

The complaint

Mr S complains CA Auto Finance UK Ltd (CA Auto) supplied him with a car that he believes wasn't of satisfactory quality therefore not fit for purpose

What happened

In July 2023, Mr S entered into a 38 month finance agreement for a used car. The car's cash price was £14,942, it was around seven years old and had travelled 29,713 miles. Mr S paid a deposit of £1,541 and the rest was financed with a loan with CA Auto. Mr S was required to pay monthly instalments of £279 and a final payment of £7,189 should he decide to keep the car.

Mr S says before agreeing to buy the car, he made it clear to the dealership that due to his physical disability, he needed one with a 'soft' clutch – light and easy to use. He also identified a few issues, namely an abnormal whooshing noise coming from the air conditioning unit and it wasn't working, one of the doors wasn't opening correctly, a broken windscreen, chips and dents on the car's bodywork. It was agreed that these issues would be rectified by the dealership before he collected the car.

However upon collection, Mr S says the above agreed repairs hadn't been carried out meaning the car had to be returned on more than one occasion for the dealership to fix it. He said the windscreen was fixed around 19 July and it was returned again around 24 July 2023 for the air-conditioning to be fixed. He was told the noise from the unit was no longer present and it had been re-gassed.

On 24 July 2023, Mr S reported the clutch was heavy and it wasn't suitable for his needs. He complained despite the car being returned to the dealership on two occasions for repair, the whooshing noise remained and the door still hadn't been fixed. He asked to reject the car within 30 days but it was refused.

Mr S complained to CA Auto in January 2024. In addition to the above points, in summary he also complained:

- The dealership mis-represented the car and it hadn't been subject to the 100 point pre- delivery checks as advertised;
- He wasn't given the opportunity to test drive the car before agreeing to buy it;
- He felt forced into buying the car on finance - it wasn't needed as he had cash to buy it outright;
- It took too long for the finance application to be approved;
- He had been discriminated against on grounds of his physical and mental disabilities;
- His reasonable adjustments for communication to be via phone hadn't been followed;
- CA Auto's level of service was poor e.g. agreed callbacks not taking place;

- This entire situation had caused him considerable distress, trouble and upset.

In May 2024 CA Auto arranged for an independent inspection to be carried out. Overall, it concluded the car was commensurate for its age and mileage. It said the whooshing sound was coming from the sunroof area and the rattling was from the plastic dash trim. It found no fault with the door.

Based on the findings of the inspection report and following a number of complaints raised by Mr S, CA Auto issued final response letters and in summary they said:

- Mr S test drove the car before he bought it;
- The initial issues identified prior to sale had been rectified but there was a slight delay in doing so;
- The issues weren't fixed at the time of delivery as Mr S said he didn't want to delay it.
He was happy for the repairs to take place after the agreement started;
- The intermittent fault with the door is covered by warranty and Mr S should make a claim under that policy. The manufacturer had also agreed to cover this cost of repair but Mr S had declined this offer;
- The dealership had previously offered to take the car back, consider a replacement car or fix the faults, Mr S hadn't returned the car to them and declined the offer;
- No faults were found during the inspection;
- They wouldn't allow rejection of the car.

As Mr S disagreed with CA's findings, he arranged his own independent inspection in July 2024. That report concluded the door lock and air conditioning worked, the clutch pedal pressure was within tolerance for the car's age and mileage. The windscreen seal was insecure. There was an intermittent whooshing sound and a knocking noise upon release of the accelerator which needed further investigation.

Unhappy with CA's response, the complaint was referred to our service. The investigator recommended it was upheld. He said there were faults with the car at supply and despite opportunities to repair them, some remained. He said CA Auto should allow Mr S to exercise his short term right to reject the car and put things right such as pay refund the deposit, pay compensation, etc. CA Auto disagreed with the investigator's findings.

While the complaint has been ongoing at our service, we've been made aware that Mr S has started legal proceedings against the dealership regarding this situation. However given this complaint is against CA Auto and ultimately they are responsible for the quality of the car, this decision focuses on CA Auto. I won't be commenting on Mr S' legal action.

In February 2025, I issued a provisional decision outlining my intentions to uphold the complaint. I said:

"Was the car of satisfactory quality?"

Mr S acquired a car under a regulated credit agreement. CA Auto was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 (CRA) is relevant 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”. To be considered “satisfactory”, the goods would need to 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. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.

Mr S acquired a used car that was around seven years old and had travelled 29,713 miles. As this was a used car with mileage and age, it’s reasonable to expect parts may already have suffered substantial wear and tear when compared to a new car or one that is less travelled. Meaning there’s a greater risk this car might need repair and/or maintenance sooner than a car which wasn’t as road-worn.

