

The complaint

Miss B complains about a vehicle supplied to her under a hire-purchase agreement with CA Auto Finance UK Ltd.

Background

I recently issued my provisional conclusions setting out the events leading up to this complaint, and how I thought it should be resolved. I've reproduced the complaint background and my provisional findings below, which form part of this final decision.

My provisional decision

In November 2022, Miss B entered into a CA Auto Finance hire-purchase agreement. Under the agreement, CA Auto Finance supplied Miss B with a car she'd seen at a dealer "D". At the time the car was four years old and had done just over 47,000 miles. D attached a cash price to the car of £14,500, noting that the water pump required replacement and undertaking to do so prior to Miss B collecting it.

Unfortunately, within a couple of months Miss B began to experience problems with the car's cooling system. She took it back to D a number of times for repair, which limited her use of the vehicle. After further unsuccessful attempts at repair by third party garages, which culminated in a blown head gasket and significant damage to the engine, Miss B sought to exercise her right to reject the car under the Consumer Rights Act 2015 ("CRA") as not having been of satisfactory quality when supplied to her.

CA Auto Finance noted the attempts that had previously been made at repair. But it also said Miss B had been kept mobile with a courtesy vehicle. It disputed Miss B's right to reject the vehicle, and said that D and a warranty provider had said they would share the costs of the indicated repair. CA Auto Finance offered Miss B £500 compensation, or to reduce the settlement figure by this sum should Miss B instead want to end the finance agreement.

Miss B wasn't satisfied with CA Auto Finance's proposals or the outcome it had reached. As a result of further investigation the repair cost had risen from £3,900 to around £10,000. She had also incurred additional costs in arranging alternative transport, as the engine damage meant the car couldn't be driven and was off-road. Miss B said she lived in a remote area without readily accessible public transport. She maintained that she should be entitled to reject the car, referencing an independent inspection carried out on the car that found the underlying issues that led to the car's failure were likely present at point of supply.

Our initial assessment

Our investigator felt Miss B had provided sufficient evidence to support her claim that the vehicle supplied to her not of satisfactory quality. He thought the points she'd made about the necessary (and unsuccessful) repairs demonstrated this. After discussing the

situation with both parties, and noting the likely uneconomical cost of repairing the car, the investigator felt it fair for Miss B to be able to reject the vehicle.

He proposed that a reasonable way to settle matters would be for CA Auto Finance take back the car and refund Miss B's initial £1,000 deposit. In addition, to refund her monthly payments (less a deduction for the use Miss B had made of the car), rounding the amount up to £3,000 to include a sum in recognition of her distress and inconvenience. The investigator also felt it fair for CA Auto Finance to pay 10% of the storage costs Miss B incurred, along with initial diagnostic and repair costs. These sums totalled approximately £850, inclusive of VAT.

Miss B hasn't accepted this proposal. She says her storage costs are significantly greater and has provided invoices for these. The case has been passed to me for review.

What I provisionally decided – and why

As the supplier of the car under the hire-purchase agreement, CA Auto Finance is responsible for addressing the breach of contract Miss B has asserted. CA Auto Finance's response didn't suggest that there hadn't been a breach, and all of the evidence Miss B provided supports that position.

Miss B, on the face of it, presented a clear case that the car wasn't of satisfactory quality, taking into account the relevant provisions of the CRA. Although the CRA provides for a breach of contract to be remedied by repair or replacement, it was clear that this had already been attempted when it issued its response to Miss B. Section 24(5) of the CRA entitles Miss B to reject the car if it fails to conform to contract after one repair. CA Auto Finance was aware that there had been several such attempts.

Based on this, along with the independent engineer's inspection dated 26 February 2024, I'm satisfied CA Auto Finance ought to have accepted Miss B was entitled to reject the car. In addition, CA Auto Finance should have collected the car and borne the cost of doing so¹.

With this in mind, under the statutory remedies afforded to Miss B under the CRA she was entitled – without undue delay – to be refunded any money she paid under the hire-purchase agreement². Based on my understanding of the situation this would include a refund of the £1,000 deposit she paid for the car (shown on the hire-purchase agreement as "Advance Payment". But if I'm wrong on this point, section 19 of the CRA would also mean it would be open to her to claim a refund of this payment as a claim in damages.

Section 8 of the CRA entitles CA Auto Finance to make a deduction from any refund for use Miss B had of the car. I think a fair deduction should take into account any period during which Miss B had use of a courtesy car, but no deduction should be applied for those periods where she had to fund the cost of hiring a replacement vehicle. It should also incorporate any impairment of Miss B's use of the car. The key dates in respect of this calculation are set out in the investigator's assessment dated 20 May 2024. I'm minded to propose a refund of £2,650 in this respect, in line with the calculations of our investigator, though it should also include any further payments Miss B has made since.

