

Complaint

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

Background

In February 2023, Toyota provided Mr M with finance for a used car. The car was approaching four years old and it is my understanding that it had completed 21,400 miles at the time of sale. The cash price of the vehicle was £32,999.00. Mr M paid a deposit of £3,193.87 and applied for finance to cover the remaining £29,805.13 required to complete the purchase. Toyota accepted Mr M's application and entered into a 49-month hire-purchase agreement with him.

The loan had an APR of 9.9%, interest, fees and total charges of £8,481.23 and the total amount to be repaid of £38,286.36 (not including Mr M's deposit) was due to be repaid in 48 monthly instalments of £524.82 followed by an optional final payment of £13,095.00, which Mr M only had to pay if he wanted to keep the vehicle at the end of the agreement.

In June 2023, Mr M first experienced issues with the vehicle going into limp mode and the engine management warning light appearing. The car was recovered to a garage (connected to the supplying dealer and who I'll refer to as Garage A in this decision) where it was discovered that there was low pressure in turbo 1.

As garage A couldn't diagnose what was causing the issue with turbo 1, the car was then passed to another garage (Garage B) and a part, which I believe to be an air pipe, was replaced before the car was returned to Mr M, via garage A, at the end of June 2023.

After a few days the engine management warning light returned, the car once again would only operate in limp mode and the same fault code, which previously appeared in June 2023, reappeared. This time the turbo actuator was diagnosed as being responsible for the fault and a second repair took place in August 2023 before the car was returned to Mr M in September 2023.

In October 2023, the engine management warning light once again reappeared. Garage A was unable to diagnose the cause of the fault and once again sent the car to garage B. Garage B forced a regeneration on the Diesel Particulate Filter ("DPF") and this had the result of clearing the fault code and engine management warning light.

However, garage B viewed this as a temporary solution, as it did not believe that the DPF was responsible for the fault. Within a few days the engine management warning light returned and garage B confirmed that the error was once again as a result of low pressure in turbo 1.

In January 2024, what was considered to be a faulty sensor was replaced. However, while the engine management warning light was not appearing, garage B did not consider that turbo 1 was operating in the way that it should have been.

At this point, garage A confirmed that neither it nor garage B, would be responsible for any repairs as these would be out of warranty, unless the repair was related to the turbo actuator replacement repair which garage A carried out in September 2023.

In any event, the turbo was sent away for testing and repair before the vehicle was returned to Mr M in February 2024. After a few days the car once again returned to limp mode and as I understand it, although Mr M has had some limited use of the car it has remained in limp mode ever since.

Mr M complained to Toyota in February 2024. Toyota didn't uphold Mr M's complaint. Toyota said that it didn't believe the fault with the vehicle lay with the turbo actuator that was repaired and as Mr M had decided against purchasing an extended warranty offered to him at the time of sale, it considered that he was now responsible for rectifying any faults with the vehicle. Mr M remained dissatisfied at Toyota's response and exercised his right to refer his complaint to our service.

Mr M's complaint was subsequently reviewed by one of our investigators. She thought that Toyota supplied Mr M with a vehicle that was not of satisfactory quality. So she upheld Mr M's complaint and thought that Mr M should be able to reject the vehicle.

Despite being given more than one extension to the period of time to do so, Toyota didn't respond to our investigator's view. As this is the case, the complaint was passed forward 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.

Having considered everything provided, I'm satisfied that what I firstly need to decide is whether the car that Toyota supplied to Mr M 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 Toyota to do put things right.

Having carefully considered matters, I'm satisfied that the vehicle Toyota supplied to Mr M was not of satisfactory quality and I'm therefore upholding Mr M's complaint. I'll explain why in a little more detail.

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

This arrangement resulted in Toyota being the supplier of Mr M'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 M's agreement with Toyota. 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?

Having considered everything provided, while there may be a dispute over which party is responsible, I'm satisfied that there is a fault currently present on the vehicle. The car is in limp mode and doesn't reach full engine power. Bearing in mind the repairs that have taken place, for reasons I'll go on to explain, I think it's likely that this is down to an issue with the engine turbo. But for now, it's sufficient for me to be satisfied that there is currently a fault with the vehicle.

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

Why I don't think that Mr M was supplied with a vehicle of satisfactory quality

Mr M acquired a car that was used – it was just under four years old when it was sold and had completed around 21,400 miles. I 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.

In this case, Mr M began experiencing engine management light warnings and associated fault codes shortly afterwards. I've seen an invoice dated June 2023 indicating that an air pipe was replaced, which resulted in the engine management warning light and associated faults being cleared.