From the information I’ve read from Mr S and CA Auto (as provided by the dealership), both parties appear to accept that before entering into the agreement, a few faults were identified with the car (the air conditioning, windscreen, the door, the whooshing sound) and it was agreed they would be fixed before Mr S took delivery of the car. That doesn’t appear to be in dispute. From my understanding, Mr S initially saw the car at the start of July and he took delivery of it around a couple of weeks later.

So I’m satisfied Mr S agreed to buy the car knowing there were some faults but it would be fixed by the time he would collect it. I find that to be an agreed term as part of Mr S entering into the contract therefore it was reasonable for him to rely on the same.

CA Auto are likely to argue that rather than waiting for the repairs to take place, Mr S insisted on taking delivery of the car so it was agreed he would return it for the repairs to take place. While I accept the same, I also believe it’s reasonable for Mr S to expect when he returned the car (a few days later) that all issues identified would be rectified and it wouldn’t require multiple trips to resolve the same. Based on the evidence presented to me, repairs were carried out to the windscreen and the air conditioning after two trips were made to the dealership.

Mr S asserts despite the above repairs, there is an intermittent fault with the door and there remains a whooshing noise coming from the car. The car was looked at at a manufacturer approved dealership in March 2024 who determined the door needed a new lock assembly. Based on the information as provided by the dealership they also appear to accept there may be an issue with the door as they’ve indicated it can be fixed under warranty and the manufacturer has agreed to fix it at no cost to Mr S. However given this fault was initially identified before purchase and it was agreed it would be fixed by the dealership, I can understand why Mr S is frustrated and upset this didn’t happen. When the car was returned to the dealership for repair, I would’ve expected all the faults initially identified to have been fixed as that is what was agreed.

I’m aware both inspection reports don’t say there is a fault with the door but if it’s an intermittent one that may explain why it couldn’t be replicated at the time of the inspections. On balance, I find it’s more likely than not the door was faulty at supply and

it's yet to be fixed. I also note both inspection reports say there is an abnormal whooshing noise coming from the car.

Mr S also complains about the clutch. He says before buying the car, he made it clear that due to his physical disability he needed a one with a 'soft' clutch but when he received it, the clutch was stiff and heavy. In my opinion, I believe the comfortability and suitability of the clutch would be a decision that ultimately Mr S would need to make, not the dealership as it's a somewhat subjective opinion. This is because what could be considered a 'soft clutch' may differ from one individual to another. Therefore I find it would've been a reasonable course of action for Mr S to test drive the car before purchase.

Mr S says the dealership didn't allow him to test drive the car until after he agreed to enter into the agreement. However I've been provided with a copy of the insurance document which shows he test drove the car on 13 July 2023 which was the same day he signed the agreement. So I can't agree that he didn't have the opportunity to do so until afterwards. If having drove the car, he wasn't comfortable with the clutch, I find it would've been reasonable for him to let the dealership know and not enter into the agreement but there's no indication that happened. It appears it was a few days later Mr S complained about the clutch and he said he believed it had gotten tighter and more heavy since he bought it.

Given the short period of time Mr S had the car, I'm not persuaded there was any change with the clutch. On balance, I believe it's more likely than not after having been driving the car for a longer period of time (longer than the test drive), Mr S realised the clutch may cause him physical difficulty. While I appreciate that to be the case, I can't reasonably hold CA Auto responsible for that. Nor can I fairly say that meant the car wasn't fit for purpose. Both inspection reports say the clutch is commensurate for the age and mileage of the car. So I don't find there is a fault with the clutch.

However given the number of issues mentioned above including an outstanding fault with the door and there is still an abnormal whooshing noise which requires further investigation, I find the car wasn't of satisfactory quality at the point of supply. There was also a breach of an agreed term that these issues would be fixed by the dealership before the car was collected.

Mr S has made it clear that he doesn't want any further repairs and wants to reject the car. Given the timeline of events and the repairs that have already taken place, I can understand why he feels that way. In the circumstances, I agree with the investigator that the most fair resolution would be to allow him to reject the car.

Putting things right

Mr S should be allowed to reject the car meaning the agreement comes to an end. He should be refunded the deposit and all adverse information recorded to his credit file about this agreement should be removed.

Given the mileage covered, it's clear Mr S has had use of the car so it's fair he pays to reflect that. He has told our service he stopped using the car in November 2024. So I find it's fair to say Mr S should pay for the months he had use of the car (that is, from inception to November 2024). For any payments he paid from December 2024 onwards, this should be refunded. If payments haven't been paid since December 2024, Mr S shouldn't be held liable for them and any adverse information reported to the CRAs should be removed.

