

The complaint

Miss H is unhappy that a car supplied to her under a Hire Purchase agreement with Go Car Credit Limited (Go Car Credit) was of an unsatisfactory quality.

What happened

In December 2022, Miss H decided to purchase a vehicle via a dealership who I will refer to as A.

In January 2023, Miss H was supplied with a used car through a hire purchase agreement with Go Car Credit. She paid an advance payment of £6,500 and the agreement was for £14,183 over 60 months; with 60 monthly payments of £457.00. At the time of supply, the car was around eight years old, and had done 81,506 miles.

There were a number of delays with the car, however in January 2023, the car was delivered. When Miss H took possession of the car, she wasn't happy with its condition. After speaking to A, she took the car to a third-party garage who inspected it and quoted almost £7,000 for "*accident damage repairs*." Due to the extent of the necessary repairs, it was agreed with A that she would return the car to them for the further work to be completed. Following the work being completed, the car was returned to Miss H after an independent inspection had been completed and found the work to be satisfactory. The car was with A from 30 January to 10 February, during which point Miss H wasn't provided with a courtesy car.

Miss H believed the car to remain faulty, and complained to Go Car Credit in May 2023. She additionally complained that because the cam belt had not been changed prior to her buying the car, she believed that it had not had the full service history that she was told. They stated that she should provide evidence of the faults, so Miss H returned the car to the third party garage. They provided a quote for additional work that needed to be carried out, however because the third party stated that Miss H had asked for the additional work to be completed, rather than them being picked up by the inspection, Go Car Credit did not agree that the additional faults were present at the time the car was provided, and partially upheld her complaint. They upheld the complaint in respect of the initial faults identified that had been rectified at no cost to Miss H, but did not uphold the complaint relating to the additional faults. In relation to the cam belt, they stated that it was not a requirement for this to have been changed prior to purchase, and that the interim service that had been carried out could be considered to be part of the full service history described at the point of purchase. In their final response letter, Go Car Credit confirmed that A had offered Miss H £300 in respect of the inconvenience caused which they thought was reasonable.

Miss H wasn't happy with what'd happened, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator agreed that the evidence indicated that the car was not of satisfactory quality at the point it was provided, and that Go Car Credit had taken appropriate steps by carrying out the repairs which appeared to have been successful at the time. He agreed that there was no evidence that the later faults identified by Miss H were present at the point the

car was received, and therefore did not agree that Go Car Credit should be responsible for rectifying them.

In respect of the cam belt, the investigator stated that a reasonable person buying a car which came with a full service history would expect that the service schedule would have been followed. In Miss H's case, this would have included a cam belt change, therefore the investigator was of the view that Go Car Credit should either arrange for this to be done, or refund Miss H for the cost of this. He also stated that Go Car Credit should pay Miss H £400 for the inconvenience caused, and a pro-rata refund of payments made while Miss H did not have use of the car.

Go Car Credit didn't agree with the investigator. They said that there is no requirement for a car to have a cam belt changed unless it is faulty, and that because the car had done over 80,000 miles at the point of purchase by Miss H, they believed that a reasonable person should expect that over time some repairs would be needed.

Because Go Car Credit didn't agree, this matter has been passed to me to make a final decision

Provisional findings

I issued my provisional decision on 24 November 2024. It said;

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I have come to the same conclusion as the investigator, although for slightly different reasons. I also believe that a different resolution is appropriate."

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. Miss H was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, the business are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless a business can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for the customer to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss H 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 Go Car Credit to put this right.

Based on the information supplied by Miss H and A, it does not seem that there is any dispute that the car was not in satisfactory quality when Miss H took ownership of it. A were entitled to one chance to repair the car, which they have done, and the repairs appear to

have been successful. As identified by the investigator in their view, although Miss H says there are faults remaining, these appear to be linked to work requested by Miss H and not linked to the initial work carried out. I have not been provided with evidence to indicate that these repairs relate to faults present at the time of the supply of the vehicle and I agree that Go Car Credit should not be held responsible for these.

The relevant legislation in this area (s56 Consumer Credit Act 1974) makes finance providers liable for potential misrepresentations made during the negotiations in the run up to the agreement being entered into.

A misrepresentation is a false statement of fact made by one party to another which has the effect of inducing that party to enter an agreement or contract. The remedy for misrepresentation is either rescission (unwinding the contract) or damages, in order to put the parties back in the position they were in before they entered the agreement.

In this case, there have been two instances of misrepresentation – firstly in relation to the fact that Miss H was told that the car had a full service history, and secondly, the comments made to her by A.

In order for misrepresentation to have occurred, the false statements of fact must have had the effect of inducing the party to enter into the agreement or contract. I have considered whether there is evidence to support the fact that the false statements induced Miss H to enter into the agreement, and I am satisfied that it did.

Having reviewed the text conversations provided to me, A repeatedly told Miss H that the car was in great condition. Examples of this, taken from the communication record provided to me by A are;

- “I am told the car is fantastic, in excellent condition and drives lovely so it will be quick to turn around when it arrives. So worst case you could be looking at late next week or beginning of the new year.....it is a beautiful car and hopefully worth the wait if you can.”
- “As advised, the car has been seen and driven and I’m advised a really nice car in great condition”.
- “Keep being told what great condition the car is in they wanted to keep themselves apparently! They ensure all cars go out in as new condition so will be worth it for this I think.”
- “I am told this is a mint example of a car still the appraisal will check this and I share when it is done.”
- “the appraisal is to pinpoint defects cosmetically – as there are no other pictures this means there are no other notable marks on the car which is of course great on a used car. They plan to touch the mark on the wheel up but after that, I’m told it is in all round great condition so not other things to share as there are no other defects.”

