

Complaint

Miss G has complained about the quality of a car that Toyota Financial Services (UK) PLC (“Toyota”) supplied to her through a hire-purchase agreement.

Background

In June 2021, Toyota provided Miss G with finance for a used car. The car was approximately seven years old and it is my understanding that it had completed around 42,921 miles at the time of purchase.

The cash price of the vehicle was £9,428.50. Miss G paid a deposit of £99, received a part exchange value of £908.77 and applied for finance to cover the remaining £8,420.73 she needed to complete her purchase. Toyota accepted Miss G’s application and entered into a 58-month hire-purchase agreement with her.

The loan had an APR of 8.9%, interest, fees and total charges of £1,890.93 and the total amount to be repaid of £10,311.66 (not including Miss G’s deposit or the part exchange value she received for her previous vehicle) was due to be repaid in 58 monthly instalments of £177.77.

The initial breakdown and Miss G’s first complaint

After the car broke down in April 2022, the car was inspected. This inspecting engineer concluded that there were bolts missing from the gearbox and this was causing oil to leak. This led to a dispute over whether this meant that Toyota supplied Miss G with a car that was not of satisfactory quality, which reached our service in August 2022. The complaint was decided by one of our ombudsmen who concluded that the car supplied to Miss G was not of satisfactory quality on 22 March 2023.

Amongst other things, the ombudsman directed Toyota to carry out full diagnostics to identify the issue with the gearbox and also carry out any repairs required at no cost to Miss G. Miss G accepted the final decision and Toyota liaised with the supplying dealer in order to carry out full diagnostics to identify the issue with the gearbox and also carry out any repairs required at no cost to Miss G.

After the initial complaint

The car was collected by the supplying dealer at the start of June 2023 and was returned functioning at the end of June 2023. However, at the beginning of January 2024, Miss G once again began to experience difficulties with the vehicle changing gear. Shortly afterwards the vehicle broke down and was recovered to the supplying dealer. In February 2024, the supplying dealer confirmed that the transfer box now needed to be replaced.

Miss G subsequently complained, to Toyota, about the car having broken down within months of the repair carried out in June 2023. After eight weeks, Toyota hadn’t issued its final response to this complaint but it notified Miss G that she was entitled to refer the

complaint to us as its time for investigating matters had elapsed. Miss G then referred her complaint to our service.

Miss G's complaint was reviewed by one of our investigators. She thought that Miss G had the final right to reject the vehicle as Toyota had carried out a repair of the vehicle and it still was not of satisfactory quality.

Toyota didn't respond to our investigator's assessment. So the complaint was passed to an ombudsman as part of the next stage of our dispute resolution process.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, Toyota purchased the vehicle from the dealership Miss G visited. Miss G then hired the vehicle from Toyota and paid a monthly amount to it in return. Toyota remained the legal owner of the vehicle under the agreement until Miss G's loan was repaid.

This arrangement resulted in Toyota being the supplier of Miss G's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Miss G's agreement with Toyota. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

However, it is the case that all parties agree (as a result of the ombudsman's final decision of 22 March 2023) that the car Miss G was supplied with by Toyota was not of satisfactory quality. So as it is not in dispute that the car was not of satisfactory quality, I do not need to revisit this matter in this decision.

As a resolution to supplying Miss G with a car that was not of satisfactory quality and in order to put things right along the lines of the ombudsman's final decision of 22 March 2023, Toyota agreed to repair the fault which resulted in the car it supplied to Miss G not being of satisfactory quality.

Miss G says that as she'd only had use of the vehicle for around six months this attempt at a repair failed and she now wishes to reject the vehicle. The CRA does permit a customer a final right to reject a vehicle in circumstances where there has already been a repair but the problem nonetheless remains.

So it seems to me that what I need to decide in this case is whether there is currently a fault with the car. If I think there is, I'll need to decide whether this fault is the same as, or linked to, the fault which meant that the car wasn't of satisfactory quality at the time it was supplied to Miss G. And if this is the case, I'll finally need to decide what's fair, if anything, to put things right.

Is there currently a fault with the vehicle?

Having considered everything provided, I'm satisfied that there is a fault currently present on the vehicle. The vehicle broke down and was recovered to the supplying dealer. The notes from the motor dealer's job sheet state that a diagnosis was carried out to identify the gearbox issue. The technician was able to drive the vehicle into the workshop but it was very jerky and it was difficult to select gear.

