

## **The complaint**

Mr D is unhappy that a car supplied to him under a conditional sale agreement with Toyota Financial Services (UK) Plc ("Toyota") was of an unsatisfactory quality.

When I refer to what Mr D has said and what Toyota has said, it should also be taken to include things said on their behalf.

## **What happened**

The circumstances of this complaint are well-known to both Mr D and Toyota, so I haven't repeated the detail here. Instead, I've summarised what I think are the key points and I'll comment on the relevant evidence when I explain my decision.

In December 2021, Mr D was supplied with a used car through a conditional sale agreement with Toyota. The cash price of the car was £20,410 and Mr D paid a cash deposit of £8,000. The agreement, including a charge for credit, was for £14,635 payable in equal instalments of £243.93 for 60 months, with nothing further to pay at the end of the term. At the time of supply, the car was around six years old, and had done 57,059 miles.

On the day of supply, Mr D found that the car's heated seat wouldn't turn off. He returned to the dealer and he said it took three attempts at repair to fix it, during which time the seat was damaged. From that point, Mr D said he frequently experienced faults with the car and had to return it for further repairs, often for lengthy periods. Some of the faults were in the following areas:

- Gearbox (ongoing)
- Engine warning light (multiple times)
- Fuel vapour valve
- Exhaust temperature sensors
- Airconditioning controls melted
- Airconditioning compressor
- Seat (damage caused during repairs)
- Injectors
- Diesel particulate filters
- Wheel speed sensor
- Cylinder compression
- Exhaust valves stuck open
- Catalytic converter

The invoices show that the cost of these repairs exceeded £10,000.

Mr D complained to both the original dealer and another branch of the dealership after the first one closed. The dealer agreed to various actions to put matters right, including a two-year warranty set to run until December 2024. Mr D was unhappy with the condition of the car, but the dealer didn't uphold his complaint.

Mr D complained to Toyota that the car was of unsatisfactory quality and he wanted to reject it. Toyota said that the faults had occurred more than six months after supply, so there was no automatic assumption that the faults were present from the start of the agreement.

Mr D brought his complaint to us in April 2024, at which time the car had been in for repair since February 2023. He said that the car had not been of satisfactory quality; he had been unable to use the car for long periods of time while it was being repaired; when provided, courtesy cars were not suitable, and he had experienced significant inconvenience.

Our investigator said the information persuaded him that the car had not been of satisfactory quality when it was supplied, and that Mr D had experienced significant distress and inconvenience. Our investigator thought that Toyota should:

- End the agreement with nothing further to pay.
- Collect the car at no further cost to Mr D.
- Refund Mr D's deposit / part exchange contribution.
- Pay a refund of all rentals, minus fair usage mileage, based on the contract.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay a further amount of £300.00 for any trouble and upset that's been caused due to the faulty goods.
- Remove any adverse information from Mr D's credit file in relation to the agreement.

Toyota didn't agree with our investigator. It said:

- The first fault was repaired.
- The same fault didn't reoccur.
- The next problem didn't occur until 13 months after Mr D purchased the car.
- After six months from purchase, the onus lies with Mr D to complete repairs.
- All repairs were carried out under warranty or at the cost of the dealership.
- Mr D was kept mobile throughout.

As an alternative resolution, Toyota offered to assist with a Voluntary Termination even though the car would normally need to be roadworthy, or it would assist with a reduced settlement quote.

Mr D didn't accept Toyota's alternative offers, although he said he would accept the investigator's proposal at a lower rate of interest in the spirit of mediation. Toyota didn't agree.

I issued a provisional decision in January 2025 explaining that I was intending to uphold Mr D's complaint. Here's what I said:

#### provisional findings

*If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.*

*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 what I consider was good industry practice at the time. Mr D was supplied with a car under a conditional sale*

agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr D entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Mr D 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 Toyota to put this right.

#### Undisputed Fault

In this instance, it's not disputed there was a problem with the heated seat and headlights, nor that this fault was present when the car was supplied to Mr D. The evidence indicates that the fault was repaired and the car was returned to Mr D.

But Mr D's complaint is that the car had multiple faults thereafter, meaning he had to return the car for repairs on many occasions. Toyota said that the first fault was repaired in line with Section 24(5) of the CRA – the single chance at repair. Because Mr D didn't raise any further issues within six months, the onus is on him to prove that the subsequent faults were present at the time of supply.

I haven't seen anything to suggest that Toyota disputed the faults, so I've moved on to consider whether the faults were likely to have been present when the car was supplied.

#### Independent Engineer's Report

Neither party has supplied an independent engineer's report to offer an opinion about whether the faults were likely to have been present at supply, although I wouldn't necessarily have expected Mr D to obtain one. So I've relied on the evidence of the work completed and the timeframe over which the faults occurred to decide whether it was more likely than not that the car was of satisfactory quality.

#### Satisfactory quality

As I've explained, the CRA says the quality of goods includes, amongst other things, fitness for purpose and durability. The car was six years old and had done 57,059 miles, which doesn't seem to be excessive, and Mr D paid over £20,000 for the car. So I think Mr D could reasonably expect that the car would operate satisfactorily for some time, albeit not for the length of time that a new car might.

