

The complaint

Miss W complains about a vehicle she acquired with finance provided by CA Auto Finance UK Ltd.

What happened

In April 2023 Miss W entered into a regulated personal contract purchase agreement (“the agreement”) with CA Auto Finance in relation to a used vehicle. The vehicle was four years old, its mileage was 21,750 miles, and its cash price was £40,644. It had passed its MOT test in February 2023 with no advisories. It passed again twelve months later, when its mileage was 26,579 miles.

A few days later, Miss W reported that the brakes were making a screeching noise. Later that year, she reported some other issues involving the air conditioning and the automatic transmission. In October she complained to CA Auto Finance about these issues, and also that the vehicle did not have a full service history, even though she had been told that it did when she chose it.

CA Auto Finance did not uphold her complaint. It said there was no evidence of misrepresentation or that the car had not been of satisfactory quality at the point of sale. It added that if there had been a fault at the point of sale, then the dealership was entitled to attempt to repair it. It suggested that she take the car there, or arrange an independent inspection of the car to prove it had been faulty at the point of sale. But as a gesture of good will, CA Auto Finance offered to reduce her outstanding balance under the agreement.

Being dissatisfied with that response, Miss W brought this complaint to our service. She told us that the main issue for her was the misrepresentation. But she also wanted to complain that CA Auto Finance had taken too long to investigate her claim and had not investigated it properly.

Our investigator did not uphold this complaint either. She said that when the vehicle was advertised as having a full service history, that had been correct. This was verified by the service record. And she had seen correspondence which showed that Miss W had agreed to have a pre-delivery inspection and an oil and filter service carried out by the dealership (rather than by the manufacturer). So the vehicle had not been misrepresented to Miss W, because she had known the relevant facts at the time of buying it.

Miss W did not accept that opinion. She maintained that the vehicle had not had a full service history. She asked for an ombudsman to review her complaint.

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.

Having done so, I do not uphold it. I will explain why.

Misrepresentation

A misrepresentation is a false statement of fact which caused Miss W to enter into a contract. Under section 75 of the Consumer Credit Act 1974, CA Auto Finance is liable to Miss W for any misrepresentation made by the dealership which induced her to acquire the vehicle. But a false statement is not a misrepresentation if it didn't affect her decision to buy or hire the vehicle.

Miss W says that when she bought the car in April 2023, its last full service had been in March 2021. As a service is supposed to be carried out every two years, it was overdue. She says she didn't realise that at the time, and that she didn't discover it until September 2023. Furthermore, the oil and filter service carried out by the dealership in 2023 was not a full service, so the car still didn't have a full service history.

I have verified that the last recorded service before the sale was indeed on 11 March 2021, and that the vehicle was advertised as having a full service history. That statement was accurate before 11 March 2023, but it was a few days out of date by the time Miss W bought the car in the first week of April. So by then the advert was not strictly true anymore, but I don't think that a gap of only a few days would have made a difference to her decision to acquire the vehicle. That's because if it had been important to her, she would have looked up or asked when the last service was and when the next full service was due, but apparently she wasn't curious about that enough to inquire. She only found out in September, nearly half a year later, when it was pointed out to her by a third party.

I am therefore not persuaded that the car was misrepresented or mis-sold.

Brakes, air conditioning, and transmission

There is not enough evidence for me to conclude that the car was not of satisfactory quality at the point of sale. But even if it wasn't, the dealership would still be legally entitled to one attempt at repairing the car before Miss W would be entitled to reject it. It hasn't had that opportunity, so I cannot uphold her complaint about that.

The handling of Miss W's claim and of her complaint

Before I go further, it is necessary for me to digress for a moment and say something about our jurisdiction. Our jurisdiction is set out in rules made by the Financial Conduct Authority ("FCA"). Those rules say we cannot consider a complaint about everything that happens; we can only look into a complaint about certain financial services and activities. That includes how a business such as CA Auto Finance deals with a claim under section 75, but it doesn't include how it deals with a complaint (such as a complaint about the outcome of a claim).

Miss W asked CA Auto Finance to let her reject the vehicle and end her finance agreement on 9 October 2023. CA Auto Finance gave her its decision on 5 December. It treated her section 75 claim as if it was a complaint, and so it sent her a letter which not only set out its decision about her claim, but which also set out her right to bring a complaint to the Financial Ombudsman Service, and a six month deadline to bring that complaint. In the FCA's rules, this is called a "final response."

Under the rules, a final response has to be sent within eight weeks of a complaint being made. CA Auto Finance missed that deadline by one day, but for the reason I have explained above, I don't have jurisdiction to consider a complaint about that. I can only consider this letter in the context of how CA Auto Finance dealt with Miss W's claim under section 75.

There is no fixed time limit for responding to a section 75 claim. I would expect a claim to be dealt with within a reasonable time. But I don't think eight weeks and a day is an unreasonably long time to make a decision about a claim.

Because I have decided that CA Auto Finance reached the right decision about Miss W's claim, and did so in a reasonable time, I don't uphold her complaint about how it handled her claim overall. She subsequently complained about the decision to deny her claim, and about how long CA Auto Finance took to investigate that complaint (it issued a second final response six weeks later). But as I have no power to consider a complaint about how a complaint was handled, I cannot comment about that.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 2 October 2024.

Richard Wood
Ombudsman