

The complaint

Mr P is unhappy that a car supplied to him under a hire purchase agreement with Toyota Financial Services (UK) Plc was of an unsatisfactory quality.

What happened

In June 2023, Mr P was supplied with a used electric car through a hire purchase agreement with Toyota. He paid a £2,000 deposit and the agreement was for £10,770 over 60 months, with 59 monthly payments of £230.69 and a final payment of £231.69. At the time of supply, the car was just over five years old, and had done 22,352 miles.

Mr P experienced issues with the car from shortly after it was supplied to him – an electrical fault meant the batteries weren't charging, which meant the car became undrivable. Mr P reported the fault, and an unsuccessful attempt was made to fix this. In January 2024, Mr P financed another car as he required transportation in order to be able to work. It's my understanding that Mr P has maintained payments to both these agreements, although doing so has caused him some financial difficulties.

Furthermore, in March 2024, the car supplied by Toyota was impounded by the local authority as it was parked on a public road without a valid MOT (which couldn't be completed as the car was undrivable due to the ongoing battery fault.) It's my understanding that Mr P recovered the car from the impound, and it's now in storage.

Mr P wants to reject the car as it wasn't of a satisfactory quality when it was supplied to him, and because multiple attempts to repair it have failed. However, Toyota didn't agree with rejection, and said their right to repair outweighs Mr P's right to reject.

The matter was passed to the Financial Ombudsman Service for investigation. Our investigator was satisfied there was a fault with the car that made it of an unsatisfactory quality when it was supplied. The investigator was also satisfied that the attempt to repair the car had been unsuccessful, and that this took an unreasonable amount of time to take place. As such, the investigator said that Mr P had the right to reject the car.

The investigator thought that, because the car was undrivable from shortly after it was supplied, Toyota should refund the deposit and all the payments Mr P paid. The investigator also considered Mr P's personal circumstances in depth (which I won't repeat here) and thought Toyota should also pay him an additional £350 for the trouble and upset he'd been caused. However, the investigator didn't think Toyota were responsible for either the impound fees or Mr P's costs in purchasing recording equipment, so he had a record of his interactions with the supplying dealership.

While Mr P generally agreed with the investigator's opinion, he didn't think the £350 compensation was sufficient in the circumstances. He said that he'd had to pay for unnecessary insurance on the car from January 2024, which wouldn't have been needed had Toyota allowed him to reject it; that he'd paid £664.61 on a suspension repair on the car; that he only purchased the recording equipment because his complaint wasn't dealt with; that the impound fees were only incurred because the car was faulty and he was now paying

storage costs for the car; and that he'd incurred recovery costs of around £30 to £60. Mr P also provided extensive comments on how this matter was affecting him, and how he believed things should be resolved.

The investigator revised their opinion to say that Toyota should refund Mr P's insurance costs from 19 July 2023, as this was when the mileage evidence showed Mr P stopped using it; as well as covering any 'reasonably incurred' storage costs from 5 March 2024, when the MOT expired and the car couldn't be legally kept on a public highway.

However, as the car had only done seven miles between its last MOT and when it was supplied to Mr P, and as this MOT didn't identify any issues or advisories with the suspension, the investigator didn't think that the car was supplied with any suspension problems that required repair. The investigator considered that any problems with the suspension happened during the 2,218 miles Mr P drove between 27 June and 19 July 2023. As such, they didn't think Toyota were responsible for the repair costs.

Mr P didn't agree with the investigator. He said that he only consented to Toyota paying his insurance costs from January 2024 onwards, as this was when they unreasonably refused his request to reject the car. Mr P also said he didn't agree that Toyota weren't responsible for the repair costs as *"parts don't get damaged instantly it is a gradual process"*, so he thought he should receive a refund of at least 50% of the repair costs. He also said that he wasn't prepared to reveal the location of the vehicle by providing evidence of the storage costs that were being incurred.

Mr P said that he would be happy to resolve the case on the basis of a refund of all the payments he'd paid to Toyota, including the deposit, and statutory interest.

I issued a provisional decision on 11 July 2024, where I explained my intention to uphold the complaint. In that decision I said:

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 P was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Toyota are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Toyota can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr P to show it was present when the car was supplied.

