

## **The complaint**

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

## **What happened**

In March 2023 Mr E was supplied with a used car through a hire purchase agreement with Toyota FS. The agreement was for £17,362 over five years; with 60 monthly payments of £289.37. No deposit was paid. At the time of supply, the car was around six years old, and had done 35,153 miles.

Mr E said that he reported a fault with the gearbox to the supplying dealer and to Toyota FS two days after he acquired the car. He said that the dealer initially told him to wait two weeks for the parts to arrive and they would replace the gearbox. He said that after a few weeks of promises to repair, he said he returned the car and the keys to the dealer. He said he informed Toyota FS that he had done this.

He said that a few days later the dealer denied receiving the car. He said he reported this to the police who found the car parked on a street. He said it had no number plates and no keys so he had to pay to replace these. He said he returned the car to the dealer again. He said that Toyota FS want him to take back the car without any repairs. Mr E said that he'd be prepared to take the car back when it had been repaired by a main dealer garage, and he is given an extension to the original warranty.

Toyota FS didn't uphold Mr E's complaint. They said they had discussed the circumstances with the supplying dealer. They said it told them that there was an issue with the gearbox and they had agreed to repair.

They said the dealer had told them that Mr E had been at its premises on 18 April 2023, it had done a test drive with Mr E, and agreed to repair. Toyota FS said Mr E wasn't happy and left the dealer's premises. They said the dealer told them he didn't leave keys and it had presumed he had driven home.

They said the dealer told them it had advised Mr E to report the car to the police as stolen as it was not on its premises.

They said the dealer advised that Mr E turned up at its premises on 23 May 2023 with the car. The dealer said it didn't accept the car as they had confirmed it had been reported as stolen. It also said there was only one set of keys, and it was concerned that the whereabouts of the original keys was unknown. It said it was no longer liable for the car as it didn't know what had happened to the car when it was stolen.

Toyota FS said the car was Mr E's responsibility as the dealer refused to accept rejection. They said the police had said the car was not the dealer's responsibility. They said Mr E must maintain his payments, and collect the car from the dealer. They did say they could offer a reduce settlement figure if he wanted to sell the car.

Mr E was unhappy with this response, so he referred his complaint to our service for investigation.

Our investigator said that Toyota FS should arrange and cover the costs of the repair of the gearbox. But he said that Toyota FS weren't liable for any of the costs incurred after the car was reportedly stolen.

Toyota FS replied stating that the agreement had been terminated due to the arrears on the account. They said Mr E didn't collect the car from the garage and it was now in their possession. They said they understood Mr E no longer wanted the car, so they were unsure whether or not the investigator's instruction that the car be repaired would resolve the complaint. They also said they wouldn't return the car to Mr E after the repair until he cleared the arrears.

Our investigator contacted Mr E and he confirmed that he'd be happy for the car to be repaired, but he wasn't happy with the level of compensation awarded by our investigator. So the matter was passed to me to make a final decision.

I issued a provisional decision on 20 August 2024, where I explained my intention to uphold the complaint. In that decision I said:

*The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr E entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.*

*So, if I thought the car was faulty when Mr E 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 FS to put this right.*

*In this case, it's not disputed there was a problem with the gearbox, nor that this fault was present when the car was supplied to Mr E. I've seen correspondence from the dealer that acknowledged the problem with the gearbox and where it says it agreed to the repair, and was awaiting the parts. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think Toyota FS should do to put things right.*

### **Putting things right**

Section 23 of the CRA states:

*If the consumer requires the trader to repair or replace the goods, the trader must –  
(a) do so within a reasonable time and without significant inconvenience to the consumer*

*Given that the car has been on the dealer's premises since May 2023, and Toyota FS were fully aware of this, it's arguable that they failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mr E should be able to reject the car. But that is not what he wants.*

Section 24(5) of the CRA says that a consumer has the right to have the faulty goods repaired. He has the right to reject but he says he wants the car, after it has been repaired. That is the remedy Mr E has asked for, so in this case, that is what Toyota FS should do.

It appears that the relationship between the supplying dealer and Mr E has broken down. So I don't think it's reasonable that it is asked to carry out the repair. I think in this case it would be reasonable for Toyota FS to arrange for a repair at another reputable garage. The car has been off the road and undrivable since at least May 2023. We know that it has been with the supplying dealer throughout this period, as it told Toyota FS it would be charging them storage fees. In this case, I think it reasonable that as well as the repair to the gearbox, Toyota FS should arrange and pay for reasonable maintenance to make the car roadworthy and driveable.