However, there appears to be no dispute that this did not resolve matters, the warning light returned and in August 2023 the pressure in the turbo was diagnosed as being low. Garage A attributed this to the water pump and turbo actuator needing replacing and this work was carried out in September 2023.

The air pipe failed within a matter of weeks of Mr M being supplied with the car. The water pump and the turbo actuator then failed within a few weeks of this. And all of these components needed replacing. Given the number of components that failed and which needed replacing such a short period after Mr M took possession of the car, I think the vehicle was not of satisfactory quality when Toyota supplied it to Mr M. That said, I'm satisfied Mr M accepted a repair of these faults under the CRA for these matters and if this had resolved matters this would have been the end of the story.

However, leaving aside the fact that the engine management warning light returned in November 2023 and garage B forced a regeneration of the DPF to clear it, I think that whatever repairs were carried out as part of the September 2023 repair did not resolve the issues relating to the engine management warning light.

This is because the warning light once again began illuminating in January 2024 and this resulted in garage B diagnosing a fault with the turbo. And even though further repairs were carried out to the turbo, in February 2024, Toyota has endorsed garage A and garage B's position that this had nothing to do with the original repairs to the turbo that took place in September 2023.

I accept that I am not a mechanic or an engineer. However, it seems fairly clear to me that there is a recurring theme of issues manifesting themselves with the engine management

warning light coming on, the turbo not performing as it should and the car not having full engine power as a result.

I'm also somewhat surprised that Toyota feels able to authoritatively state that the issues in September 2023 and January 2024 are different, even though it hasn't obtained an independent report or some other kind of independent corroboration of its position. And this is despite the fact that garage A proved unable to determine what the fault was when the car was first returned to it after the September 2023 repair.

I'm also mindful that the invoice garage B supplied in February 2024 states that there was a "*turbo actuator fault on high pressure*". So even garage B's documentation appears to support that there was a fault with the turbo actuator, in January 2024 and as the turbo actuator was replaced in September 2023, it's unclear to me how the problems in January 2024 could be completely new and be in no way linked to the repairs carried out in September 2023.

Bearing in mind the evidence provided, I think that there is a reasonable case for saying that while garage B thought it had repaired the fault in September 2023 – by replacing the turbo actuator all it did was treat the symptom rather than repair what was at the root cause of turbo not performing as it should. And, in the circumstances, I think that it is more likely than not that the issue manifesting itself with the engine management light illuminating and the car not having power is, at the very least, related to the fault Mr M experienced with the vehicle in September 2023.

In my view, the issues Mr M experienced in January 2024 and what he has continued to experience up until this point are evidence that the repair carried out in September 2023 failed. I say this particularly as neither garage A, garage B nor Toyota have provided me with any persuasive evidence to support the argument that the current issues are not linked to the previous fault.

For the avoidance of doubt, and perhaps only for the sake of completeness, I would also add that even if I were to have found that the problems Mr M is now experiencing with the vehicle are unrelated and completely different from the fault that was repaired in September 2023, I'd still find that the vehicle Toyota supplied Mr M with was not of satisfactory quality.

I say this because one of the considerations of whether goods are of satisfactory quality is durability. Here, the information provided suggests that the car is unable to operate at full power and, at the very least, the turbo requires significant work. Even though the vehicle may have completed over 20,000 miles by the time it was supplied to Mr M, I still need to weigh this against the fact that Mr M paid almost £33,000.00 for it.

I think that a reasonable person would expect him to have a car that operated at full engine power and that he would have had far more use of a vehicle costing almost £33,000.00 – notwithstanding the mileage completed prior to the purchase - before having such issues with the turbo. The fact that Mr M may not have purchased an optional extended warranty doesn't alter Toyota's obligations under the CRA or somehow means that a lesser standard applies in relation to the expectations around durability.

Taking all of this into account, I think that the turbo having issues to the extent that the car still doesn't operate at full power despite Mr M having been without the car for a considerable period since he acquired it, means that even if I were to be persuaded that the fault now present on the turbo is not linked to the September 2023 repair, I would in any event reach the conclusion that the vehicle was not durable.

It follows that whether the current faults are linked to the previous repair or a new fault developed in January 2024 and this was repaired, I don't think the car was of satisfactory quality when Toyota supplied it to Mr M.

What Toyota needs to do to put things right for Mr M

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

Mr M has told us that he is not prepared to accept a further repair of the vehicle and he wishes to reject it. I've considered whether this would be an appropriate remedy here.

