

The complaint

Ms R is unhappy that a car supplied to her under a hire purchase agreement with Toyota Financial Services (UK) Plc was of an unsatisfactory quality.

What happened

In August 2022, Ms R was supplied with a used car through a hire purchase agreement with Toyota. She paid a total deposit of £5,800 and the agreement was for £6,382.50 over 60 months; with 59 monthly payments of £131.11 and a final payment of £132.11. At the time of supply, the car was just over six years old, and had done 30,424 miles (according to the MOT record for 13 July 2022).

Ms R has said that the car was faulty from the day it was supplied to her, with numerous issues being present including unusual noises, the engine management light (EML) coming on, and an issue with the door locks. The car went back to the supplying dealership for investigation and repair on multiple occasions between 25 August 2022 and 21 October 2023. During some of these repairs Ms R was provided with a courtesy car. Eventually, the car broke down due to an engine issue, and has remained at the dealership since then.

Unhappy with the ongoing issues, Ms R complained to Toyota. They said that, due to the age and mileage of the car, some repairs would be expected. However, they offered her a £100 gesture of goodwill for the inconvenience she'd suffered. Ms R wasn't happy with Toyota's response, and she brought her complaint to us for investigation.

Our investigator was satisfied there were faults with the car, and that these faults made it of an unsatisfactory quality when it was supplied. So, they thought Toyota needed to do something to put things right.

As the car had been subject to multiple failed repairs, the investigator said that Ms R should be allowed to reject it, with Toyota ending the agreement and collecting the car. They also said that Toyota should refund the deposit Ms R paid; as well as 15% of the payments she'd paid between August and December 2022, and 100% of the payments she'd made since January 2023 (after which point Ms R had stopped using the car). The investigator thought that Toyota should also refund Ms R's insurance and road tax costs since January 2023, as well as paying her a total of £350 compensation.

Ms R agreed with the investigator's opinion and said that the initial £100 offered by Toyota was never paid. She also provided information about her insurance and road tax costs. However, Toyota didn't agree and said Ms R has waived her right to reject by accepting further repairs to the car, and the provision of a courtesy car limited any inconvenience she'd suffered. They also said that the car had passed an MOT before it was supplied to Ms R, so it was of a satisfactory quality at the point of supply. Finally, they said that Ms R would always have been liable for insurance and road tax, so these shouldn't be refunded.

Based on the information that had been provided, the investigator revised what they thought Toyota should do to put things right. As Ms R had been provided with a courtesy car from June 2023 onwards, the investigator said that she should only be refunded 100% of the

payments she'd made between January and June 2023, and 15% of all other payments she'd made. All other recommendations remained unchanged.

Ms R didn't think this change to the recommendation was fair, and Toyota's opinion didn't change.

I issued a provisional decision on 28 November 2024, where I explained my intention to uphold the complaint. In that decision I said:

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. Ms R was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

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 goods, Toyota are responsible. What's satisfactory is determined by things such as 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 and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Toyota can show otherwise. So, if I thought the car was faulty when Ms R took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Toyota to put this right.

I've seen evidence of the work that has been carried out on the car supplied to Ms R. Between 25 August 2022 and 8 August 2023, 18 repair attempts were carried out. During the same period, the mileage increased from 30,833 miles to 35,549 miles - a total of 4,716 miles. This repair history is also supported by various job cards. I've noted that Ms R has said there were further attempts at repair, in addition to these, but I haven't seen anything to show me that was the case.

It's also not disputed that there is an ongoing issue with the car – the car is with the dealership for repair, and has been since early 2023, with the dealership providing Ms R with a courtesy car since June 2023. This wouldn't be the case if the car was operating correctly. Ms R has referred to correspondence with the dealership and that the EML comes on every few miles, and they cannot fix this fault. She's also said that the parts needed to repair the car are on back order, with no timeframe as to when they would be available. I haven't seen anything that contradicts this.

Based on this, I'm satisfied there are faults with the car. As the issues with the car started within six-months of it being supplied to Ms R, as stated above, the CRA implies the faults were present when the car was supplied to Ms R, unless Toyota can show otherwise. I haven't seen anything to show me that the issues with the car weren't present or developing when the car was supplied to Ms R, so it's reasonable for me to conclude that Toyota are responsible for putting things right.

Section 24(5) of the CRA says "a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract." This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for

the dealership AND a single chance of repair for Toyota – the first attempted repair is the single chance at repair. What’s more, if a different fault arises after a previous repair, even if those faults aren’t related, the single chance of repair has already happened – it’s not a single chance of repair per fault.

The CRA is also clear that, if the single chance at repair fails, as was the case here, then Ms R has the right of rejection. However, this doesn’t mean that Ms R is required to reject the car, and she can agree an alternative remedy i.e., further repairs to the car. In their comments on the investigator’s opinion, Toyota have argued that, by accepting further repairs, Ms R has waived her right to reject the car.

If I were to accept this argument, I also need to consider section 23(2) of the CRA. This 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*

Given that the car is still faulty and has been awaiting repair for more than a year, even if Ms R had waived her right to reject under section 24(5) of the CRA, it’s arguable that Toyota failed to comply with Section 23(2)(a) of the CRA by ensuring the repairs are completed in a reasonable amount of time, and without significant inconvenience to Ms R.

So, in these circumstances, I’m satisfied that Ms R should now be allowed to reject the car.