Given the breakdown and subsequent job sheet, I'm satisfied that there is a problem with selecting the correct gear and it is affecting the car being driven. Although I do accept that there is some disagreement over the cause of this. As this is case, I'm also satisfied that this problem in being able to select the correct gear means that there is a fault with the car.

I'll now proceed to decide whether the fault which I'm satisfied is currently present on the vehicle, is the same as, or is linked to, the fault which meant that the car wasn't of satisfactory quality at the point it was supplied to Miss G.

Why I think that the fault currently on the vehicle is the same as, or linked to, the fault, which meant that the car wasn't of satisfactory quality at the point it was supplied to Miss G

It is extremely disappointing not to have received anything at all from Toyota on this complaint. This is especially as this is in circumstances where it has been aware of the issues Miss G has been experiencing and it has had her complaint for almost six months.

Toyota's lack of engagement with this complaint means that I don't know whether it views the current fault on the vehicle as a new fault, or whether it accepts that it is the same fault, or linked to the fault, that was repaired by the motor dealer, on its behalf, in June 2023.

Nonetheless, as I understand it, the motor dealer does not accept this current fault to be linked to the previous one. I say this because it has replaced the gearbox for a second time under the warranty provided as a result of the first replacement. However, it believes that the current issue relates to the transfer box and it does not consider this to be covered in the same way.

I've carefully considered the position.

It is clear that when the car initially broke down in April 2022, Miss G's ability to drive the car was affected by the fact that it was difficult to select the correct gear. The ombudsman who considered the initial complaint found that this meant that there was a fault with the car and that the car supplied to Miss G was not of satisfactory quality.

In response to the ombudsman's decision and in order to put things right, Toyota authorised the motor dealer to carry out repairs to the vehicle on its behalf and the motor dealer replaced the gearbox as a result. However, it's important to note that the ombudsman did not direct Toyota to replace the gearbox. The ombudsman directed Toyota to carry out full diagnostics to identify the issue with the gearbox and also carry out any repairs required at no cost to Miss G. And it is the motor dealer which diagnosed that replacing the gearbox would resolve the problem.

I accept that I am not a mechanic or an engineer. However, it seems fairly clear to me that there is a recurring theme of issues manifesting themselves by it being difficult to select the correct gear when driving. It also seems apparent that the motor dealer merely diagnosed and then repaired the symptom – that there were difficulties with selecting the correct gear – rather than repaired what was at the root cause of this.

I say this because replacing the gearbox for a second time has not rectified the issue. I also note that the motor dealer now says that there is an issue with the transfer box and it needs to be replaced because it is full of oil sludge and metal. Given the initial inspection of the original gearbox, in April 2022, concluded that there were bolts missing from it and this was causing oil to leak, it's doesn't seem unreasonable to conclude that the issue with the transfer box is related and that the oil sludge and metal present actually came from the original gearbox.

In the circumstances, I am satisfied that the issue with the transfer box is, at the very least, related to the fault Miss G experienced with the vehicle in April 2022. In my view, the fact that the motor dealer may not have inspected the transfer box and simply replaced the gearbox, does not mean that Toyota fully diagnosed what was causing the problem with gearbox, or that it carried out the repairs in accordance with the ombudsman's direction on 22 March 2023.

I say this particularly as while the motor dealer has said that this new repair is not covered by the warranty for the previous work it carried out in June 2023, neither it nor Toyota have provided me with any persuasive evidence to support this issue not being linked to the previous fault.

As this is the case, I'm satisfied that the fault that is currently present on the vehicle, is the same as, or at the very least is linked to, the fault which meant that the car wasn't of satisfactory quality at the point it was supplied to Miss G.

What Toyota needs to do to put things right for Miss G

I've gone on to think about what Toyota needs to do to put things right as a result of the fact that the fault that is currently present on the vehicle, is the same as, or is linked to, the fault which meant that the car wasn't of satisfactory quality at the point it was supplied to Miss G.

Miss G has told us that she is not prepared to accept a repair of the vehicle and she wishes to reject it. I've considered whether this would be an appropriate remedy here – particularly as the CRA does permit a customer a final right to reject a vehicle in circumstances where there has already been a repair, but the problem nonetheless remains.

I'm mindful here that while the supplier has its own right to repair, Toyota authorised the motor dealer to carry out the repair the ombudsman directed it to carry out in her final decision of 22 March 2023. So I'm satisfied that the repair carried out in June 2023 was Toyota's repair and also that that this repair was Toyota's right to attempt one repair.

