

The complaint

Miss G complains about the quality of a car supplied by Go Car Credit Limited ('GCC').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Miss G took out a hire purchase agreement in September 2022 with GCC for a car. However, Miss G has been having problems with it particularly a loss of power. A turbo fault was identified by a diagnostic about ten months after the supply of the car.

Miss G thinks that GCC should be responsible for fixing the turbo fault but it says that the onus is on her to prove the issue was inherent at the point of sale.

Our investigator upheld the complaint but GCC disagreed so the matter has come to me for a decision.

I issued a provisional decision which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

In considering what is fair and reasonable, I need to have regard to 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.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. GCC is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

In the process to get the car Miss G appears to have dealt with a credit broker who helped her source the car and finance combination with GCC. She also dealt with the dealership which arranged the supply of the goods for GCC under the finance agreement. I think it is important to note here that as the supplier of the goods GCC is also fairly responsible for descriptions attached to goods on its behalf. It is also fairly responsible for those representations made by the broker in respect of the goods particularly noting the provisions of Section 56 of the Consumer Credit Act 1974 which make the finance provider responsible for the things said and done by the broker in the course of arranging finance

Misrepresentation / mis-description

I will come on to discuss the implied contractual terms around satisfactory quality later. However, in the particular circumstances here I think that regardless of any finding on that

this case should fairly be upheld on the basis of a misrepresentation and/or mis-description of the goods which in my view has likely caused Miss G a financial loss. I have asked our investigator to send GCC the additional information Miss G has sent us to further support this finding. I think it likely that this information would have been reasonably available to GCC previously in any event.

Miss G has provided persuasive and credible testimony to indicate to me that her motivation in looking for a car was that it was well maintained and with a full service history. From what she has said I am persuaded that despite its age and mileage Miss G was attracted to this particular car because it was described by the broker and dealer as being well maintained and with a full service history. In fact I can see texts from the broker to Miss G prior to supply that persuasively show it described the car to her as having a full service history and being immaculate. And it follows that the dealership likely did the same thing as the broker's information appeared to be based on the dealer's description of the car.

I can also see that shortly after the sale Miss G noticed an error light on the dash and contacted the dealer. The dealer in its response indicates that this is a minor issue (a service light) and just needs resetting as the car had been serviced recently. This text message chain reinforces the finding that the dealer was holding this car out as particularly well maintained and serviced just before supply.

Our investigator has also run valuation tools and determined that the dealer charged Miss G around 15% above market value for the car – which again is an indicator that it was likely marketed as being in particularly good and well serviced condition.

The reality is that it appears this wasn't a fully serviced car and it hadn't been serviced around the time of supply. Miss G has shown what appears to be just two 'interim' services (from December 2021 and June 2022) in the service book prior to her taking the car. As the car had been registered in 2015 I would expect a more comprehensive history of services than this. We have asked but it appears GCC has been unable to supply anything to show the car had a full service history. Miss G has provided us what she says is the page with the service stamps and has recently been unable to provide a full copy of the book as it is now with the car in storage. However, on balance, based on the information I have and in the absence of any evidence from GCC to the contrary I am persuaded the car does not have a complete service history.

I also note that shortly after taking the car Miss G texts the dealer with a photo of a warning light and the dealer says this is a service light that needs manually resetting as the car had a recent service. But the only record of a service is months prior to Miss G taking the car. So I don't think the car was as well maintained and recently serviced as Miss G was led to believe.

I am persuaded from Miss G's compelling testimony that she would never have purchased this car if the broker and dealer told her factually accurate information about the service history. And while I accept she didn't appear to double check the service records at the time of supply – I think here she had reasonably relied on the explicit information she was given over text message, and what I believe she was likely given verbally too. She has explained this was her first car on finance and she is new to driving so I also think that has to be taken into account as well in considering the reasonableness of Miss G's actions.

Even if GCC were to argue that Miss G would still have bought the car – I think there are also questions as to whether the misleading information about recent servicing has unfairly disadvantaged her. Although the turbo might have failed in any event, there is evidence to suggest that a lack of regular servicing can cause a turbo to fail prematurely as it will be starved of oil which is essential for lubrication. Had the dealer not led Miss G to believe the

car had a full service history and had also been serviced around the time of supply, I think she would likely have had a service carried out sooner than when the car ultimately got another service (in March 2023). Especially considering Miss G needed the car for regular use both for work and running her children to nursery. I accept that we will never know if an earlier service would have prolonged the life of the turbo. However, ultimately Miss G was deprived of the chance to maintain the car in the way she could have due to misleading information, so I think it fair that GCC put things right on these grounds too.

Satisfactory quality

I have proceeded here on the basis that the Consumer Rights Act 2015 applies. But, it is worth noting that Miss G has mentioned she uses the car for work and personal purposes. I am not sure whether Miss G would be considered a 'consumer' as far as the Consumer Rights Act 2015 is concerned – she might not be depending on the detail of how the car is used. However, I don't think this is fundamental to my outcome here. Even if the Consumer Rights Act 2015 did not apply there are similar provisions around 'satisfactory quality' that do apply.

