

## The complaint

Mr P complains about the quality of a car that was supplied through a hire purchase agreement with Ald Automotive Limited (ALD).

## What happened

In September 2021, Mr P signed a hire agreement with ALD to lease a car. Mr P made an advanced payment of £3,105.32, leaving him to make 47 monthly repayments of £345.04.

Mr P said he started experiencing issues with the car's engine intermittently cutting out, in July 2023. Mr P said he took it to a dealership where a software issue with the engine control unit (ECU) was diagnosed, however, he was told that there was no available fix. Mr P said he refused to take the car back because he was given no assurances of when the issue would occur again. He said the dealership arranged a courtesy vehicle for him in the meantime.

Mr P complained to ALD about the issues, and in November 2023 he said ALD advised him to arrange a replacement vehicle with the dealership.

Unhappy with the circumstances surrounding the car, Mr P brought his complaint to our service in November 2023, he also hadn't yet received a formal response from ALD to his complaint.

Mr P confirmed in an email dated 15 January 2024 that he'd been asked by the dealership to return the replacement car and to take his car back despite there being no fix available.

ALD issued their final response to Mr P's complaint which they didn't uphold. In it, ALD explained that under the consumer rights act 2015 (CRA) Mr P was not able to reject the car unless he could demonstrate the issue was present at the point of supply. They also said the terms of the agreement didn't allow for a courtesy vehicle and advised the car was deemed safe to drive pending a software fix becoming available. However, for the inconvenience caused they paid Mr P £300 in compensation.

In a separate email also in January 2024, ALD confirmed to our investigator that the software update was part of a recall affecting all models of that vehicle. They also confirmed an early termination was Mr P's only way to end the agreement.

Having reviewed all the information on file, one of our investigators recommended that Mr P's complaint should be upheld. The investigator concluded that the car wasn't of satisfactory quality when it was supplied to Mr P so recommended that he be allowed to reject the car.

Mr P accepted this recommendation. ALD didn't. They believed the car was fit for purpose and in working order at the point of supply. And as the issues were raised with them around 19 months after the point of supply they felt it was outside of the timescales for rejection under the CRA.

The investigator responded to say that his opinion remained unchanged, and in an amended assessment the investigator recommended that as part of the rejection of the car, Mr P should also receive a pro rata refund of his advanced payment. ALD maintained their disagreement with the investigator's assessment and asked that the case be referred to an ombudsman for a final decision.

### **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 what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr P complains about a hire agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr P's complaint about ALD. ALD is also the owner of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

Here, the car was hired new. So, I think it's fair to say that a reasonable person would expect the level of quality to be higher than a second hand, more road-worn car and that it could be used – free from defects – for a considerable period of time.

From the information provided I'm persuaded there was a fault with the car's ECU. ALD has said in their final response that the dealership confirmed a software issue was identified as part of a product recall affecting Mr P's model of car. This is consistent with what Mr P has told us, so I don't consider that either party disputes that the fault affecting the car is related to an ECU software update which results in the engine cutting out intermittently. Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.

*Satisfactory quality*

Mr P told us that the car started failing in July 2023, around two years after supply. He said the engine would completely stop, and that it happened four times in a week. Mr P told ALD that he wanted to reject the car.

In their final response ALD pointed out that as the issues were raised with them more than six months after the car was supplied, Mr P was unable to reject the car. ALD said they were satisfied that the car was fit for purpose when it was supplied to Mr P and that any issues relating to repairs were the responsibility of the dealership.

Neither party disputes that the issue is due to a product recall related to the ECU software; and although I've not seen the recall notice I've no reason to doubt what ALD has said.

I recognise that typically when a manufacturer issues a recall it doesn't necessarily mean that all cars within the criteria are affected by the issue. However, in the circumstances of this complaint I'm satisfied that Mr P's car is affected by the recall issue and so it follows that I'm satisfied the issue would have been present at the point of supply, as Mr P was supplied the car new.

ALD confirmed that the manufacturer is working on the software update required, so the dealership has been unable to repair it. However, as the issue came to light in July 2023, which is almost 12 months ago, I'm satisfied that Mr P should be able to reject the car due to an unreasonable delay in having the car fixed.

Under the CRA, where the consumer has the right to a repair it states:

*If the consumer requires the trader to repair or replace the goods, the trader must—  
(a) do so within a reasonable time and without significant inconvenience to the consumer,*

It also says where the trader is in breach of this requirement, the consumer may exercise their final right to reject.

I acknowledge what ALD has said about the car being safe to drive, and I don't doubt what the dealership have told ALD, however, I also acknowledge what Mr P says about feeling safe in it. For example, having the knowledge the engine could cut out at any point whilst on a variety of roads. I don't think its reasonable to expect that Mr P should feel comfortable driving the car with the risk of the engine cutting out, without warning.

As I've concluded that the car wasn't of satisfactory quality when it was supplied, ALD will have to put things right for Mr P.

As I'm satisfied that Mr P would have the final right to reject the car, I'll be instructing ALD to end the agreement and to collect the car with nothing further for Mr P to pay. ALD should also pay to Mr P a pro rata refund of the advanced rental, in relation to how long the agreement has been active. For example, (and for illustration purposes only) as of June 2024 Mr P's agreement would have been active for approximately 33 months (on the assumption that the agreement became active in September 2021) which is about 69% of the total length of the 48-month agreement. So, ALD should hold back this percentage of Mr P's advanced rental and refund to him the remaining 31% of it.

Although Mr P had to leave his car with the dealership for a period of time, I'm satisfied that he was provided with a courtesy car at no additional cost to him. Neither party has disputed this. ALD also confirmed the car was returned to Mr P in September 2023 pending the repair. I'm satisfied Mr P's experience of the car has been impacted by the issue, which I

think is likely to have recurred in the absence of the repair being carried out. In the circumstances I'm in agreement with the investigator that a 10% refund of the rentals Mr P has made from September to the date of settlement fairly recognises the impaired use.

I've also considered the distress and inconvenience that Mr P would have experienced during this situation, having to go back and forth to the dealership, to arrange the repairs of a brand-new car that shouldn't reasonably have given him any problems. However, I think the £300 in compensation already paid to Mr P by ALD is fair in all the circumstances.

### **My final decision**

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and instruct Ald Automotive Limited to:

- End the hire agreement entered into by Mr P and remove it from his credit file
- Collect the car at no additional cost to Mr P
- Give Mr P a pro rata refund of his initial rental. ALD should withhold the percentage of the advanced rental to match the length of time the agreement has been active. (if any part of this deposit is made up of funds paid through a dealer contribution, Ald Automotive Limited is entitled to retain that proportion of the deposit)
- Refund to Mr P 10% of his monthly rentals paid from September 2023 until the date of settlement

Ald Automotive Limited should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If Ald Automotive Limited considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 31 July 2024.

Benjamin John  
**Ombudsman**