CA Auto should also cover the cost of the inspection report as arranged by Mr S. As this was a cost he's incurred as a result of the breach of contract. I don't intend to say CA Auto should refund insurance costs as this is a contractual and legal obligation.

I've also thought about the impact of this situation on Mr S. This includes multiple trips to the dealership, the extent of his communication with the parties involved and some instances of failed call backs, arranging an inspection report, etc. Given the circumstances, I agree CA Auto should pay £250 compensation to Mr S for the trouble and upset caused.

Discrimination

Mr S says CA Auto has discriminated against him on grounds of disability. He says this is in relation to his physical disability because he believes he was supplied with a car that wasn't suitable for him. He also says he was discriminated against on grounds of his neurodiversity and learning difficulties. He said he had requested for all communication to be by phone. He considered that to be a reasonable adjustment but on several occasions it wasn't followed by CA Auto.

He says CA Auto has failed in their duty to make reasonable adjustments under the Equality Act 2010. I've taken this relevant law into account when deciding this complaint – but I've ultimately decided this complaint based on what's fair and reasonable. If Mr S wants a decision that CA Auto has breached the Equality Act 2010, then he would need to go to court.

For the reasons outlined above, that is, there is no fault with the clutch, I don't agree CA Auto has treated him unfairly due to his physical disability. However based on the communication I've seen, Mr S made it clear that due to his neurodiversity, he requires communication by phone. He says this helps him to understand what is happening and the information being conveyed. I consider Mr S' request to be a reasonable one in the circumstances. While I can see there have been a number of calls with Mr S, on some occasions I can't see this has always happened and call backs haven't taken place as agreed. He says this has caused him upset and distress. For this, I find CA Auto should pay £150 compensation.

Other

I'm aware Mr S has also complained he believes there was undisclosed commission paid as part of this agreement. That has been raised as a separate complaint at our service so I haven't commented on that in this decision.

I'm also aware he says due to the quality issues, the car was mis-represented to him. But given I'm saying the agreement should come to an end, I don't find it's necessary to comment on this particular complaint point".

Responses to the provisional decision

Mr S agreed with most of the provisional decision. But in summary he says:

- He asked to reject the car within 30 days but this was refused by the dealership;
- He asked for the car to be recovered and kept safe in storage but this was refused so it's unfair he must pay for the monthly instalments;
- For several months, he didn't use the car as he was out of the country. He used the car for around 10 months - primarily between March 2024 to 30 Oct 2024;
- Due to the issues, he used the car less than intended and this is reflected in the mileage;
- He's incurred insurance and tax costs for the car;
- He declared the car SORN (statutory off the road notification) on 1 November 2024;
- Due to the type of car insurance (telematics), he had been told by the insurer that he must use the car otherwise the policy would be cancelled;
- Significant inconvenience was caused as he needed the car to travel to medical appointments but because he wasn't comfortable using the car, he had to arrange alternative transport;
- He hired a car in November 2024 at a cost of £404;
- The current mileage of the car is around 37,400 miles.

CA disagreed with the findings. They provided information from the legal representative of the supplying dealership.

In summary it said:

- Although legal proceedings are against the dealership and this complaint is against CA Auto, the issue for consideration represents the same cause of action. So a determination of the complaint by the Ombudsman is an abuse of process;
- The complaint should be dismissed without consideration subject to DISP3.3.4A in that the subject matter of the complaint is the subject of current court proceedings and the trial is listed to take place;
- The provisional decision relies on errors of fact;
- Mr S has made representations to the court to stay the legal proceedings pending the ombudsman's determination but this has been rejected twice by the court;
- The car was collected by Mr S with several works still to be undertaken however at his express request, it was agreed to be carried out at a later date. These don't represent faults as alleged. Any issues that remain are characteristics of the car which Mr S should reasonably be aware of;
- The dealership found no fault with the clutch, wind noise and rattle – these are characteristics of the car given its mileage and age. Neither inspection reports refer to them as faults present at the point of supply;

- Mr S didn't report the issues with the passenger door until much later and he hasn't provided evidence it was present at supply. This can be repaired under warranty but refused by Mr S;
- The quote for the repair to the clutch was provided at Mr S' insistence, not because it was a fault;
- The door fault was an intermittent one (lock jammed internally) – this is a wear and tear issue. It wasn't present at the point of supply
- Previous works were carried out by the dealership so they don't represent a fault under the CRA 2015
- Mr S has raised a number of issues but they don't represent faults for the purposes of the CRA 2015
- Mr S has buyer's remorse given his medical condition – the manual clutch isn't suitable for his use. The dealership did suggest an automatic transmission but this suggestion was rejected by Mr S.