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

Before I explain why I've reached my provisional decision, I think it's extremely important for me to set out exactly what I've been able to consider here. I note Mr P has provided comments about how customers were, in general, being let down by the system that was meant to protect them; and why he thought the Financial Ombudsman Service wasn't fit for purpose. When considering this matter, I'm only able to consider the complaint Mr P has raised about the Toyota. I'm not able to consider more general issues or how other people may or may not have been treated in similar or other circumstances. I've also noted that some of Mr P's comments have already been dealt with under our service complaints process. As such, Mr P's general comments won't form part of my decision.

Mr P has provided video evidence, dated 19 Jul 2023, which shows a charging fault with the car and the error message that "battery charging impossible." The mileage at the time was 24,570 miles.

I've seen Toyota's complaint response dated 22 September 2023, where they acknowledge there was a fault with the car, and that they were arranging for this to be fixed but were awaiting parts. I've also seen an email from the dealership, dated 7 November 2023, which confirmed the parts have been fitted but the car is still showing faults. The dealership confirmed they were still investigating the matter.

While I haven't seen any evidence when the car was returned to Mr P, it's my understanding this happened in late December 2023. Mr P has provided further video evidence, dated 29 December 2023, which again shows a charging fault with the car and the error message that "battery charging impossible." The mileage at the time was 24,608 miles.

Based on this evidence, I'm satisfied that Mr P was without use of the car from July to December 2023. I'm also satisfied that the attempt to repair the car was unsuccessful, as the charging fault remained after the car was returned to Mr P. What's more, as this was an electric vehicle, the inability to charge the batteries meant the car was unusable.

Section 24(5) of the CRA says "a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract." This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Toyota – the first attempted repair is the single chance at repair. What's more, the CRA is clear that, if the single chance at repair fails, then Mr P has the right of rejection.

As I've stated, I'm satisfied that the first attempt at repair was unsuccessful, and I haven't seen anything to show me that the car has subsequently been repaired. As such, under the terms of the CRA, I'm satisfied that Mr P has the right to reject the car. So, Toyota should do something to put things right.

I've considered the mileage record for the car supplied to Mr P. The MOT record for 6 March 2023 shows the car had done 22,345 miles, and the agreement paperwork shows that the car had done 22,352 miles when it was supplied to Mr P on 27 June 2023. As such, the car had travelled seven miles in this period of almost four months.

Mr P has also provided evidence that the car had travelled 24,570 miles on 19 July 2023, and 24,608 miles on 29 December 2023. Mr P has said that the mileage hasn't changed since December 2023 which, given the faults with the car and the fact the MOT wasn't renewed in March 2024, I'm inclined to believe without further evidence of the mileage.

As such, while the car only travelled 38 miles between 19 July and 29 December 2023, it travelled 2,218 miles in the 22-days between 27 June and 19 July 2023. In both the

investigator's opinions they've said Mr P should receive a refund of all the payments he's made since being supplied with the car as the car was not being used. However, the investigator has also said in their second opinion that Mr P should be refunded the insurance premiums he's paid since 19 July 2023, as this was when he stopped using the car.

I find the investigator's findings contradictory with regards to these refunds, and the mileage record shows that the car was used extensively between supply and 19 July 2023. As such, I can't agree with the investigator that Toyota should refund all the payments Mr P has made. As he used the car until 19 July 2023, but not after this date, only the equivalent of the payments he's made from 19 July 2023 until the agreement is ended should be refunded.

Turning to the insurance payments, while Mr P hasn't used the car, he's benefitted from the insurance payments he paid – the insurance also covers for fire, theft, and third-party damage. What's more, until the car was put into storage, it was stored on a public road (from which it was impounded), and there is a legal requirement for any car stored on a public road to be insured. Given this, and while I appreciate that Toyota could've accepted rejection sooner, I'm not satisfied that any insurance costs should be refunded.

I've also considered the £664.61 repair costs Mr P has paid. The evidence he's supplied shows this was for repairs to the suspension, and the MOT record for 6 March 2023 doesn't indicate any failure or advisory points with the suspension. I'm therefore satisfied that the suspension met at least the minimum legal standard when the car was supplied.

As I've stated above, the car travelled 2,218 miles in the 22-days between 27 June and 19 July 2023. While I've noted Mr P's comments that, for the suspension to need repairing after such a short time/mileage, there must've been issues developing when the car was supplied to him. While this may be the case, it's also possible that the suspension suffered damage during this period of intensive usage, and this is what necessitated the repair, not an issue that was present/developing at the point of supply.