Mr E has asked that Toyota FS supply him with an extended warranty. I'm not asking them to do that – there was no warranty recorded on the original sales invoice or the hire purchase agreement so to provide one now would not be fair on Toyota FS. However, Mr E has protections under the CRA: if the single chance at repair fails, then he would have the right to reject the car.

The car was off the road and undrivable since May 2023. During this period, Mr E wasn't supplied with a courtesy car. As such, he would be paying for a car he was unable to use.

As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Toyota FS failed to keep Mr E mobile; I'm satisfied they should refund any payments he made during this period.

Toyota FS say that Mr E is in arrears, and he does not dispute that he stopped making payments. I agree with our investigator that by refusing to make payments Mr E was in breach of the agreement he entered into. I would have expected him to continue making the payments. But I sense the frustration he felt with the way he was treated by the dealer, and by Toyota FS' failure to act. So I think in this matter, it is unreasonable for Toyota FS to insist the arrears are paid. That's because, as I said above, if he had made the payments I would've asked them to repay them to Mr E as they didn't keep him mobile.

Mr E says that he wasn't able to work as he wasn't given a courtesy car and has asked that we consider his loss of earnings. I can't say that Toyota FS are responsible for that loss. Mr E abandoned the car at the dealer. I accept that his relationship with the supplying dealer broke down at this point. But if he had collected the car as Toyota FS instructed him at that time I would have expected them to make arrangements for a repair, or at the very least to arrange an independent inspection. This would likely have concluded this matter without the loss of earnings he suffered.

I'm not asking Toyota FS to pay for the replacement number plates or keys. That's because Mr E abandoned the car and I can't hold them responsible for losses arising from his decision to abandon the car.

However, it's clear that Mr E has been inconvenienced and suffered distress from being supplied with a car that wasn't of satisfactory quality. Some of that distress was brought on by his own decision to abandon the car at the dealer's premises. But this all links back to Toyota FS supplying him with a car that wasn't of satisfactory quality. So, I think Toyota FS should pay him £200 in compensation to reflect the distress and inconvenience caused.

Mr E was also distressed by the impact on his credit report caused by Toyota FS reporting the missed payments to the Credit Reference Agencies. It was reasonable for them to do so, but on this occasion, I'm asking them to remove the missed payment markers, for the same

*reasons as I'm asking them to waive the arrears.*

*Therefore, I'm proposing that Toyota FS should:*

- arrange for the repair of the car at no cost to Mr E as I've explained above;*
- clear the arrears on the account from May 2023 until the car is repaired and returned to Mr E;*
- remove any adverse entries relating to this agreement from Mr E's credit file;*
- refund any payments Mr E paid from May 2023 until the car is repaired;*
- apply 8% simple yearly interest on the refunds, calculated from the date Mr E made the payment to the date of the refund†; and*
- pay Mr E an additional £200 to compensate him for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

*†If Toyota FS considers that tax should be deducted from the interest element of my award, they should provide Mr E with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.*

## **Responses**

Toyota FS said they had paid for the car to be stored but discovered that the car had been sold. This meant they were unable to do what I had suggested. Instead, they said they were willing to refund the two payments Mr E made, and pay the £200 I had proposed for the distress and inconvenience caused to him. They also agreed not to pursue him for any outstanding balance and remove the agreement and adverse markings from Mr E's credit file.

I put this to Mr E and he accepted.

## **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 both parties have agreed with my provisional decision, I see no reason why I shouldn't now adopt my provisional view as my final decision.

## **Putting things right**

But given the new information that the car has been sold, to put things right, Toyota FS should:

- end the agreement with nothing more to pay;
- remove the agreement and any adverse entries relating to this agreement from Mr E's credit file;
- refund the two payments of £289.37 paid by Mr E;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr E made the payment to the date of the refund†; and
- pay Mr E an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

†If Toyota FS considers that tax should be deducted from the interest element of my award, they should provide Mr E with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

**My final decision**

For the reasons explained, I uphold Mr E'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 E to accept or reject my decision before 8 October 2024.

Gordon Ramsay  
**Ombudsman**