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.

I thank both parties for their further information which I've carefully considered. I won't address each one of them, instead I will focus on what I consider to be key concerns or those not previously addressed in the provisional decision.

Concerning the information from CA Auto. The Financial Services and Markets Act 2000 and DISP2 of the Financial Conduct Authority Handbook outlines our powers to consider complaints. Considering all the rules, I'm satisfied Mr S' complaint against CA Auto is one we can consider.

I want to make it clear that our service's ability to dismiss a case under DISP 3 without consideration of the merits, is a discretionary power. We may choose to dismiss a complaint for reasons such as the complaint is the subject of current court proceeding, however that isn't the same as saying we can't look at a complaint. Having carefully thought about the same, I've used that discretion and I've decided not to dismiss this complaint.

Our service is a free and informal alternative to the courts and Mr S has asked us to look into matters. Although legal action is currently underway against the dealership, that is yet to be heard by the court. So I see no reason as to why this case should be dismissed without consideration of its merits.

Turning to CA Auto's information about the merits of the case. I've already given my thoughts about the clutch, I don't find this was a fault. Regarding the door, I remain of the opinion it was an intermittent fault that was more likely than not present at supply as correspondence indicates Mr S raised this shortly after purchase. So I don't agree it wasn't raised until several months later.

The 'whooshing' noise was raised by Mr S from the start of the agreement and both inspection reports make reference to it but the cause of it remains is still in dispute. It was agreed this would be sorted by the dealership when Mr S bought the car, but the noise is still there, so on balance I find this is a fault and a breach of what was agreed.

Regarding Mr S' comments. While it could be argued if Mr S should've been able to reject the car sooner, he's used the car for a number of months. I acknowledge Mr S asked CA Auto to collect the car but as they said it wasn't faulty and independent inspections that were carried out were disputed, they didn't agree to do so. Which is why he has raised this complaint.

While I accept Mr S was out of the country for some time, that doesn't mean those months instalments should be refunded. I say this because the car wasn't used due to Mr S not being in the UK, not because it was faulty. Based on the recent mileage reading of 37,400, he has covered around 8,000 miles in the car so it's clear he used it (even if it's less than he intended). So, it's fair he pays for that use.

As the car was declared SORN from 1 November 2024, I find Mr S didn't drive it from that date so he should be refunded the monthly instalments from November 2024 onwards. Meaning he will be held liable the monthly instalments from the time the agreement started in July 2023 up to October 2024. For any payments made from November 2024 onwards, that should be refunded.

While I appreciate the situation with the insurance, the need to drive the car on a regular basis was a part of that policy (telematics). I can't reasonably hold CA Auto Finance responsible for that, it's the type of policy Mr S decided to buy. As insurance and tax are contractual and legal requirements, I won't be saying these costs need to be refunded by CA Auto. However if Mr S accepts this decision and once the car is collected by CA Auto, he may wish to consider finding out if he can get a refund of the unused part of his insurance. However he would need to speak directly to the insurers about this, it's not something I can get involved with.

Mr S has made clear his feelings about the car but there's nothing to say it couldn't be used or it was unsafe to do so even with these faults. I've already said he shouldn't be held liable for the monthly instalments from November 2024 onwards, I know he hired a car during the month of November 2024. But because I'm saying the car finance payments need to be refunded, I won't be saying the hire car costs need to be refunded too.

I've already thought about the distress and inconvenience caused by this situation so I won't repeat it again. I still think £250 compensation is fair and reasonable in the circumstances.

As I haven't been given any more information to make me change my decision I still believe my provisional findings are fair and reasonable in the circumstances.

My final decision

For the reasons set out above, I've decided to uphold Mr S' complaint. To put things right, CA Auto Finance UK Ltd must:

- End the agreement with nothing further for Mr S to pay;
- Collect the car at no cost to Mr S;
- Refund the cash deposit and/or part exchange*;
- Refund any monthly instalments paid from November 2024 onwards;
- Refund the cost of the inspection report as arranged by Mr S; (upon proof of evidence)
- Pay 8% simple interest on the above refunds from the date of payment to the date of settlement;

- Pay £250 compensation to Mr S for the trouble and upset caused due the faults of the car;
- Remove any adverse information about this agreement from Mr S' credit file;
- Pay £150 compensation for trouble and upset caused by not applying his reasonable adjustments.

*If CA Auto Finance considers tax should be deducted from the interest part of my award it should provide Mr S with a certificate showing how much it has taken off, so Mr S can reclaim that amount if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 April 2025.

Simona Reese
Ombudsman