I think it's worth me starting this part of my decision by stating that the CRA does permit a customer a final right to reject a vehicle in circumstances where there has already been a repair, but the problem nonetheless remains. As I've previously, explained there is a strong argument for saying that it is likely the current fault relates to the repair carried out in September 2023 and therefore Mr M should be able to reject the vehicle as a result.

In any event, even if it is fair to regard the January 2024 fault as a new fault under the CRA, if a repair is carried out it must be done so within a reasonable time and without significant inconvenience to the consumer. Given Mr M has been reporting these new issues with the vehicle, since at least January 2024, he's been without the use of it for a considerable period and whatever garage B arranged hasn't worked, I don't think that any repair being carried out now would be within a reasonable period of time.

I think that it's also worth noting that there have been multiple attempts to diagnose the fault and carry out repairs already and Mr M has not had unimpaired use of the car for any sort of reasonable period. Equally, the problem with the turbo still hasn't been fully diagnosed and it's fair to say that it may be some time before any repair can be completed.

It is also not beyond the realms of possibility that the problem could extend further than the turbo and to the engine thus any repair could, in any event, prove to be uneconomical in the circumstances. Therefore, I'm not persuaded that there is a sound rationale for Toyota to now attempt its own repair of the vehicle. In my view, any repair might not even resolve the issue and could prove to be uneconomic. And, in any event, I don't think a repair would be completed within a reasonable time and without significant inconvenience to Mr M.

In these circumstances, I'm satisfied that the fair and reasonable resolution here would be for Mr M to reject the vehicle and for Toyota to collect it from him. As Mr M will have rejected the vehicle, I'm satisfied that Toyota should end its agreement with him and ensure that he has nothing further to pay on it.

This will seek to place Mr M 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 Toyota should refund Mr M the £3,193.87 deposit he paid as part of the agreement with interest at 8% per year simple.

In her assessment, our investigator explained to Toyota that Mr M had no use of the car at all for a total period of between two to three months, during the course of the various repairs. Rather than requiring partial refunds in an attempt to account for the precise periods Mr M was without the car for and in circumstances where Toyota hasn't disputed the period referred to, I think it would instead be fair and reasonable for me to direct Toyota to return the first three payments Mr M made.

I think that returning these payments will adequately account for Mr M's loss of use during the period when the car was being repaired. So Toyota should refund Mr M's March 2023,

April 2023 and May 2023 payments with interest at 8% simple a year from the date that these payments were made to the date it settles his complaint.

I'm also mindful that even when Mr M has had the car he's pretty much always had to use it in limp mode. Therefore, while Mr M has had some use of the vehicle, he's clearly not had the full benefit of the car he was making payments for. In these circumstances, I'm satisfied that as well as returning Mr M's March 2023, April 2023 and May 2023 payments in full, Toyota should also refund 10% of the monthly payments (i.e. £52.48 each month) Mr M made from June 2023 onwards. These partial returns should also be returned with interest at 8% simple a year from the date the part payment was made to the date Toyota settles Mr M's complaint.

I've also considered the distress and inconvenience that Mr M experienced and the impact of him being without the vehicle for long periods of time and not having the full benefit of the car when it was with him. I appreciate that Mr M has also had the stress of arranging and getting to and from garages and dealing with, at least, three separate repairs with no assistance from Toyota.

Having considered all of this, I'm persuaded that Mr M was caused a significant amount of distress and inconvenience as a result of Toyota supplying him with a car that was not of satisfactory quality. So I think that Toyota should pay Mr M £300 for the distress and inconvenience caused by its actions.

Fair compensation – what Toyota needs to do to put things right for Mr M

Overall and having considered everything, I think it is fair and reasonable for Toyota to put things right for Mr M by:

- collecting the car from Mr M at no cost to him;
- ending the hire-purchase agreement and ensuring that Mr M has nothing further to pay. Toyota should also remove any adverse information it may have recorded against Mr M as a result of this agreement from his credit file;
- refunding his deposit, the full amount of the first three monthly payments that he made on the agreement and 10% of all the payments that he made to the agreement from June 2023 onwards;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mr M to the date the complaint is settled†
- paying him £300 in compensation for the distress and inconvenience that was caused.

† HM Revenue & Customs requires Toyota to take off tax from this interest. Toyota must give Mr M 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 M's complaint. Toyota Financial Services (UK) PLC should put things right for Mr M 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 M to accept or reject my decision before 31 October 2024.

Jeshen Narayanan
Ombudsman