

The complaint

Mrs B is unhappy that a car supplied to her under a hire purchase agreement with Toyota Financial Services (UK) PLC ('TFS') was misrepresented to her, and she is unhappy that certain aspects of the hire purchase agreement were misrepresented to her.

When I refer to what Mrs B has said or done and what TFS have said or done, it should also be taken to include things said or done on their behalf.

What happened

In July 2024, Mrs B was supplied with a new car through a hire purchase agreement with TFS. The cash price of the car was £41,505 and a total deposit of £11,750 was paid, some of which came directly from Mrs B and some of which came from manufacturer/dealer incentives. The total amount of credit was for £29,755 over 42 months, comprising a first payment of £289.08, followed by 40 monthly payments of £289.08 and a final payment of £19,530.

Mrs B had initially contacted the supplying dealer about a specific car around May 2024, via a third-party website. In June 2024 she attended the supplying dealer for a test-drive of what she thought was the same car as the one she had initially enquired about, and after this test-drive Mrs B ordered the car.

The hire purchase agreement was signed towards the end of June 2024 and Mrs B collected the car around mid-July. After collecting the car Mrs B says she realised immediately that some of the specific features present in the test-drive car were not present in the car she had just collected. The main features she was concerned were missing were a blind-spot monitor, an aerial-view camera and a rear-crossing traffic sensor. Mrs B contacted the supplying dealer and notified them of the following:

- She wasn't told that the model she had test-driven wasn't the same as the model she had ordered. She only found this out after a conversation with the supplying dealer the day after collecting the car.
- She wasn't accompanied on the test-drive by the dealer, which would have given the opportunity to discuss the features she liked and later found were missing on the car she had ordered and collected.
- After the test-drive, she mentioned to the dealer how much she liked certain specific safety features which the test-drive car had, but the dealer didn't tell her that the one she had enquired about and was ordering didn't have these features.
- She was told during the transaction that she couldn't pay any of the deposit by credit card but found out later that she could have paid up to £1,500 by credit card, which would have alleviated some financial pressure and reduced the need to move money around on the day she collected the car, which caused her stress.
- She was told by the dealer on the day of collection that the deposit amount couldn't be changed despite having previously been told by them that it could.
- She felt rushed through the paperwork by the dealer, who said there was another client waiting and that additional options, such as alloy wheels and scratch insurance, could be discussed later. The dealer asked Mrs B to sign documents affirming that

these options had been discussed, when they hadn't been, and she didn't get the opportunity to go over them later.

- There was a lack of clarity regarding the dealer's policy on the ability to combine different offers and discounts, and Mrs B said she received conflicting information about this during the process.
- She wanted to exercise her right to reject the car within 30 days under the Consumer Rights Act 2015 because it wasn't as described and wasn't fit for the intended purpose, because it lacked specific features she explicitly mentioned as necessary to her.
- They were in breach of the Sale of Goods Act 1979 because the car didn't match its description due to the absence of the features that were crucial to her entering the agreement, including a blind-spot monitor, an aerial-view camera and a rear-crossing traffic sensor.

Mrs B told the supplying dealer she wanted to return the car and receive a full refund.

The supplying dealer told Mrs B that they couldn't accept her request to reject the car because there was no evidence that the wrong car had been ordered or supplied. They said there was no evidence from the communications Mrs B had with them prior to collecting the car that there was any mention of specific safety features, such as the blind spot monitor, rear-crossing traffic monitor or aerial-view camera being essential to her. The dealer said the car that was ordered and delivered to Mrs B is the model she selected and enquired about with them via the third-party website, and it is also the model she signed an order form and hire purchase agreement for.

With regard to paying by credit card, the dealer told Mrs B that its company policy is that up to £1,500 can be paid by credit card and this should have been explained to her when she ordered the car.

Mrs B spoke further with the supplying dealer to try to resolve the matter and they subsequently agreed to take the car back and cancel the agreement, but at a cost of £3,000 to Mrs B. She says she reluctantly agreed to this as it seemed to be the only option at the time, but she told the dealer that she still wanted the rest of her deposit back. When the supplying dealer declined to agree to this Mrs B referred the matter to TFS.

In September 2024 TFS said they weren't upholding Mrs B's complaint because there was no evidence of mis-selling relating to the agreement and they advised Mrs B to contact the supplying dealer if she wished to pursue the recovery of the rest of her deposit.

