

The complaint

Mr H complains that Toyota Financial Services (UK) PLC ("TFS") supplied a car that wasn't as described. Mr H says he was led to believe the car would be supplied with an alarm and immobiliser and as this has turned out not to be the case, he'd like the alarm retrospectively fitted or for TFS to pay for him to have it fitted by a reputable company.

What happened

Mr H entered into a hire purchase agreement with TFS for a brand-new car in August 2023. The agreement was for 42 months with 41 monthly payments of £524.99 and a final payment of £15,412 should Mr H wish to keep the car. Mr H paid a deposit of £3,300 and the cash price of the car was £33,672.08. The total amount of credit was £30,372.08 and the total amount repayable was £40,237.09.

Mr H opened communication with TFS in October 2023 asking for confirmation that an alarm was fitted in the car as specified. In October and November 2023, TFS confirmed there was only an immobiliser fitted although it believed at the time the car was supplied to Mr H that it had both an immobiliser and an alarm.

Mr H raised a formal complaint in November 2023 following this confirmation. TFS didn't issue a final response until April 2024, after Mr H had referred his complaint to the Financial Ombudsman Service. It upheld Mr H's complaint but didn't agree the lack of the alarm on the car made it of unsatisfactory quality. It offered Mr H £100 as a gesture of goodwill.

Mr H was unhappy with TFS' response and so one of our investigators looked at the information provided by both sides. Our investigator said there had been a false statement of fact made to Mr H and this statement induced him to enter the agreement. This meant TFS had misrepresented the car to Mr H.

Our investigator recommended that the complaint be upheld, and the agreement be terminated. Our investigator thought Mr H should be given a refund of his payments and a total of £250 for the trouble and upset TFS caused Mr H.

Mr H accepted the investigator's view, but TFS didn't respond, so I don't know what it thinks about the investigator's view. As the complaint remains unresolved, it has been passed to me an ombudsman for a 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. Mr H was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

Both parties have provided a good deal of evidence, so I've had to summarise things in this decision. The rules of our service allow me to do this, but I want to assure the parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. However, I'm going to concentrate here on what I consider is key to reaching a fair and reasonable outcome overall.

Section 56 of the Consumer Credit Act 1974 has the effect of holding TFS responsible for the antecedent negotiations between Mr H and the broker – who acted as TFS' agent when brokering the hire purchase agreement. What this means is that anything said or done by the broker when arranging the finance agreement, I can consider against TFS.

Mr H has provided the equipment specification and the vehicle summary documents, both clearly state that the car is fitted with an alarm and immobiliser. Mr H has also provided email correspondence between him and the broker where it asks him to select an option on the drive home insurance cover that identifies the car as having an alarm and immobiliser. In an email to Mr H on 24 October 2023, the broker confirms it believed the car was fitted with both an alarm and immobiliser which it confirms isn't now the case.

The question in this complaint isn't about the quality of the car i.e. whether it is mechanically faulty but about what Mr H says he was led to believe when he entered into the agreement. For me to decide TFS has done something wrong here, I need to be satisfied that a misrepresentation has taken place.

A misrepresentation is when a false statement of fact has been made and this false statement induced the consumer to acquire the car.

In this case, the documentation about the car stated it will be fitted with alarm and immobiliser on delivery and following Mr H's query TFS has confirmed that it isn't the case that the car was fitted with an alarm. So, I'm satisfied there is false statement of fact here. I now need to consider whether Mr H was induced into taking the agreement by this false statement.

Mr H started to query the alarm in October 2023, around six weeks after the car was supplied, this suggests to me it was an issue that was important to him, and he'd noticed early in the agreement something wasn't quite right. Mr H has also explained that the lack of the alarm impacts how he feels about the safety of the car given its high value and the potential impact he has on his insurance costs.

Given how soon after the supply of the car Mr H started to query the issue and what he says his concerns about the absence of the alarm, I'm persuaded the false statement induced him to enter the agreement.

Based on the above, TFS has made an error here and needs to put things right for Mr H.

TFS has said the alarm issue doesn't impact the default insurance but can't confirm what this might mean if Mr H decided to take insurance with a different company. It has said it can't retrospectively fit the alarm and so I think the only fair thing to do is for TFS to end the agreement, collect the car and refund Mr H's deposit payment towards the agreement. Even though the car was misrepresented to Mr H, he has had use of it for a period and I think it's fair he pays for the use of the car during the relevant time. So, I won't be asking TFS to refund the monthly payments Mr H has made while he had use of the car.

I can understand Mr H's anxiety and concern over the car once it was confirmed there was no alarm fitted, that loss of expectation and the fact he had to wait for quite some time before TFS confirmed the lack of the alarm. This has understandably caused Mr H trouble and upset.

TFS also took a long time to provide a final response to Mr H and when this service asked TFS for his file to investigate the complaint, it took a long time to provide this. TFS' overall handling of the complaint has prolonged the process unduly for Mr H and has caused further trouble and upset.

I think £250 is a fair reflection of the trouble and upset caused by TFS in this case and it should pay that amount in compensation to Mr H.

Putting things right – what TFS should do

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to the Mr H.
- Refund the deposit of £3,300 Mr H paid*.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement†.
- Pay a further amount of £250 for any distress or inconvenience that's been caused to Mr H.
- Remove any adverse information about the agreement from Mr H's credit file.

† TFS may be required to deduct tax from this interest. If it does, it must give Mr H a certificate showing how much tax it has taken off if he asks for one.

* If any of this deposit includes a contribution from the dealership, manufacturer or TFS, this amount can be deducted from the amount refunded to Mr H.

My final decision

For the reasons given above, I uphold this complaint and direct Toyota Financial Service (UK) PLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 March 2025.

Oyetola Oduola
Ombudsman