

The complaint

Mr T complains about a used car he acquired through a personal contract purchase agreement with CA AUTO FINANCE UK LTD ("CA AUTO"). Mr T says the car needed significant repairs shortly after he acquired it, and he is unhappy he's been left with costs incurred as a result.

What happened

Mr T acquired a used car in May 2023. The car was approaching four years old and had travelled just over 22,000 miles at that time. The car cost £16,400 and after paying a £2,000 deposit, Mr T borrowed £14,400 from CA AUTO. This was to be repaid over 48 months at £249.99 plus a final payment of £8,110 if Mr T decided to keep the car.

Mr T took the car for a service and MOT in August 2023, which it failed. The MOT notes stated the 'exhaust carbon monoxide content after 2nd fast idle exceeds default limits' and 'exhaust lambda reading after 2nd fast idle outside specified limits'. There was also an advisory for the front brake discs and rear brake pads to be renewed as both had worn below acceptable tolerances. Mr T also replaced all four tyres.

Mr T contacted CA AUTO about the faults and asked them to repair these within 10 days to comply with MOT testing rules. CA AUTO wrote to Mr T saying the dealership had confirmed they would book the car in for repairs and would organise a courtesy car while this happened, but Mr T refused this because he didn't trust the dealership's ability to carry out the repairs. CA AUTO also said they wouldn't cover the cost of the tyres as these were advisories on the MOT and were a wear and tear item. And CA AUTO said there wasn't any technical evidence to show the current faults had been present when Mr T acquired the car, but the dealership had made a fair offer and he should allow them the chance to repair the car, in line with the requirements under the Consumer Rights Act 2015 ("CRA").

Mr T wasn't happy with CA AUTO's response and referred his complaint to us. One of our investigators looked into what had happened but didn't recommend that the complaint should be upheld. She said, in summary, that there wasn't enough evidence to suggest the car was of unsatisfactory quality at the point of supply and, in any event, Mr T hadn't allowed the dealership to repair the issues. So, she didn't recommend that CA AUTO take any action.

Mr T didn't agree, so his complaint was passed to me for a decision.

I issued my provisional decision on 19 July 2024, in which I said the following and which forms part of my final decision:

'Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.'

CA AUTO supplied the car to Mr T under a regulated personal contract purchase agreement. Because of that, our service is able to consider complaints about the agreement and the

goods, i.e. the car, supplied under it. As the supplier of the car, CA AUTO has an obligation to ensure the car supplied was of satisfactory quality – as set out in the CRA. Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car.

Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods, (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

It's reasonable in my view to note the car here was not new and had already travelled some miles at the time of supply. So, it would be unreasonable to expect a used car like this to be in the same 'as new' showroom condition which it would have been when first supplied. But just because the car was used with some mileage, doesn't mean that CA AUTO has no requirements in relation to satisfactory quality, or more specifically durability.

Here, Mr T's car showed serious faults within three months from him acquiring it, which led to the car failing its MOT. By that time, Mr T had only travelled approximately 1,500 miles in the car. As such, I think it more likely than not that the car had an underlying issue at the point of supply. And it's because of this underlying issue that the problem became apparent so quickly after Mr T took possession of the car. The MOT notes show significant issues with the lambda sensor. On balance, considering all of the circumstances here I'm satisfied the car wasn't of satisfactory quality when it was supplied to Mr T.

I note also that CA AUTO has referred to the dealership's right to repair the issues with the car, by reference to the CRA. That right though only arises when a consumer is entitled to a remedy because of a breach of the implied terms within the CRA that the car needed to be of satisfactory quality. So, it seems to me that CA AUTO has either accepted that the car wasn't of satisfactory quality or has misunderstood the CRA on this point. Either way, I think it reasonable that Mr T was entitled to the appropriate remedy under the CRA in view of my comments about the car's quality at the point of supply.

I note though that the car passed its MOT in November 2023. So, presumably the issues identified within the previous MOT that I have referred to above have been repaired, and that Mr T continues to have possession of the car. As such, I will only be considering Mr T's claim to have costs he incurred refunded.

I note that Mr T replaced all four tyres on the car around the time of the MOT. I've not though seen sufficient evidence that these had to be replaced at the time because of faults with them or faults that were causing issues with them. It seems to me that replacing the tyres was a choice made by Mr T, rather than it being a necessity. So, I don't propose to instruct CA AUTO to refund those costs. Nor do I propose to direct them to refund the cost of the MOT and the service. Those are costs that flow naturally from ordinary ownership or use of a car.

I also don't propose to reimburse Mr T with any travel costs he incurred. CA AUTO explained to Mr T that the dealership would look at the car and fix any faults found. As I've mentioned above, CA AUTO might well have got their reasons for this mixed up. But, irrespective of that, the CRA does state that the consumer must allow one opportunity for repair (or replacement). Here, the dealership confirmed they would try to repair this and would offer a courtesy car to Mr T while this was happening. I realise Mr T felt that they couldn't be trusted to do this. But that doesn't mean the dealership wasn't entitled to attempt repairs and I've seen no evidence that they weren't in a position to do so. So, I find that Mr T didn't mitigate his position at that time and that the costs he incurred resulted from this, as it was possible the dealership could have resolved the issues fairly promptly.

I'd just add here, as this is a cost Mr T has asked to be refunded, that I've seen a receipt for £119.97 for works carried out to the car by a third party in November 2023. However, there is no mention of Mr T on the invoice as a customer. I can't be certain, at this stage at least, that this was a cost he paid.

So, while I intend to find that the car wasn't of satisfactory quality when it was supplied, I don't intend to make any award, for the reasons I've set out above.

My provisional decision

My provisional decision is that I uphold the complaint as the car wasn't of satisfactory quality, but I don't intend to make any award'.

I asked Mr T and CA AUTO to provide me with any further evidence or comments they wanted me to consider. Mr T replied saying he was exercising his right to terminate the finance agreement due to a change in his financial circumstances. He also said that my findings had come somewhat late and meant he was left with a considerable amount of debt in relation to the car. CA AUTO said they had nothing further to add.

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.

I'm sorry that Mr T feels that my decision has come too late for him to avoid significant debt in respect of the car. However, Mr T hasn't given me any further evidence that would make me re-think my provisional findings. So, for the reasons given here and in my provisional decision (as copied into my decision above), I uphold the complaint in relation to the complaint about the satisfactory quality of the car. But I won't be making any award.

My final decision

My final decision is that I uphold the complaint. But I won't be making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 September 2024.

Daniel Picken
Ombudsman