

## **The complaint**

Mrs M is unhappy that a car supplied to her under a hire purchase agreement (personal contract purchase agreement) with CA Auto Finance Ltd (CAAF) was of an unsatisfactory quality.

When I refer to what Mrs M has said and what CAAF have said, it should also be taken to include things said on their behalf.

## **What happened**

On 20 January 2024 Mrs M was supplied a car through a personal contract purchase agreement with CAAF. The car was first registered on 22 January 2018 and had covered 79,283 miles. The cost of the car was £19,954.69 and Mrs M paid an initial payment of £407.54, followed by 35 more monthly payments of £407.54 and a final payment of £10,592.

In February 2024 Mrs M started to experience problems with the car and the engine management light coming on. She raised them with the supplying garage.

On 8 April 2024 Mrs M took the car for a diagnostic check at an independent garage. The diagnostic report showed that there were several faults including NOx being exceeded, EGR flow being insufficient, issues with the camshaft sensor, potential for cracked DPF and the need to replace noisy timing chain. They could not give a fully itemised breakdown of cost/issues as it would require further investigation. They spoke to the warranty company, who stated that it would require full investigation before they could authorise repairs and some issues, such as the DPF, wouldn't be covered. The garage recommended that Mrs M speaks to the supplying garage as it would be expensive to investigate and might not be covered by the warranty in any event.

Mrs M raised a formal complaint with CAAF on 24 April 2024. There were several exchanges of letters between her and CAAF the most pertinent of them are covered below.

She followed up her complaint with a letter on 14 June 2024. In this letter she set out that as neither CAAF or the supplying garage had either carried out a repair or replaced the car within a reasonable period of time she was exercising her right to reject. She was seeking full reimbursement of the purchase cost plus the cost of the diagnostic test.

CAAF wrote to Mrs M on 21 June 2024 not upholding her complaint. They explained that having spoken to the retailing garage they would require an itemised bill/estimate so that they could pursue through the warranty company, as this is what the warranty company would require. As a good will gesture they offered Mrs M £54 for the original diagnostic test and a further £100 to help towards the cost of the further diagnostic work required to produce an itemised bill.

Mrs M wrote on 26 June 2024 pointing out that she felt the onus should not be on her to provide a detailed breakdown of costs for the repair. She only went to an independent garage to get the diagnostic report as she had no success with the retail garage. She rejected their good will offer and reiterated her desire to reject the car.



Mrs M wrote back on 17 July 2024. She reiterated her desire to reject the car and receive a full refund plus the cost of the diagnostic test. In particular she highlighted the fact that whilst CAAF said its normal practice for the retailer to be given an opportunity to inspect the car they had already had ample opportunity to do so.

As Mrs M wasn't happy she complained to us.

Our investigator issued their decision on 16 October 2024. They upheld Mrs M's complaint. They felt that there was a fault with the car, they cited the independent diagnostic report as evidence of this, and the fact that these faults manifested themselves so close to supply made the car of unsatisfactory quality. In deciding what CAAF needed to do to make things right they felt that the delays that Mrs M had in getting the faults sorted meant that she had the right to reject the car. They decided that CAAF needed to:

- End the agreement with nothing to pay
- Collect the car with nothing further to pay
- Refund all payments made from 8 April 2024
- Refund 20% of payments between 20 January 2024 and 8 April 2024
- Pay 8% simple annual interest from date of payment to date of settlement
- Pay £300 compensation for distress and inconvenience
- Pay £54 for the diagnostic test

Mrs M accepted the investigators decision, but CAAF have not communicated whether they accept the investigators decision or not.

As CAAF did not respond to the investigator's decision it has been passed to me to consider.

### **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.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time.

Mrs M was supplied with a car under a hire purchase agreement (personal purchase contract). This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". The CRA says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a vehicle, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. Where goods are second hand, as in this case, due regard must be had to the price, age and any description applied to the vehicle.



So, if I thought the vehicle was faulty or not fit for purpose when Mrs M took possession of it and this made the vehicle not of a satisfactory quality, it'd be fair and reasonable to ask CAAF to put this right.

I note from the file that both CAAF and the supplying garage have referenced the role of the warranty in addressing the faults with the car and what they would need from Mrs M to be able to proceed with a warranty claim. The rights set out in the CRA are absolute rights that Mrs M can look to exercise regardless of any warranty claim. Any warranty is in addition to these statutory rights. Whilst, on occasions, the use of a warranty may be a mutually agreed solution to a fault, Mrs M is under no obligation to use the warranty process should she have rights under the CRA. I also note that the garage undertaking the diagnostic test did speak to the warranty company and not every issue would have been covered by the warranty. My decision focuses upon Mrs M's rights under the CRA not any additional protection the warranty would have given her.

