DRN-5018605

Complaint

Mr A has complained about the quality of a car Toyota Financial Services (UK) PLC ("TFS") supplied to him through a hire-purchase agreement.

Background

In November 2023, TFS provided Mr A with finance for a used car. The car was three years old and although the milage isn't stated on the hire-purchase agreement the MOT test carried out just before the sale indicates the car had completed around 18,300 miles. The cash price of the vehicle was £46,000.00. According to the agreement, Mr A paid a deposit of £2,551.00[1] and applied for finance to cover the remaining £43,449.00 needed to complete his purchase. TFS accepted Mr A's application and entered into a 49-month hire-purchase agreement with him.

The loan had an APR of 8.9%, interest, fees and total charges of £11,521.16 and the balance to be repaid of £54,970.08 (which does not include Mr A's deposit) was due to be repaid in 46 monthly instalments of £698.96 followed by an optional final payment of £21,420.00 which Mr A has to pay if he wishes to keep the vehicle at the end of the term.

Mr A says that he immediately began having issues with the engine stalling while the car was being driven. In early December 2023, Mr A took the car to the supplying dealer. Mr A says the supplying dealer agreed to send the car to a manufacturer garage and provided him with a loan car in the interim. A few days later Mr A was informed that he could pick up the car as it was repaired. He wasn't given any paperwork such as job sheets or invoices for any repair work carried out.

It is not in dispute that the car once again broke down days after it was collected. At this point he returned the car to the supplying dealer. Mr A subsequently complained to TFS, in effect, saying that the car supplied wasn't of satisfactory quality and that he wanted to reject it. TFS reviewed Mr A's complaint and didn't uphold it saying that it didn't think there was anything wrong with the car.

Mr A's complaint was subsequently reviewed by one of our investigators. She eventually reached the conclusion that it was more likely than not that TFS had supplied Mr A with a vehicle that was not of satisfactory quality and it therefore should have accepted his rejection. So she upheld Mr A's complaint.

In truth, it's unclear what TFS' position on Mr A's complaint is. After being chased for its response to the investigator's assessment, TFS provided some further comments. However, when it was pushed to confirm whether it agreed or disagreed with our investigator's view it refused to elaborate. Nonetheless, as TFS hasn't confirmed its position and has ceased

[1] The hire-purchase agreement shows a cash deposit of £2,551.00. However, Mr A insists that he made two separate payments of £500 and £2,500.00 to the supplying dealer and has supplied evidence of this. However, while I've been provided with a deposit indicating that the £500 was for the deposit, I've not been provided with a breakdown of what the £2,500.00 was for.

corresponding with the investigator, the complaint was passed to an ombudsman as per 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.

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.
I've read and considered everything provided. I accept and acknowledge that Mr A has referred to a number of different issues which extend to comments regarding the information in the vehicle's service history and whether or not it was reasonable for correction fluid to be used in it. However, I've focused on what I think is important in order to for me to reach what I think is the right outcome.

I want to reassure Mr A that where I haven't commented on a specific issue he's referred to or comment that he has made, it's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because I don't think I need to do so in order reach what I consider to be a fair and reasonable outcome. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

I'm satisfied that what I need to decide in this case is whether the car supplied to Mr A was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for TFS to do put things right.

It might also help for me to explain that I will reach my decision on the balance of probabilities. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I must reach my conclusion based on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

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, TFS purchased the vehicle from the dealership Mr A visited. Mr A then hired the vehicle from TFS and paid a monthly amount to it in return. TFS remained the legal owner of the vehicle under the agreement until Mr A's loan was repaid.

This arrangement resulted in TFS being the supplier of Mr A'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 Mr A's agreement with TFS. 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.

Is there a fault with the vehicle?

It's fair to say that both parties have significantly differing views on whether there is a fault with the car. Mr A has provided lengthy submissions putting forward his arguments on why the car is faulty. On the other hand, Toyota FS says the supplying dealer has driven the car extensively but hasn't been able to find any faults.

While I've considered what Toyota FS has said about what the supplying dealer thinks, I've noted that it has provided an invoice from a garage that the car was sent to after Mr A returned the car for the second time. This invoice is dated 13 February 2024. In terms of the description of the work that was carried out, the invoice states:

"Carried out investigation on engine management light and car gone into limp mode. Confirmed fault and found IGM for ERAD has failed, this will require replacement and then confirm that ERAD is all OK. Potentially could have an issue with the ERAD transmission but IGM must be replaced first."