Finally, I'm also mindful that the motor dealer has now made a diagnosis which differs from the one that it made in June 2023. Given that this is the case and the motor dealer is saying that this new repair isn't covered under the terms of the warranty for the first one, I can't say it's more likely than not this repair would result in the issue being resolved. Indeed it's not clear to me why this new diagnosis is any more accurate than the first one made in June 2023.

So notwithstanding the fact that the CRA permits Miss G to a final right to reject the vehicle, I'm in any event, not persuaded that there is a sound rationale for directing a further repair to take place. As this is the case, I'm satisfied that the fair and reasonable resolution here would be for Miss G to reject the vehicle and for Toyota to collect it from her. As Miss G will have rejected the vehicle, I'm satisfied that Toyota should end its agreement with her and ensure that she has nothing further to pay on it.

This will seek to place Miss G in the position she would be in had she not entered into the hire-purchase agreement in the first place, so I'm satisfied that Toyota should refund Miss G the £99 deposit she paid to the motor dealer as well as the part exchange value of £908.77, for her previous vehicle, with interest at 8% per year simple.

There is also no dispute that Miss G hasn't had any use of the vehicle, at all, since it was recovered to the motor dealer in January 2024. I understand that she has continued making payments to the agreement since then, despite this and notwithstanding having not been provided with any replacement vehicle. In these circumstances, I think that Toyota should refund all of the payments that Miss G has made from her January 2024 payment, plus interest at 8% a year simple.

Miss G has also provided invoices and proof of payment to show that she had to pay £50 to have the vehicle recovered back to the motor dealer and then a further £120 to have the vehicle returned to her, after the motor dealer said that it would charge her storage costs. I think that Toyota should reimburse these payments with interest at 8% per year simple from the date they were made.

I've also considered the distress and inconvenience that Miss G experienced and the impact of her being without a vehicle since January 2024 and the fact that this is the second time she has been without this vehicle for an extended period of time.

Miss G has said that she needed the vehicle to get to hospital appointments and get her children to school. She's also said that the difficulties with the vehicle have exacerbated her health conditions. I'm mindful that Miss G is being refunded her payments for the period she didn't have the vehicle for. So she is being placed, as close as possible, to the position she would be if she didn't have the vehicle for this time. And, in these circumstances, she would always have incurred some transport costs to get to her appointments and get her children to school.

Nonetheless, as I've explained, Toyota has offered Miss G little help despite this being the second time she will have been without the vehicle for an extended period, it will have known that this could impact her health bearing in mind the correspondence from the first complaint and it hasn't even responded to this complaint at this stage.

That said, I have to be mindful of the fact that complaint handling isn't an activity that I'm able to consider a complaint about. So, while I can consider whether Toyota failing to rectify a fault which meant that the car wasn't of satisfactory quality at the point it was supplied to Miss G caused distress and inconvenience to her, I cannot make an additional award of compensation for Toyota's poor complaint handling – its failure to issue a final response or engage with Miss G's complaint.

Having considered all of this, I'm persuaded that Miss G was caused significant distress and inconvenience as a result of Toyota's actions in failing to rectify the fault which meant that the car wasn't of satisfactory quality at the point it was supplied to Miss G. And this has taken a lot of extra effort to sort out. In these circumstances, I think that Toyota should pay Miss G a further £500 to reflect the distress and inconvenience its actions (and in some instances inaction) caused here.

Fair compensation – what Toyota needs to do to put things right for Miss G

Overall and having considered everything, I think it is fair and reasonable for Toyota to put things right for Miss G by:

- collecting the car from Miss G at no cost to her;

- ending the hire-purchase agreement and ensuring that Miss G has nothing further to pay. Toyota should also remove any adverse information it may have recorded against Miss G as a result of this agreement from her credit file;
- refunding her deposit and all of the payments that she made to the agreement from January 2024 onwards;
- reimbursing her the £170 she paid for the vehicle to be recovered to and from the motor dealer;
- adding interest at 8% per year simple on any refunded and reimbursed payments from the date they were made by Miss G to the date the complaint is settled†;
- paying her £500 in compensation for the distress and inconvenience that was caused.

† HM Revenue & Customs requires Toyota to take off tax from this interest. Toyota must give Miss G a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss G's complaint. Toyota Financial Services (UK) PLC should put things right for Miss G in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 16 September 2024.

Jeshen Narayanan
Ombudsman