I think it's important to point out that the car was a 4-wheel drive pick-up truck, and Mr D had intended to use the car for carrying materials during his home renovation and for towing during family holidays. Whether or not he told the dealer about his intended use, I don't think it's an unreasonable expectation that a car of that type, age and mileage would be capable of meeting Mr D's expectations. In order for the car to be considered of satisfactory quality, it would need to be durable.

I've thought about the faults Mr D evidenced and some of the failures he described. For example, Mr D said the car "went limp" on the motorway, dropping suddenly from 70 mph

to 30 mph, and he provided 20 invoices showing work done. Although just a few of those were for minor service works, the majority were for the repairs I've listed.

I've also considered the period of time Mr D was able to use the car. When we first looked at this complaint, the agreement had run for around 34 months. Mr D said he'd been able to use the car for no more than 12 months of that time because it had been in for repair so often. Indeed, it had been out of his possession on one occasion for more than 14 months.

So, turning back to Toyota's comment that the onus was on Mr D to prove that the subsequent faults were present at the time of supply, I can't agree that's the only measure of satisfactory quality here. That's because the ongoing and frequent faults over the time Mr D had the car meant that it was not sufficiently durable. I'm satisfied that a reasonable person would not consider that the car supplied to Mr D was of satisfactory quality.

#### Use of the car

Mr D has been able to use the car for limited periods while it was in his possession. And, while it was being repaired, he was provided with a courtesy car to keep him mobile. Because of this, I think it's only fair that he pays for some usage.

However, given the faults with the car, and the provision of unsuitable alternative transport, I'm also satisfied that Mr D's usage has been impaired. Because of this, I think it's fair that Toyota refunds some of the payments Mr D made.

Our investigator thought Toyota could reasonably deduct fair usage mileage in line with the contract. Having checked the credit agreement, I note that there is no provision for an excess mileage fee. So I've thought about what might be a reasonable alternative, and it's for this reason I'm issuing a provisional decision.

Mr D had done around 10,000 miles in the car, which is broadly equivalent to what the agreement set out as a year's average usage. Mr D also said he'd had the car for about 12 months during the whole of the agreement period. So, I think it's reasonable to use this as a basis for calculating the refund and I think Toyota should refund to Mr D all except the first 12 months' payments.

#### Courtesy car

I understand that Mr D had use of a courtesy car for some of the time his car was in for repair. He's described these as being city cars, such as a small three-door hatch. While I accept that a courtesy car will not necessarily be of a similar model to the car in for repair, and it's reasonable to think a customer would manage with a smaller car for a few weeks, I wouldn't ordinarily expect the repair to take more than a year. So, essentially, Mr D entered into a credit agreement to purchase a pick-up truck to accommodate his needs, he paid on time every month, yet he only had the use of a city car for most of the time.

Toyota pointed out that Mr D has not had to pay for any of the repairs. That may be so. However, I find it unlikely that Mr D paid a cash deposit of £8,000 and regular monthly payments of £243.93 so that the car could be in the repair centre for the majority of the time while he had use of a courtesy car insufficient for his needs. Therefore, I'm not persuaded that providing a courtesy car in these circumstances was enough to warrant keeping all of Mr D's payments.

#### Distress and inconvenience

Mr D has undoubtedly experienced significant inconvenience because of the frequent repairs and the time without his car, often without suitable alternative transport. Our

*investigator thought Toyota should pay £300 compensation, which Mr D accepted. I'm satisfied that's fair and reasonable compensation to reflect the distress and inconvenience caused.*

#### Toyota's offer to Mr D

*As a final point, I've noted Toyota's offer to Mr D to assist with a Voluntary Termination even though the car would normally need to be roadworthy, or a reduced settlement quote. I've also noted Mr D's offer to accept interest on the payments to him at a lower rate. While any attempt to resolve a complaint is welcome, based on the circumstances and evidence of Mr D's complaint, I'm not persuaded that any further change to the proposed outcome is warranted.*

#### Conclusion

*Overall, and on balance of the evidence, I currently find that the car supplied to Mr D was not sufficiently durable and, therefore, it was not of satisfactory quality when supplied.*

I set out the way I thought Toyota should put things right and I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

#### Responses

Mr D accepted my provisional decision and asked for clarification of whether the interest payment would be applied to both the deposit and monthly payments or just the monthly payments.

Toyota didn't respond.

#### **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 the absence of any further comment from Toyota, I looked again at the evidence. Having done so, I remain satisfied that I've explained my reasons for reaching what I think is a fair and reasonable decision based on the evidence available. Therefore, I haven't changed what I think is a fair outcome to Mr D's complaint.

In response to Mr D's question, Toyota should pay interest on his deposit and monthly payments.

## **My final decision**

For the reasons I've explained above, and in my provisional decision, my final decision is that I uphold Mr D's complaint and Toyota Financial Services (UK) Plc must:

- end the agreement with nothing more for Mr D to pay;
- if the car is in his possession, collect it at no cost to Mr D;
- refund the £8,000 deposit Mr D paid;
- refund all rental payments made after the first 12 months' payments;
- apply 8% simple yearly interest on the refunds for the deposit and monthly rental payments, calculated from the date Mr D made the payment to the date of the refund<sup>†</sup>;
- pay Mr D an additional £300 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality, and
- if required, remove any adverse entries relating to this agreement from Mr D's credit file.

<sup>†</sup>If Toyota considers that tax should be deducted from the interest element of my award, it should provide Mr D with a certificate showing how much it has taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 February 2025.

Debra Vaughan  
**Ombudsman**