

## The complaint

Mr S complains that a car supplied to him under a hire purchase agreement by CA Auto Finance UK Ltd (“CAAF”) was of an unsatisfactory quality.

## What happened

I issued a provisional decision on this complaint in May 2024. In that decision I explained why I thought the complaint should be upheld and what CAAF needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

*In April 2023, Mr S was supplied with a used car through a hire purchase agreement with CAAF. The agreement was for £24,850 over 60 months, with monthly repayments of £555.10. At the time it was sold, the car was just over four years old and had done 39,535 miles.*

*Very soon after being supplied with the car Mr S notified the dealer of two problems. He says that the rear window failed to close properly due to a missing hydraulic strut, and that he was missing a spare key. The dealer replaced the missing key and ordered a replacement window strut. But when the strut arrived it couldn't be fitted as it needed to be mounted on a clip that formed part of the actual window. So a replacement window was required. Mr S said that he used the car as a taxi, and due to the unsecured rear window the car later failed a council inspection. It appears that this repair has still not been completed by the dealer.*

*The car suffered a further mechanical breakdown in August 2023. A roadside assistance report confirmed the cause of the breakdown as being a broken / shattered water pump. Mr S arranged for the required repairs to be completed by a local garage at a total cost of £2,785.67.*

*Shortly afterwards Mr S complained to CAAF that the car he had been supplied was not of a satisfactory quality. It said that the breakdown Mr S had suffered in August was likely to have been a result of fair wear and tear. So it didn't think the car had been of an unsatisfactory quality when it had been supplied. Unhappy with that response Mr S brought his complaint to us.*

*Mr S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. The relevant law – 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 finance used to purchase the car, CAAF is responsible. What's satisfactory is determined by 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.*

*The CRA also implies that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. So given Mr S complained about the problems with the rear window to the dealer very soon after taking delivery of the car, and to CAAF about the water pump around three months after he purchased the car, it would be for CAAF to establish that any faults were not present at the time of sale.*

*The water pump on the car failed around three months after the car had been supplied. Generally the manufacturer would expect that part to need replacement after a period of around ten years or 112,500 miles. When Mr S was supplied the car it was around four and a half years old and done just under 40,000 miles. And in the time Mr S used the car it had travelled an additional 2,845 miles.*

*So the failure of that part, so soon after Mr S was supplied the car, would lead me to conclude that it wasn't sufficiently durable when it was sold. I acknowledge CAAF's disappointment that Mr S arranging the repairs so promptly meant that it wasn't able to form its own opinion of the reason for the part failing. But I am satisfied, given the nature of Mr S's use of the car, that there were no ulterior motives for that repair taking place so promptly.*

*So, given that Mr S wasn't supplied with a car that was of a satisfactory quality, I think it reasonable that CAAF should reimburse him for the repair costs he has incurred in replacing the water pump and associated parts.*

*It seems that all parties accept that the car, when it was supplied to Mr S, was missing one of the hydraulic struts that assisted with the opening and closing of the rear window. And I can see that the dealer attempted to provide Mr S with a replacement part to resolve that problem. But it does seem, from the information provided by both Mr S and the dealer, that further parts (such as a replacement rear window) are required to complete the repair. Despite Mr S raising the problem more than a year ago, I understand that the problem remains unresolved.*

*I have considered the testimony from the dealer that Mr S became abusive when it initially failed to resolve the problem. I don't have any independent verification of those interactions. Whilst all staff have a right to perform their jobs without being abused, I can understand why Mr S might have been frustrated, particularly given the impacts on his job of the extended delays in getting the repair completed. But I cannot conclude that Mr S's behaviour absolved the dealer, or CAAF, from their responsibilities to Mr S as set out in the CRA.*

*Where I differ from the investigator's assessment, is in my conclusions about the importance of the problem that has occurred with the rear window. Again I don't have an independent inspection of the problem, although all parties seem to agree it is present, and has been since the car was supplied. But what I do have is Mr S's testimony that his car has been deemed unsafe, by a council inspection, for use as a taxi whilst the problem persists.*

*I accept that Mr S was supplied the vehicle as a private individual, and the dealer's terms expressed stated that the car was being supplied for private use. So my findings here are not predicated on the problems Mr S has had getting his car certified for use. But what those findings do suggest is that the problems with the rear window make the car unsafe for use – whether there are paying passengers in the rear, or Mr S's children. I understand that Mr S has taken some measures to provide a temporary fix to the problem to mitigate some of those safety concerns whilst conveying this family in the car.*