Subject to any additional payments that gives a total refund of £3,650, which Miss B should have received without undue delay, and allowing for a period of time for CA Auto Finance to review the independent report, certainly no later than 1 April 2024. As Miss B

¹ Consumer Rights Act 2015 – Chapter 2, Section 20(8)

² Consumer Rights Act 2015 – Chapter 2, Section 20(14-15)

has been deprived of the use of that money since that point, I intend to require CA Auto Finance to pay interest on it, calculated at 8% simple per year, from 1 April 2024 until the date it pays this settlement.

As I've said, the CRA entitles consumers to certain specified remedies in the event of a breach of contract. It also says³ that this doesn't prevent a consumer from seeking other remedies such as damages in addition to, or in place of, those statutory remedies. One of the costs of the breach to Miss B has been the cost of storing the car during the dispute. As far as I can see, the car has been available for CA Auto Finance to collect. If it has not done so, then the storage costs should be for CA Auto Finance to bear, rather than Miss B – at least from the point I've identified above, but more appropriately from when they started to be incurred, which I understand to be 19 March 2024.

I'm minded to find that Miss B would likely be able to recover those costs in full as part of her claim. Given that the car was undriveable and Miss B had made CA Auto Finance aware of the ongoing cost (£25 per day), I think the onus was on CA Auto Finance to limit its exposure to such costs. She appears to have taken reasonable steps to mitigate further costs, such as by declaring the car off-road.

In addition to the above, Miss B has provided evidence she's been charged £480 plus VAT (£576) for work done on the engine to investigate the problems. It's less clear whether Miss B has herself paid the invoice setting out all of these costs. If she has, then CA Auto Finance should reimburse her the sum she has paid. If she has not, then the fair remedy would be for CA Auto Finance to undertake responsibility for dealing with the invoices directly with the garage concerned, ensuring that Miss B does not have any liability for paying the invoices.

I now turn to the matter of Miss B's other costs that relate directly to the breach. I'm conscious she has indicated alternative travel costs. It's by no means guaranteed that CA Auto Finance would be liable to her for these costs and even if it was, they would need to be offset against the refund of payments she would otherwise have been required to make towards the hire-purchase agreement, as well as the general running costs associated with using the car had it conformed to contract.

That said, where a customer's had avoidable cost, time or trouble, it's important to recognise this. It's undoubtedly the case that this has happened with Miss B, and she's described how her financial situation has been under a good deal of pressure due to the unexpected expense she's incurred. I'm sure it's been a very stressful experience for her, and I think this is best reflected by an award of compensation to recognise her distress and inconvenience. There's information about how we assess awards of this nature on our website⁴. Having considered the circumstances in Miss B's case, I'm minded to award £600 in this respect.

Putting things right

Bearing all of this in mind, I proposed to issue a final decision upholding Miss B's complaint and requiring CA Auto Finance to take the following steps:

1. terminate Miss B's hire-purchase agreement with an effective date of 1 April 2024, and arrange to collect the car at no additional cost to Miss B;

³ Consumer Rights Act 2015 – Chapter 2, Section 19(9-11)

⁴ www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience

2. amend Miss B's credit file to show the account as fully settled on 1 April 2024, and removing any entries that refer to missed or late payment after she ceased being able to use the car on 30 October 2023;
3. pay Miss B £3,650 to reflect her deposit and payments she's made towards the hire-purchase agreement less a suitable deduction for the use she's had of the car or a courtesy vehicle supplied in its place;
4. pay interest on the amount in 3. at 8% simple per year from 1 April 2024 until the date CA Auto Finance settles the complaint. I've assessed this at the rate the courts use where – as here – a party's been deprived of the use of their money. If CA Auto Finance thinks it should deduct tax on this interest, it should provide Miss B with an appropriate tax certificate if she asks for one;
5. undertake to pay all storage costs and to cover the cost of work done as detailed (above and on the invoice from the garage). It should do this by dealing directly with the garage, or by reimbursing Miss B subject to her providing a valid statement or receipt to show the costs she's paid in these respects; and
6. pay Miss B £600 for her distress and inconvenience

Both parties have since responded to let me know they accept the proposed outcome.

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 Miss B and CA Auto Finance accepted my provisional decision, for the reasons I set out above I'm satisfied it's a reasonable way to resolve this complaint. I'd like to thank both parties for their prompt response and agreeing an amicable conclusion.

Miss B has asked that a timescale be included for carrying out the resolution. Given aspects such as the ongoing storage costs, I think it's sensible to do so as well as being in the interests of both parties.

My final decision

My final decision is that to settle this complaint CA Auto Finance UK Ltd must, within 28 days of receiving Miss B's acceptance of this final decision, take the steps set out in 1-6 above. If CA Auto Finance Ltd pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 18 October 2024.

Niall Taylor
Ombudsman