The repair evidence Mr P has provided shows what work was carried out, but not why i.e., there's nothing that states the repairs were needed because of an issue that was present or developing when the car was supplied to Mr P; nor have I seen any other evidence, for example a report from an independent engineer, that says this was the case. Given this, I'm satisfied it's reasonable for me to rely on the evidence I do have – the MOT record that shows there were no issues with the suspension at the point of supply. As such, I won't be asking Toyota to cover any of the costs of these repairs.

The investigator also recommended that Toyota cover any 'reasonable' storage costs Mr P has incurred since 5 March 2024 – the day the MOT expired. However, I'm unable to direct Toyota to pay this, as what is 'reasonable' is a subjective opinion. Mr P has been invited to provide evidence of the storage costs he's incurred, but he's declined to do so – he doesn't want either Toyota or ourselves to know the whereabouts of the car. Given this refusal, I'm unable to determine whether the storage costs are reasonable i.e., that Mr P has taken steps to mitigate these costs as far as possible, so I won't be recommending that Toyota pay these.

However, for clarity, if Mr P provides evidence of these costs along with any comments he may have on my provisional decision, I will be asking Toyota to pay what of these costs I consider to be reasonable.

It's clear that Mr P has been inconvenienced by what's happened. I've considered Mr P's personal circumstances, and the fact he was made homeless in July 2023. While this would've been a traumatic experience for him, this event happened around the same time as the fault with the car first happened. As such, I'm not able to say that Toyota were in any

way responsible for this unfortunate situation. While the fault with the car, the length of time it took for the attempted repair to happen, and that Mr P has continued to pay Toyota after they refused his request to reject the car would no doubt have added to the impact Mr P was experiencing from his personal circumstances, any direction I give Toyota can only consider the direct impact of their action.

Taking into consideration just this direct impact, the investigator had recommended Toyota pay Mr P an additional £350 compensation. This is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my provisional decision.

Therefore, I intend to ask Toyota to:

- *end the agreement with no further monthly payments to pay;*
- *collect the car at no collection cost to Mr P;*
- *remove any adverse entries relating to this agreement from Mr P's credit file;*
- *refund the deposit Mr P paid (if any part of this deposit is made up of funds paid through a dealer contribution, Toyota is entitled to retain that proportion of the deposit);*
- *refund the payments Mr P has made (Toyota are entitled to keep the pro-rata equivalent of the payments made for the period 27 June to 19 July 2023, so this amount should be deducted from the payment refund);*
- *apply 8% simple yearly interest on the refunds, calculated from the date Mr P made the payments to the date of the refund[†]; and*
- *pay Mr P an additional £350 to compensate him for the significant trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

[†]If HM Revenue & Customs requires Toyota to take off tax from this interest, Toyota must give Mr P a certificate showing how much tax they've taken off if he asks for one.

Responses

Mr P explained that, while my provisional decision wasn't exactly what he wanted, he was prepared to accept it. He also said that he wanted Toyota to make the payment of his refund and compensation within 15-days of my final decision. He subsequently updated this to say he required the payment from Toyota by no later than 10 August 2024.

Mr P didn't provide any evidence of the storage costs he's incurred.

Toyota chose not to respond to my provisional 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.

As neither party have objected to my provisional decision, I see no compelling reason not to now adopt this as my final decision.

With regards to Mr P's comments about when he expects things to happen, while these have been noted, and while I understand that his personal circumstances are such that the payment from Toyota is urgent for him; it's already been explained to him that it's not for either party to set deadlines by when certain actions must be taken. If/when Mr P accepts

my final decision, Toyota have a set period of time in which to follow my directions. While we can ask them to deal with matters sooner, we are unable to compel Toyota to do so.

Putting things right

For the reasons stated in my provisional decision and above, Toyota should:

- end the agreement with no further monthly payments to pay;
- collect the car at no collection cost to Mr P;
- remove any adverse entries relating to this agreement from Mr P's credit file;
- refund the deposit Mr P paid (if any part of this deposit is made up of funds paid through a dealer contribution, Toyota is entitled to retain that proportion of the deposit);
- refund the payments Mr P has made (Toyota are entitled to keep the pro-rata equivalent of the payments made for the period 27 June to 19 July 2023, so this amount should be deducted from the payment refund);
- apply 8% simple yearly interest on the refunds, calculated from the date Mr P made the payments to the date of the refund[†]; and
- pay Mr P an additional £350 to compensate him for the significant trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Toyota to take off tax from this interest, Toyota must give Mr P a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr P's complaint about Toyota Financial Services (UK) Plc. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 August 2024.

Andrew Burford
Ombudsman