*So I'm satisfied that the problems with the strut and rear window also mean that the car was of an unsatisfactory quality when it was supplied.*

*I can see that Mr S reported the problem to the dealer shortly after the car was supplied. And, at the very least, CAAF has been aware of the problem since Mr S made his complaint in August 2023. Section 23 of the CRA requires any repairs to be completed within a reasonable period of time. Although the act is not specific on how long a reasonable period of time might be, I am entirely satisfied that time period has been exceeded by a significant margin here. So I currently think it reasonable that Mr S be offered the remedy provided in the CRA when a repair has failed – that is to reject the car.*

*It does seem that Mr S has been able to make some use of the car – albeit only for family use rather than as intended as a taxi. So I think it fair that CAAF retains some of the hire purchase repayments that he has made. So I am intending to direct that 25% of the repayments Mr S has made to CAAF are also refunded to him. And it is clear that these problems will have caused distress and inconvenience to Mr S. So I intend to direct CAAF to pay £250 to Mr S in that regard.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. CAAF hasn't provided us with anything more. Mr S has provided some additional comments across a series of responses. Although I am only summarising here what Mr S has said, I want to reassure him that I have read, and carefully considered, everything he has said.

Mr S says that the problems with the car, and so his inability to work, have caused significant problems to his health. He says that he has needed to use credit cards to support his living costs and the repayments he needed to make on the car. Mr S has also provided details of other problems he has faced with the car – although some of those now appear to have been resolved by the dealer. Mr S says that even though he has been unable to use the car for this taxi work, he has continued to have to pay the business insurance he took out. He says that, given his inability to use the car for his work, it would be reasonable for 75% of the repayments he has made to be refunded to him.

## **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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr S and by CAAF. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I've thought carefully about the additional comments and information Mr S has sent me in response to my provisional decision. I'm sorry to tell him that I'm not persuaded that I should change my findings in relation to what CAAF needs to do in order to put things right. But I would like to comment further on some of the matters that he has raised.

As I said in my provisional decision, Mr S purchased the car as a private individual rather than on behalf of his business. And the agreement he signed with the original dealer expressly excluded any problems that were specifically in relation to the car's use as a taxi. So I would find it difficult, on the basis of that agreement, to conclude any compensation due to Mr S should be higher due to his inability to work.

It does seem clear, from the information Mr S has sent us, that there were a number of problems with the car. Although, as I said earlier, some appear to have been resolved by the dealer, and others might be considered more of a cosmetic nature, the failure of the water pump, and the problems with the rear window are of a significant nature. And since those two problems have led me to a conclusion that Mr S should be allowed to reject the car, I don't think it necessary to make any further findings about the other problems – the resolution I direct would be the same.

I am very sorry to hear of the health problems that Mr S has encountered. But from the evidence I have seen, I cannot be sufficiently sure that those health problems have arisen as a result of Mr S being unable to use, or being restricted in the use of, the car for his family activities. So I think the payment of £250 that I proposed for his distress and inconvenience remains appropriate.

In summary, I think the problems with the car are such that it is reasonable to allow its rejection by Mr S. And I think CAAF should also refund to Mr S the cost of the repairs he undertook to the water pump. Mr S's use of the car for his family activities has been impaired by the problems with the car so I think 25% of the payments he has made should be refunded to him. And CAAF should pay Mr S £250 for the inconvenience he has been caused.

## **Putting things right**

Mr S has faced impaired use of his car since the time it was first supplied to him. And the problem he reported, with the missing hydraulic strut has not been resolved, despite almost a year having passed. So, CAAF should do the following;

- Allow Mr S to reject the car, and arrange for its collection at no cost to Mr S.
- Terminate the hire purchase agreement, with Mr S having nothing further to pay, and remove any adverse information relating to the agreement from Mr S's credit file.
- Refund 25% of the repayments that Mr S has made to the hire purchase agreement to reflect his impaired usage of the car.
- Refund the sum of £2,785.67 Mr S paid on 9 August 2023 for the repair of the water pump.
- Add interest of 8% simple a year on each of the refunds above from the date any amounts were paid to the date of settlement. HM Revenue & Customs requires CAAF to take off tax from this interest. CAAF must give Mr S a certificate showing how much tax it's taken off if he asks for one.
- Pay Mr S £250 for the distress and inconvenience he has been caused.

## **My final decision**

My final decision is that I uphold Mr S's complaint and direct CA Auto Finance UK Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 August 2024.

Paul Reilly  
**Ombudsman**