Having considered this invoice, it seems to me that at the very least the manufacturer garage considered that the IGM (which I understand to be the Hybrid Starter Generator Control Module) required (or requires) replacing. This was affecting the ERAD (which is the Electronic Rear Axle Drive) transmission and it is possible that work was needed on it too.

While I appreciate that the supplying dealer may believe that there is no issue with the car, I note that it sent the car elsewhere because it considered that that it did not have the equipment required to diagnose what was wrong with the car. Furthermore, I'm satisfied that the expert it sent the car to has a different opinion from it.

Given the supplying dealer sent the car to the manufacturer garage, precisely because it believed that it was better placed to assess what, if anything, was wrong with the car, I'm more inclined to accept its version of events. Therefore, I'm satisfied that there was at least a fault with the vehicle at the time that the manufacturer garage inspected the car in or around February 2024.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied was present on the vehicle in February 2024, means that the car wasn't of satisfactory quality at the point of supply.

Was the vehicle that Mr A was supplied with of satisfactory quality?

It is clear that Mr A had issues with the vehicle. But just because things might have gone wrong, it doesn't automatically follow that this means that the car wasn't of satisfactory quality. I've therefore considered all of the information on the issues Mr A has highlighted and I have reached my own determination on things.

The events leading up to the manufacturer garage's first inspection of the car

Mr A has said that he had problems with the car almost as soon as he took delivery of it. He has provided evidence of messages he exchanged with the supplying dealer to support this being the case. I can see that he contacted the supplying dealer on 30 November 2023. He told the supplying dealer that there were issues with the engine stalling whilst the car was being driven and that warning lights relating to the engine and fuel management system were illuminating on the dashboard.

The messages show that Mr A reported the same issue on 5 December 2023. The photographs he has provided show that he had warning lights illuminating on the dashboard and a warning message suggesting that the car would suffer from reduced performance.

Mr A has also provided a photograph of what looks to be a diagnostic check carried out by his breakdown provider.

This photograph shows the diagnostic check stating that an error has occurred in the transmission; there is an, albeit, temporary fault highlighted on the drivetrain; and there is a hot or overheated gearbox. Mr A's messages show that the supplying dealer told him that the car needed to go to a manufacturer garage so the problem could be diagnosed.

The supplying dealer's notes show that Mr A left the car with it on 6 December 2023. At this point, it arranged for the car to be taken to a manufacturer garage. The notes suggest that the car went into limp mode while someone from the supplying dealer was driving it to the manufacturer garage. The driver contacted a breakdown provider and a breakdown technician was able to get the car started. However, in order to do this, the fault codes needed to be cleared. As a result, when the car was inspected by the manufacturer garage, it was unable to see the fault codes that had previously appeared.

I've also seen an email from the manufacturer garage which corroborates what the manufacturer dealer's notes say. The manufacturer garage states that as it couldn't find any errors with the car at this point, because all of the fault codes were cleared, all it did was update the software as a software update was available.

There is no suggestion that there were no faults present at this stage. It is simply the case that the codes were cleared by the breakdown technician. As the manufacturer garage couldn't diagnose the faults the car was returned to the supplying dealer. And the notes suggest it road tested the vehicle before determining the car was operational so invited Mr A to collect it.

Considering all of this, I'm satisfied there was an initial problem with the engine stalling which resulted in the car going into limp mode and that the supplying dealer sought to rectify the issue. But as the fault codes were cleared the manufacturer garage couldn't get to the bottom of what happened. I'm not persuaded that this means there wasn't a fault with the car at this point, or even that the manufacturer garage said this.

Furthermore, the supplying dealer chose to determine that this meant that the issue, which one of its own representative's would have seen first-hand as the car went into limp mode when they were taking it to the manufacturer garage, had been rectified. Mr A was then told that the car had been fixed and was operational.

The events leading up to the manufacturer garage's second inspection of the car

The notes show that after being told that the car was ready for collection, Mr A collected the vehicle from the supplying dealer on 15 December 2023. However, by 17 December 2023 he returned the car to the supplying dealer stating that the problems he was having previously had returned.