The CRA sets out some key dates post contract with regards the burden of proof in relation to the goods being of unsatisfactory quality. The CRA gives the consumer the automatic right to reject if the goods are not of satisfactory quality and that fault is discovered within 30 days. After that period but before six months the burden of proof is on the business to show that the faults were not present at supply and the goods are of satisfactory quality. After six months the burden of proof then resides with the consumer.

In deciding whether there is a fault with the car as the issues manifested themselves so shortly after supply the onus is on CAAF to show that any fault was not present at the time of supply. Mrs M did have the faults diagnosed on the car by an independent garage, as recommended by the supplying garage. The diagnostic report, dated 8 April 2024, showed that there were several faults including NOx being exceeded, EGR flow being insufficient, issues with the camshaft sensor, potential for cracked DPF and the need to replace noisy timing chain. It would require further investigation to give a breakdown of the costs to rectify.

I also note that the garage undertaking the diagnostic test spoke to the warranty company, who confirmed that it would require full investigation before they could authorise repairs and some issues, such as the DPF wouldn't be covered. The garage recommended that Mrs M spoke to the supplying garage as it would be expensive to investigate and might not be covered by the warranty in any event.

Mrs M has also produced evidence of additional faults such as issues with dents/paintwork and a leaky boot.

Neither the supplying garage nor CAAF have challenged whether faults are present on the car. They have both stated that Mrs M would need to get an itemised costing at her expense (although CAAF did offer a good will gesture of £100 contribution towards the cost of getting this breakdown). As stated earlier these faults occurring within the first six months of supply means that the onus is on CAAF not Mrs M to show the faults were not present at the time of supply. As I have no evidence from either the supplying garage or CAAF it is my conclusion, on the balance of probabilities, that there is a fault with the car.

Having a fault with the car does not necessarily make the car of unsatisfactory quality. I must take into account that Mrs M was supplied with a car that was first registered on 22 January 2018 and had covered 79,283 miles. This means that she can reasonably expect wear and tear on the car commensurate with that age and mileage. That said the list of faults with the car identified through the diagnostic test is extensive and may well have turned out to be more if a fuller inspection had taken place. Given the amount paid for the car a reasonable person would not have expected these faults to be present. Mrs M also started experiencing



problems within approximately a month of supply and the onus is on CAAF to show the identified faults were not there at the time of supply and the car was of satisfactory quality. As they have not produced any evidence to demonstrate this, I am content to conclude that the faults on the car do indeed make it of unsatisfactory quality.

Having decided that the car is of unsatisfactory quality I now need to consider what CAAF need to do to put things right. I have considered whether a repair would be a fair resolution. I note that both the supplying garage and CAAF have highlighted the lack of detailed breakdown of the faults and CAAF specifically stated that it is normal practice for the supplying garage to be given a chance to look at the car first. However, Mrs M has been trying to deal with this issue since February 2024 and the car has been off the road since April 2024. During the time that she has been trying to resolve both CAAF and the supplying garage have had ample opportunities to inspect and rectify the faults on the car. Therefore, I do not feel that a repair would be a fair resolution for Mrs M given this. Therefore, Mrs M has the right to reject the car. In rejecting the car CAAF should both end the agreement and collect the car without anything further to pay by Mrs M.

In terms of any payments or refunds due to Mrs M. Firstly it is right that she isn't made to pay for the times that she has not had use of the car. That means that CAAF should refund all payments made from 8 April 2024, when the car was taken off the road. Clearly Mrs M had impaired usage from the time of agreement to 8 April 2024. Our investigator suggested a payment equating to 20% of the amount paid during this time was fair recognition of the impaired usage. I believe that this is a fair and reasonable amount given that Mrs M started experiencing problems with the car within one month of supply. I also note Mrs M agreed with this figure and CAAF did not challenge it when the investigator issued their decision, I feel that this is a fair amount.

In addition, CAAF should refund Mrs M the £54 she paid for the diagnostic test. Finally, I have to consider whether Mrs M is due any compensation for the distress and inconvenience caused by the faulty car. The investigator suggested £300 as part of their decision. In considering whether this is a fair reflection of the impact I can see the amount of hassle that Mrs M has had in resolving the matter and has been paying for a car that she has not been able to drive due to it being of unsatisfactory quality. As above Mrs M accepted this figure as fair and it was not challenged by CAAF. So, I issue the same amount of compensation to her.

### **Putting things right**

I uphold Mrs M's complaint against CAAF. To put things right I direct CAAF to do the following:

- End the agreement with nothing to pay
- Collect the car with nothing further to pay
- Refund all payments made from 8 April 2024
- Refund 20% of payments between 20 January 2024 and 8 April 2024
- Refund £54 for the diagnostic test
- Pay 8% simple annual interest on all refunds from date of payment to date of settlement
- Pay £300 compensation for distress and inconvenience

### **My final decision**

My decision is that I uphold Mrs M's complaint against CA Auto Finance Ltd. In order to put things right I direct them to follow the redress as outlined above.



Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 1 June 2025.

Leon Livermore  
**Ombudsman**