Due to Miss H’s personal situation, which she outlined to A on a number of occasions, it is apparent that having a reliable car would have been important to her. She was clear at the outset that she needed a car urgently to meet her family’s specific needs, however was persuaded to wait by the representative due to the fact that the car was in “as new” condition. The tone of the text messages sent by A are persuasive in nature, and implied that Miss H would be making a mistake not to accept the delays due to the excellent condition of the car. The texts state that the car has been “seen and driven” and “is a really nice car in a great condition” and are sufficiently consistent and persuasive that it is reasonable to consider that Miss H would have been induced to purchase the car by the messages and relied on the fact that the content of the message was accurate. One of the

text messages sent to Miss H states “They ensure all cars go out in as new condition so it will be worth it for this I think.” The information provided by both parties indicates that this was not the case, and the faults identified by Miss H when it was delivered to her and the extent of the repair work required to be carried out indicate that the car could not be reasonably considered to be in “as new” condition. The file indicates that the condition of the car as represented to her was a significant factor in Miss H’s decision to wait for the car, despite it causing personal inconvenience. I am satisfied that if the misrepresentation in relation to the condition of the car hadn’t been made, Miss H wouldn’t have purchased the car and uphold this element of the complaint.

Miss H states that she was told that the car had a full service history, and therefore would have expected the cam belt to be changed as part of a service prior to her taking ownership of the vehicle. The file includes an email from A confirming that the car came with a full service history. When it became apparent that the car had not had the cam belt replaced, Miss H queried this, and was told that the most recent service had been an oil filter change. I have considered whether the fact that the cam belt had not been changed evidences that the car could not be considered to have a full service history. I have considered the manufacturer’s service requirements, and have been unable to find evidence that the manufacturer specifies the mileage/age point the service requires the cam belt to be changed. Therefore, whilst it may be generally accepted that a cam belt would be changed prior to the point at which Miss H took ownership of the vehicle, I do not believe that this is sufficient for Miss H to rely on this assumption to expect that it would have been done. I therefore do not uphold this element of her complaint.

I uphold Miss H’s complaint. Go Car Credit should do the following;

- Accept rejection of the vehicle
- End the agreement with nothing more to pay;
- Collect the car at no cost to Miss H;
- remove any adverse entries relating to this agreement from Miss H’s credit file as appropriate;
- refund the deposit paid by Miss H (if any part of this deposit is made up of funds paid through a dealer contribution, Go Car Credit is entitled to retain that proportion of the deposit);
- apply 8% simple yearly interest on the deposit, calculated from the date Miss H made the payment to the date of the refund[†];
- make a pro rata refund to Miss H for the period 30 January to 10 February 2023, the time she did not have the car and hadn’t been supplied with a courtesy car
- apply 8% simple yearly interest on the pro rata refund, calculated from the date she made the payment to the date of the refund[†];
- pay Miss H an additional £400 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn’t of a satisfactory quality.

[†]If HM Revenue & Customs requires Go Car Credit to take off tax from this interest, they must give Miss H a certificate showing how much tax they’ve taken off if she asks for one.

For the reasons explained, I intend to uphold Miss H’s complaint. And I intend to ask Go Car Credit Limited to follow my directions above.

Responses to my provisional decision

I have received responses from both Miss H and Go Car Credit. Neither party have provided any new evidence which alters my decision.

Go Car Credit have provided a calculation showing the amount they are willing to pay Miss H upon return of the vehicle to them, which includes a return of Miss H's deposit plus interest (£7,473.04), a payment for the time Miss H was without the vehicle plus interest (£189.72) plus £400 payment for the distress and inconvenience caused. The total is therefore stated as £8,062.76. Go Car Credit have confirmed that once the car has been collected and returned to their safe storage, they will process the redress in full.

Miss H has stated that Go Car Credit have told her that they may deduct an amount from the redress payment for any wear and tear on the vehicle, and she is concerned that Go Car Credit will deduct an amount for the additional mileage on the car during the time it has been in her possession, or general wear and tear. She is concerned that Go Car Credit may not make the refund to her promptly which is a concern as she will need the refunded deposit to be able to purchase a new car. Miss H also states that she made a payment towards the finance agreement a month before having the vehicle and she thinks it is unreasonable that she should be left out of pocket for this.

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.

Miss H states that she made the first payment under the finance agreement the month before receiving the car. I cannot find evidence to support this, the finance agreement was signed 10 January 2023, the car was received by Miss H on 19 January 2023, with the first payment stated to be due 24 February 2023. Unless Miss H can provide evidence showing that she made a payment prior to receiving the vehicle, I will not be asking Go Car Credit to make any additional payment in respect of this.

Having taken into account the comments from both parties, and as no new information has been provided, I see no reason to change my decision. So I remain of the view I set out in my provisional decision – my findings as set out above should be considered as part of my final decision. It follows that I uphold this complaint, and Miss H should be allowed to reject the vehicle.

Putting things right

Go Car Credit should allow Miss H to reject the vehicle and make the redress payment to her as outlined above, and in line with the calculation they provided as a response to my provisional decision.

They should not make any deductions for reasonable wear and tear to the vehicle that has occurred since Miss H took possession on 19 January 2023, or for any reasonable mileage that has been incurred, taking into account the fact that Miss H has been making regular payments for the use of the vehicle. Payment to Miss H should be made as soon as the car has been collected and returned to the storage facility.

Miss H has indicated in her responses that a payment under the finance agreement is due at the beginning of January 2025. If this payment is made before Go Car Credit take possession of the vehicle, a pro rata refund of this payment for the remainder of the month following collection should be paid to Miss H.

My final decision

For the reasons explained, I uphold Miss H's complaint about Go Car Credit Limited and they are to follow my directions above .

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 30 January 2025.

Joanne Molloy
Ombudsman