it offered in its final response.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 31 May 2024.

Niall Taylor
Ombudsman