Mrs B was unhappy with this response, so she referred her complaint to the Financial Ombudsman Service (Financial Ombudsman) and told us that she wanted a refund of her full deposit for the car due to the misrepresentation and deceptive practices of the supplying dealer.

Our investigator said they didn't think there was enough evidence to determine that Mrs B proceeded with the transaction on the basis of false information provided about the car by the supplying dealer, and they were persuaded that any incorrect information provided about the special offers available was corrected prior to Mrs B signing the agreement. They also said they thought there wasn't sufficient evidence to show that Mrs B had been subjected to pressure to sign the agreement and that any conflicting information Mrs B had received about not being able to pay up to £1,500 of the deposit by credit card, whilst unfortunate, didn't create a level of inconvenience which was detrimental to Mrs B, because she would have had to pay off the credit card balance shortly afterwards anyway, or pay interest on it.

Mrs B didn't agree with our investigator's view and provided some further information and comments, the key points of which I have summarised below:

- It's not reasonable to place the burden of clarifying technical details on the consumer when the dealership is in a position of authority and expertise.
- The safety features she observed during the test-drive, were a determining factor in her decision to proceed with the agreement and she wouldn't have entered into the agreement had she been aware that the car being supplied lacked the critical safety features she needed.
- It was the dealership's responsibility to clearly disclose that the car she test-drove was a different model than the one she intended to purchase and their failure to do so misled her and undermined her ability to make an informed decision.
- The third-party website which Mrs B used to select the car model and specification she wanted didn't allow her to specify the presence or absence of safety features like blind spot monitors or rear-crossing traffic sensors for both of the models in question here.
- The importance of safety features, including blind spot monitors and rear-crossing traffic sensors, were also implied by Mrs B's prior ownership of a car equipped with these features and the fact that her previous car from the same manufacturer included the same safety features created a reasonable expectation that these features would also be included in a newer car from the same manufacturer.

Our investigator didn't think Mrs B had provided any new information that they had not previously considered therefore they declined to change their conclusion.

Because Mrs B didn't agree, this matter has been passed to me to make 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs B was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

What I need to decide in this case is whether the car Mrs B acquired, and/or the finance agreement, was misrepresented to her by TFS. To make a finding of misrepresentation, I would need to be satisfied that Mrs B was told a false statement of fact that caused her to enter a contract she would not have entered into otherwise. And if I'm not satisfied there has been a misrepresentation, I still need to consider whether there has been a breach of contract because the goods, and/or the finance agreement, might have been mis-described.

Mrs B said that the supplying dealership failed to inform her that the car she drove during the test-drive wasn't the same car as the one she had initially enquired about and later

ordered. She said that it was only after she took delivery of the car that she realised that the car she had collected didn't have certain specific safety features which Mrs B says the test-drive car did have and which are essential to her.

TFS say that there has been no misrepresentation because the car Mrs B enquired about, ordered and signed for was the same as the car which she collected.

I wasn't present at the time of sale to hear everything discussed, but when things are unclear I make my decision on the balance of probabilities taking into consideration what Mrs B has told us and all the other available information.

From the information provided I can see that Mrs B contacted the supplying dealer by email on the day she collected the car and again the next day by phone to discuss the issue of the safety features she had observed on the test-drive car but which were missing from her car. Therefore, I don't think it's in dispute that Mrs B quickly realised that the test-drive car had features which the car she had ordered and collected didn't have.

However, I haven't seen enough from any of the parties to say that most likely the specific missing safety features which Mrs B is unhappy about were mentioned as being essential or important to Mrs B at any point in the process prior to Mrs B collecting the car and/or that the supplying dealership told her that these would be included on the car she ordered. I understand that Mrs B says the third-party website she used to research and 'build' the car she wanted, prior to the test-drive and prior to placing her order, didn't provide the option to specify the inclusion of the safety features in question here, therefore it's not in dispute that she didn't specify these features as important or essential via these means. However, I think that if these features were of sufficient importance to Mrs B such that they were instrumental in her decision-making process, it isn't unreasonable to expect her to have told the supplying dealer about her specific requirements, and to check that the car she had enquired about and later ordered did include these features. The documentation provided by all the parties shows that the car Mrs B researched and 'designed' on the third-party website is the same car as the one she ordered and signed the agreement for. And considering that the third-party website she used to research and 'build' the car didn't provide the option to specify the inclusion of the safety features in question, I think it wouldn't have been unreasonable for her to enquire if these features would definitely be present on the model of the car she was buying, particularly considering how important Mrs B says these features are to her