The Consumer Rights Act 2015 says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they 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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA' from here) says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

GCC supplied Miss G with a second-hand car that was around 7 years old and had done around 85,000 miles at the point of supply. It is fair to say that in these circumstances a reasonable person would consider that the car had already suffered significant wear and tear – and was likely to require more maintenance and potentially costly repairs much sooner than you might see on a newer, less road worn model.

I think that some of the earlier issues Miss G describes with the car, such as the battery problem are likely due to reasonable wear and tear. And I note that the dealer appears to have fixed these at no cost to her.

I think the turbo issue which developed about ten months and 6,500 miles on (and ultimately stopped Miss G from using the car any further) is more debatable. Under normal circumstances I think it would be reasonably expected that a major component might fail at this stage on a car of this age and mileage.

However, I also have already discussed the way the car was described and the price Miss G paid in respect of my finding on misrepresentation/misdescription. And I think it is arguable that in the particular circumstances here that a reasonable person who has paid more and had the conversations around the car that Miss G had would have heightened expectations around quality and would not expect the turbo to fail when it did here. So I do consider that in the particular circumstances Miss G does have a reasonable case to support a finding that the goods were not of satisfactory quality.

I know GCC has now offered to get an expert report – but I think it is too late now for that. And ultimately, because of my findings on misrepresentation/misdescription I don't think the outcome on satisfactory quality changes my decision to uphold this case in any event.

Putting things right

All things considered I think it fair that GCC put things right here for the reasons I have given above. Primarily, I think there has been a misrepresentation so the remedy for this would be to unwind things. I also think that even from a breach of contract perspective, repair is not a practical remedy now – too much time has passed and I have thought about the CRA provisions around avoiding further delays and inconvenience to Miss G.

GCC should collect the car at no further cost to Miss G, refund her deposit and ensure the agreement is ended and there is no adverse data from it on her credit file.

I understand Miss G has been driving the car reasonably normally until May 2023 when the turbo failed. So I think she should get a refund of her May 2023 payment onwards to reflect this.

I understand Miss G doesn't have the car presently as it is undriveable. It is in storage at the garage which is charging for this. I also understand Miss G is still insuring and taxing the car. I don't think Miss G could have mitigated this expense – it isn't her fault and stems from the breach of contract/misrepresentation I have identified. She couldn't afford to have the car repaired – so I don't see how she could have collected it and continued to use it. And while GCC says she signed a document saying she would liable for storage costs I don't think that means she doesn't have a claim against GCC to recover these costs. All things considered I think it fair that GCC settle the storage costs directly for Miss G and on production of receipts pay her a refund for her tax and insurance costs on this car as incurred since 1 May 2023.

Miss G has explained the significant impact this issue has had on her. She has explained the emotional impact and how it has impacted her home life and children as she is unable to use the car for her work and the nursery run and can't afford a replacement car. She is worried about paying for the basics and the mounting costs of storage. I am very sorry to hear about how deeply things have impacted her here. I have looked at our scale of awards and based on Miss G's testimony I am satisfied that the impact of the problems with the car have caused her considerable distress, upset and worry including significant inconvenience and disruption over an extended period. Here I think that £500 is an appropriate award of additional compensation for what has occurred.

My provisional decision

I uphold this complaint and direct Go Car Credit Limited to:

- *Take back the car at no cost to Miss G, end the credit agreement with no further liability and ensure there is no adverse credit footprint on Miss G's file from it;*
- *reimburse Miss G her initial deposit of £1,100;*
- *settle the storage fees with the third party;*
- *reimburse Miss G tax and insurance costs on the car incurred since 1 May 2023;*
- *reimburse Miss G all payments she has made relating to use of the car from 1 May 2023 onwards;*

- *pay 8% simple yearly interest on all refunded amounts from date of payment to the date of settlement;*
- *pay £500 for distress and inconvenience.*

If GCC considers it must deduct tax from the interest award it should provide Miss G with a certificate of tax deduction.

Both parties agreed with my findings.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision.

Putting things right

GCC should put things right as set out below.

My final decision

I uphold this complaint and direct Go Car Credit Limited to:

- Take back the car at no cost to Miss G, end the credit agreement with no further liability and ensure there is no adverse credit footprint on Miss G's file from it;
- reimburse Miss G her initial deposit of £1,100;
- settle the storage fees with the third party;
- reimburse Miss G tax and insurance costs on the car incurred since 1 May 2023;
- reimburse Miss G all payments she has made relating to use of the car from 1 May 2023 onwards;
- pay 8% simple yearly interest on all refunded amounts from date of payment to the date of settlement;
- pay £500 for distress and inconvenience.

If GCC considers it must deduct tax from the interest award it should provide Miss G with a certificate of tax deduction.

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

Mark Lancod
Ombudsman