I'm satisfied that it is more likely than not that Mr A returned to the supplying dealer with the car because he was having issues with it. I say this because the supplying dealer has confirmed that Mr A had photographic evidence of the warning light returning and the diagnostic it ran showed fault codes that it was unable to address without specialist equipment, typically found at a manufacturer garage.

As I've explained, since Mr A returned the car, the supplying dealer once again took the car to the manufacturer garage. It went on to diagnose a need for the IGM to be replaced and a potential need to address issues with the ERAD. I appreciate that the supplying dealer argues that the manufacturer garage only said that this work needed to be carried out in the

event that the previous warning lights and fault codes reappeared. But I don't think that this interpretation is supported by the available evidence and it is certainly not what the invoice states.

Indeed, the invoice states that the IGM for the ERAD **had** [my emphasis] failed and required replacement. The use of the word had indicates that this was something that had already happened. There isn't anything in what the manufacturer garage has stated which leads me to think that it is reasonable to conclude that this diagnosis is conditional on warning lights and fault codes reappearing.

Furthermore, I note that TFS hasn't provided an independent report or some other kind of confirmation that the car is fault free. It seems to me that TFS' case that there is nothing wrong with the car is based on the conjecture of the supplying dealer. And this is conjecture is in circumstances where it sent the car to be inspected elsewhere because it believed it didn't have the correct equipment to diagnose what was wrong with the car. In these circumstances and having considered everything, I'm satisfied that the car needs, or at the very least needed, work to the hybrid motor and potentially the electronic rear axle drive.

In considering whether the work that was, or is, required means that the car wasn't of satisfactory quality at the point of supply, I've kept in mind that the car Mr A acquired was used. However, it was only three years old when it was sold and it had only completed around 18,300 miles this stage.

I also accept that there would be different expectations regarding its quality when compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage, price and any other relevant factors.

I do appreciate that as the car wasn't new there'd be an expectation that it would have had some wear and tear on it. But I think that a reasonable person would not expect a car of this cost (close to £50,000.00), age and milage to need work to the hybrid motor and potentially the rear axle, within such a short period of time of it being supplied.

Taking all of this into account, I think that the fact a fundamental component – the IGM (and potentially the ERAD) – needed, or needs, replacing almost immediately after Mr A acquired the vehicle, means that it included components that were defective. And, in these circumstances, I don't think that the car was of satisfactory quality when TFS supplied it to Mr A.

What TFS needs to do to put things right for Mr A

I've gone on to think about what TFS needs to do to put things right as a result of supplying Mr A with a vehicle that was not of satisfactory quality.

Mr A has told us that he wishes to reject the car. In the first instance, the text messages provided suggest that he notified TFS that he wished to do so on 5 December 2023, which was within the first 30 days of it being supplied to him. Bearing in mind the provisions of the CRA – specifically the short term right to reject – as Mr A sought to reject the car within the first 30 days of the hire purchase agreement, there is a strong argument that TFS (or the supplying dealer) ought to have accepted his rejection of the vehicle at that point.

But even if it could be argued that Mr A accepted a repair rather than sought to reject the car when he left the car with the dealer on 6 December 2023, the CRA provides a customer with the final right to reject (the goods) should the goods not conform to the contract after a repair has been carried out.

In my view, the CRA's use of *'conform to the contract'*, rather than successful repair, means that Mr A has to have been left in a position where he was able to use the car. I appreciate that TFS argues that no repair took place when Mr A left the car with the supplying dealer for the first time in December 2023. However, the supplying dealer knew the car had entered limp mode while it was in its custody. It consulted that manufacturer garage after this and concluded that the matter had been rectified before it returned the car.

Clearly, as it has been determined that the EGM and potentially the ERAD needs, or needed replacing after this, after the same warning lights returned and the car entered limp mode again, this wasn't the case. This happened shortly after the car had been returned to Mr A. In my view, this means that when the supplying dealer returned the car to Mr A, on 15 December 2023, rather than returning it in a state where it was able to conform to the contract, it was returned in a state where it was unusable. This 'failed repair', in itself, provides a strong reason for Mr A to be able to reject the car.

