

The complaint

Mr K complains that a car supplied to him by Toyota Financial Services (UK) PLC ("TFS") was misrepresented.

What happened

Mr K acquired a used car under a 49 month hire purchase agreement with TFS in August 2022. The car cost around £24,343. Mr K made a cash deposit payment of £1,933 and part exchanged an existing car to the value of £1,457.29. Under the agreement, Mr K was required to make 48 payments of £318.88, followed by a final payment of £9,922.50 if he wanted to keep the car. The car was around one year old at the time of supply and the mileage was 10,889. The car was supplied to Mr K by a dealership I'll refer to as "D".

After two days, Mr K says he realised some of the car's features that D had told him about, were unavailable. These features were that his phone wouldn't need to be connected to the car via a lead as it was safer, the car system could be voice controlled and he could use a satellite system without a lead connected to his phone. He said those features were available on the car he had part exchanged.

Mr K says he returned the car to D and asked to have his old car back. Mr K says he was told he couldn't have his old car back as the new car was sold under a finance agreement. Mr K said D told him an update to the car would occur in six months' time and once the update was done, the advertised features would be available. Mr K says he agreed to this.

However, six months later Mr K contacted D and says he was told the update hadn't been created and it wouldn't be created. Mr K said he wanted his old car back, but says D said it had got rid of it. Mr K said D offered him replacement cars, but these didn't fulfil his needs and didn't have the same features as his old car. So Mr K complained to TFS.

In April 2024, TFS issued its response to Mr K's complaint. It said D had agreed that the car had no voice control on it. It said D had explained that it had offered replacement cars which Mr K said were unsuitable for him and it had offered to part exchange the car. TFS offered Mr K the option to voluntarily terminate the agreement and confirmed that Mr K could consider part exchanging the car or it could provide him with a settlement figure. It also said Mr K should take up his complaint with D.

Unhappy with this, Mr K referred a complaint to this service. He reiterated his complaint and said he wanted to return the car. He said when he initially complained, he asked for his car back but was told he couldn't have it back. Mr K said the features were important as his children could activate voice control in the car. He said he had been affected emotionally and been inconvenienced by the trips he had to make to D. So he said he wanted TFS to provide him with compensation for the distress and inconvenience caused.

Our investigator looked into the complaint and said that the car had been mis-sold to Mr K. He said D had told Mr K the wireless connectivity feature would be available and when Mr K noticed it wasn't, it provided a written statement to say that an update would be available after six months which would mean the feature would become available. Our investigator said to put things right, TFS should:

- Unwind the agreement as if it had never happened with nothing further to pay;
- Collect the car at no further cost to Mr K;

- Refund Mr K's deposit and part exchange contribution;
- Pay 8% simple interest on these amounts from the date of payment until the date of settlement;
- Pay £250 for any distress and inconvenience caused; and
- Remove all information from Mr K's credit file in relation to the agreement.

TFS didn't respond.

Mr K said he had paid £100 a month more for this car than his previous car and he was having to pay insurance and tax for it. Mr K said he also wanted a refund for all the payments he had made towards the car.

Our investigator said the insurance and tax payments would be included in the usual costs of motoring.

As Mr K remains in disagreement and TFS didn't respond, the case has been passed to me to decide.

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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mr K has raised a number of different complaint points. I've concentrated 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. The rules of the service allow me to do this.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. TFS is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality. In Mr K's case, the car he acquired was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, given its age, mileage and price.

Mr K says that features of the car were misrepresented to him because he was told it would include wireless technology which, he considered to be important as it would mean he wouldn't have to connect his phone to a lead within the car.

When I consider whether a misrepresentation has been made or not, I need to be satisfied that D made a *'false statement of fact'* about the car to Mr K, and that statement induced him into entering the contract to acquire it, when he otherwise wouldn't have.

In this case, I don't think there is any dispute that Mr K was told the car would have wireless technology. I say this because when Mr K noticed the car didn't have the wireless features and he attempted to return the car to D, it wrote a statement saying:

"we will honour and cover the cost of updating the head unit in [registration number] to the latest MM software system to allow the wireless [brand name] auto and [brand name] car play functionality to be enabled adding the function of [brand name] voice control through the

steering wheel controls. Currently this feature only functions via plugging the phone in using USB."