After Mrs B had test-driven the car, she had a further opportunity to discuss the safety features with the supplying dealer. I note that she says that she did mention to the dealer after the test-drive how much she liked a couple of the safety features, and she says that they didn't correct her to say that they weren't included in the car she was planning to order. However, I'm not persuaded that this or the fact that the test-drive car was a different specification to the car ordered by Mrs B are sufficient to amount to a false statement of fact by TFS that caused her to enter into a contract she would not have entered into otherwise. I think that the time after the test-drive and before entering into the agreement is the point at which it would have been reasonable for Mrs B to check the specification of the car being ordered, if these safety features were so important to her. I understand that Mrs B says she felt pressured by the supplying dealer to sign, but I haven't seen enough evidence to say that, most likely, she was pressured, especially as I think that there were earlier opportunities to specify the safety features she required, and also considering that she did have options to walk away from the agreement. After test-driving the car Mrs B had further communications with the supplying dealership, and at times she did mention to them that she could still go to a different dealership. So, most likely, she was aware she could walk away at any point and so I'm not persuaded that the dealership pressured her into taking out this finance agreement.

I'm also not persuaded by Mrs B's statement that the importance of certain safety features, including blind spot monitors and rear-crossing traffic sensors, were implied by her prior ownership of a car equipped with these features, or that the fact her previous car from the same manufacturer included the same safety features created a reasonable expectation that these features would also be included in a newer car from the same manufacturer. There is no evidence to show that the supplying dealership or TFS were most likely aware of this, and even if they were aware that Mrs B's existing car had these features it isn't reasonable to expect them to assume that Mrs B would want those features on a new car.

A misrepresentation is a false statement of fact which induces a person into entering a contract when they would have acted differently, had they known the truth. I don't think the evidence here indicates that Mrs B was told a false statement of fact about the safety features on the car she was ordering. Whilst I think it's unfortunate that the test-drive car was of a different specification to the car Mrs B had enquired about and ordered and being of a higher specification, had features which the car she ordered didn't, I don't think this is sufficient to amount to a false statement of fact made by TFS or the supplying dealer. Especially as I have not seen enough evidence to be able to conclude that, most likely, the dealership led Mrs B to believe that these features would be on the car she was ordering.

I have also considered whether there has been a breach of contract, namely for goods which are not as described, as is implied into the contract between Mrs B and TFS by the Consumer Rights Act 2015 (CRA). In considering this I have taken into account all of the information provided and having done so, I'm not persuaded that there has been a breach of contract due to the way the car was described.

I say this because the screenshots Mrs B has provided from her research on the third-party website shows a photo and details of the same car model and specification as the one mentioned in the hire purchase agreement and sales invoice, and this is also the same as the car ordered and supplied. And whilst I don't think it's in dispute that the test-drive car was of a different specification to the car Mrs B ordered, I'm not persuaded that this is sufficient to say that, most likely, it amounts to misdescription of the goods by TFS, when considering the whole transaction from start to finish.

Turning now to the other issues Mrs B raised. It doesn't seem to be disputed between the parties that Mrs B was initially given incorrect information about whether she could use her credit card to pay some of the deposit, and whilst I can understand this must have been frustrating for Mrs B, I've not seen enough evidence to say that this, most likely, caused her a direct financial loss. When coming to this conclusion I have considered that Mrs B would have needed to pay off the deposit anyway, whether this was through the finance agreement or by paying off her credit card balance. And I have considered that, most likely, the credit card balance would have been subject to interest at a higher rate than the finance agreement so most likely would have cost more if the balance wasn't repaid promptly. I have also considered the fact that Mrs B could have paid off any additional amount directly to the finance agreement, which would have reduced the overall costs.

Finally, Mrs B says there was a lack of clarity regarding the dealer's policy on the ability to combine different offers and discounts. From the information I've seen, this issue appears to have been resolved before the agreement was entered into, therefore I don't think Mrs B has lost out as a result of this.

While I sympathise with Mrs B for the difficulties that she is experiencing, taking all the circumstances of the complaint into account, I don't think it would be fair or reasonable to ask TFS to take any further action in relation to this complaint because I have not seen

enough to be able to say that most likely there was a breach of contract or misrepresentation.

My final decision

For the reasons explained, I don't uphold Mrs B's complaint about Toyota Financial Services (UK) PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 13 January 2025.

Liz Feeney
Ombudsman