For sake of completeness and in any event, I'm also mindful that even if I were to conclude the faults identified in the manufacturer garage's invoice, of February 2024, are the first instance where it could be said that the car was not of satisfactory quality, I'm mindful of the overall circumstances here.

The CRA makes it clear that where a repair is carried out it must be done so within a reasonable time and without significant inconvenience to the consumer. Given almost a year has passed since the February 2024 invoice, I don't see how any repair could now be deemed to have been carried out within a reasonable period of time. It's clear that the length of time that has passed means that Mr A has already been significantly inconvenienced – irrespective of any repair that may be carried out now.

Bearing in mind all of this, I'm satisfied that it would be a fair and reasonable resolution for Mr A to reject the vehicle and for TFS to collect it from Mr A, or the supplying dealer should that be where it is.

As Mr A will have rejected the vehicle, I'm satisfied that TFS should end its agreement with him and ensure that he has nothing further to pay on it. This will seek to place Mr A in the position he would be in had he not entered into the hire-purchase agreement in the first place, so I'm satisfied that TFS should refund Mr A the £2,551.00 deposit I can see he paid, as part of this agreement, with interest at 8% per year simple.

While I appreciate that Mr A shown that he made payments of £500 and £2,500.00 to the supplying dealer in November 2023, I've not been provided with receipts or invoices that clearly show me that anything more than £2,551.00 (which is shown on Mr A's hire-purchase agreement) of Mr A's payments formed part of this agreement. So unless and until Mr A is able to supply documentary evidence of the fact that the full £3,000.00 was used as a deposit, or advance payment, on this agreement, rather than some of it being used to purchase other items or being used to settle an existing finance agreement, I'm satisfied that the deposit TFS needs to refund to Mr A is £2,551.00, plus interest at 8% simple.

It appears to be the case that Mr A has had very little use of the vehicle, if any, since TFS supplied it to him. I don't know if Mr A has made any payments to this agreement as he's said he made arrangements for an alternative vehicle. However, if Mr A has made any payments under this agreement, I'm satisfied that TFS should refund all of them, plus interest at 8% a year simple.

Finally, I've seen that TFS has said that the vehicle sustained damage to the wheels and the tailgate while it was in Mr A's custody. In its final response, TFS states that Mr A is aware

that he caused this damage and it informs him that it estimates it will cost around £700-£800 to repair this. TFS has not provided any evidence of this damage or the fact that it would cost £700-£800 to repair.

Nonetheless, if TFS is able to evidence both that the car sustained damage while it was in Mr A's custody AND the costs of any repairs, it can deduct this amount from what it will now need to refund Mr A. Should Mr A dispute his liability for any damage or how much TFS has determined it will cost to repair this, he can make a new complaint to TFS about these matters. Should Mr A remain dissatisfied after doing so he may – subject to any jurisdiction considerations – be able to complain to us about this.

I now turn to any distress and inconvenience Mr A may have experienced. It's clear that Mr A had to deal with the stress of going back and forth to the supplying dealer. And this was in circumstances where his partner was pregnant. I think that Mr A is likely to have experienced a moderate amount of distress and inconvenience because of all of this. Therefore, I think that TFS should pay Mr A £150 for the distress and inconvenience he experienced as a result of being supplied with a car that was not of satisfactory quality.

Fair compensation – what TFS needs to do to put things right for Mr A

Overall and having considered everything, I think it would be fair and reasonable in all the circumstances for TFS to put things right for Mr A by:

- collecting the car from Mr A (or the manufacturer garage should that now be where the vehicle is) at no cost to him;
- ending the hire-purchase agreement and ensuring that Mr A has nothing further to pay. TFS should also remove all reference to this agreement from his credit file;
- refunding his deposit and all of the payments that he made to the agreement;
- adding interest at 8% per year simple on any refunded and reimbursed payments from the date they were made by Mr A to the date the complaint is settled†;
- paying him £150 in compensation for the distress and inconvenience that was caused;
- if TFS is able to evidence that the car sustained damage while it was in Mr A's custody, TFS can deduct any reasonable costs it incurred for repairing this damage from what it now needs to pay Mr A.

† HM Revenue & Customs requires TFS to take off tax from this interest. TFS must give Mr A a certificate showing how much tax it has taken off if he asks for one.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 March 2025.

Jeshen Narayanan

Ombudsman