In later emails, D provided part exchange options to Mr K and said:

"These both include significant discounts as a gesture for our previous mistake".

So, D accepted the car didn't have wireless controls and accepted it made a mistake by saying the car had wireless technology. In light of this, I'm satisfied that at the time the car was supplied to Mr K, a false statement of fact was made by D, when it told Mr K the car would have wireless technology.

I'll now consider whether I think this statement induced Mr K to enter into the contract to acquire the car, when he otherwise wouldn't have.

Having done so, I'm persuaded that Mr K was induced to enter into the contract because of the wireless features. I say this because as soon as Mr K realised the car didn't have these features, he sought to return it back to D. He then kept hold of the car because D told him it would be able to update the software to enable it to do what he expected it to. And when D later told him it couldn't update the software, Mr K got in contact with D to complain. Mr K has explained to this service that the voice control was available in his previous car and this was important to him. However, the car Mr K was supplied only had this available without a wireless connection.

All of these actions by Mr K and the consistency of his argument lead me to believe that he wouldn't have acquired the car under the hire purchase agreement if he hadn't been told that it had wireless technology. I think this was an important factor in Mr K's decision to acquire the car. And so, it follows that I think the car was misrepresented to Mr K.

I've gone on to think about what TFS needs to do to put things right.

As I'm persuaded that the car was misrepresented to Mr K, I'm satisfied he is entitled to reject the car. TFS should collect the car from Mr K and end the agreement with nothing further to pay by Mr K. It should also refund his deposit and part exchange contribution totalling £3,390.29. TFS should pay Mr K 8% simple interest on this amount from the date of payment until the date of settlement.

Mr K was led to believe he would be receiving a car which had wireless technology but it didn't. As a result of this, Mr K paid for a car which didn't have all of the available advertised features. I think TFS should compensate Mr K for this. I can also see that Mr K has been going back and forth with D and TFS extensively about this issue for an extended period of time. I can also see that he requested D provide him with his previous car and allow him to reject this car, but it wouldn't allow him to do this.

Having considered this, I'm persuaded Mr K was caused distress and inconvenience as a result of the misrepresentation made to him about the car. And so, I think TFS should pay Mr K £500 to reflect the distress and inconvenience caused and because Mr K was provided with a car which didn't have the advertised features.

Mr K has said that he has had to pay road tax and insurance for the car. However, these would have been costs that Mr K would have incurred to be kept mobile. I'm also aware that the car has been used by Mr K and public records show that in May 2024, the mileage of the car was around 27,500. So Mr K has made use of the car and has travelled in excess of 16,500 miles in the car since acquiring it. Because of this I'm satisfied that Mr K should pay for the use of the car, which includes the cost to insure it and to pay for other associated costs of running the car. This also means I don't think Mr K should receive a refund of any of the monthly rentals. However, I've considered that Mr K's usage was impaired and have factored this into the overall award made for the distress and inconvenience he suffered.

Overall, I'm satisfied that the car supplied under the hire purchase agreement by TFS was misrepresented to Mr K.

My final decision

My final decision is that I uphold Mr K's complaint. I direct Toyota Financial Services (UK) PLC to:

- Collect the car at no further cost to Mr K;
- End the agreement with nothing further to pay;
- Refund Mr K's deposit of £3,390.29*;
- Pay Mr K 8% simple interest on this amount from the date of payment until the date of settlement;**
- Pay Mr K £500 for the distress and inconvenience caused;*** and
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement.

*If any of the deposit is made up of funds paid through a dealer contribution, then Toyota Financial Services (UK) PLC is entitled to retain the proportion of the deposit that is made up of the dealer contribution.

**If Toyota Financial Services (UK) PLC considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

***If Toyota Financial Services (UK) PLC does not pay this £500 compensation for distress and inconvenience within 28 days of the date on which we tell it Mr K accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 September 2024.

Sonia Ahmed
Ombudsman