Where Ms R has been able to use the car while it was in her possession, or where she was provided with a courtesy car to keep her mobile, I think it’s only fair that she pays for this usage. The dealership has provided me with a timeline of when the car was returned to them for repair, and Ms R has provided some evidence of when she was without the car. I’ve also seen evidence that Ms R was provided with a courtesy car from 21 June to 1 September 2023, and on 30 September 2023. Based on what I’ve seen, it seems that Ms R was without both her car and a courtesy car for the following dates:

- 25 to 26 August 2022
- 9 September 2022
- 14 October 2022
- 5 to 6, 9, 22 and 29 December 2022
- 22 December 2022
- 29 December 2022 to 2 January 2023
- 11 and 19 January 2023
- 6 to 9, 14 to 27 February 2023
- 7, 10, 21, 27 and 30 March 2023
- 21 April 2023
- 8 to 16 and 30 May 2023
- 7 and 13 to 22 June 2023
- 18 September 2023
- 31 July 2024
- 8 August 2024
- 6 September 2024
- Since 8 October 2024

As such, I’m satisfied that Toyota should refund Ms R the equivalent of a day’s payment for each of the days referred to above. If, as part of their comments on this provisional view, Toyota can evidence that Ms R was provided with a courtesy car for any of these days, I will

not be expecting them to refund the payments for those days. Equally, if Ms R can show that the car was with the dealership for repair for any additional days where a courtesy car wasn't provided, then I would expect Toyota to refund the payments for these additional days.

For the remaining time Ms R was in possession of the car, it was not fault free, with ongoing vibration issues. So, I'm also satisfied that her usage and enjoyment of the car has been impaired. Because of this, I also think it's fair that Toyota refund some of the payments Ms R made. And I think 15% of the payments made outside of those dates detailed above (i.e., when the car wasn't being repaired and when Mrs R didn't have a courtesy car) fairly reflects the impaired use caused by the car not being of a satisfactory quality.

The investigator has also recommended that Toyota refund Ms R her road tax and insurance costs for when her car was off the road. This was based on the fact that Ms R was taxing and insuring a car she wasn't able to use. However, I don't agree with this argument, and I'll explain why.

It's a legal requirement that a motor vehicle is both taxed and insured. This is needed whether the vehicle is being driven or not. The insurance covers the vehicle for risks not associated with being driven, i.e., fire, theft, and third-party damage, so Ms R was still benefitting from the insurance payments, whether she was driving the car or not. Regarding the road tax, if a motor vehicle is not being used and not being stored on a public highway, it can be declared as being off the road through a SORN. This mitigates the need to pay road tax, and I've noted this is something Ms R has done.

What's more, as stated above, for some of the time the car was off the road, Ms R was provided with a courtesy car. And she hasn't had to either tax or insure this car – these costs are being covered by the dealership. So, if I were to say that Ms R should be refunded these costs, then she would've essentially been driving without the need to either tax or insure a car – a situation she wouldn't have been in had the car supplied to her been of a satisfactory quality. As such, if Toyota were to refund these costs, Ms R would be placed in a position of betterment. So, it's not fair to ask Toyota to cover these costs.

Finally, I think Ms R should be compensated for the distress and inconvenience she was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended Toyota pay Ms R a total of £350 to recognise the distress and inconvenience she's been caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Ms R would've felt by having to arrange for the car to be repaired on multiple occasions, and by these repairs being unsuccessful. So, this is a payment I intend to direct Toyota to make

Therefore, I think Toyota should:

- *end the agreement with nothing more to pay;*
- *collect the car at no cost to Ms R;*
- *remove any adverse entries relating to this agreement from Ms R's credit file;*
- *refund the deposit Ms R paid (if any part of this deposit is made up of funds paid through a dealer contribution, Toyota is entitled to retain that proportion of the deposit);*

- *refund the payments as detailed above;*
- *apply 8% simple yearly interest on the refunds, calculated from the date Ms R made the payments to the date of the refund[†]; and*
- *pay Ms R a total of £350 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (this amount includes the £100 Toyota have already paid).*

†If HM Revenue & Customs requires Toyota to take off tax from this interest, Toyota must give Ms R a certificate showing how much tax they've taken off if she asks for one.

Responses

Ms R has said that Toyota didn't pay her the £100 they originally offered. She also said that the courtesy cars were only provided because of an extra cover that she'd paid for, but the courtesy cars supplied were not always on a like-for-like basis. Finally, Ms R queried the interest that she'd paid on the finance agreement and whether she would be required to pay for the mileage that she'd done in the car Toyota supplied to her.

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.

Toyota didn't respond to my provisional decision. As such, I'm taking their lack of comments to mean they don't object to this.

While I've noted Ms R's comments about the courtesy cars, these are provided to keep her mobile so I wouldn't necessarily expect them to be provided on a like-for-like basis – it would depend on the cars available at the time. In her comments Ms R has said that she only had not like-for-like cars *“for a week or two.”* As such, while I appreciate this would've been frustrating for Ms R, I won't be asking Toyota to increase the compensation.

I've also noted Ms R's comments that she was only to have the car repaired, and courtesy cars provided, because of the additional cover she took out with the dealership. The invoice shows this to have cost her £50. However, I haven't seen anything to show me that it was only because of this cover that Ms R received both repairs and courtesy cars, something which we would usually expect to be provided as a result of her rights under the CRA. As such, I also won't be asking Toyota to reimburse this cost.

With regards to the interest, Ms R was provided with a car under a finance agreement that charged interest. The interest charged was made clear at the outset, and it's reasonable for me to conclude that Ms R needed to finance the car as she was not in a position where she wanted or was able to purchase it outright. As such, I think it's fair that she is charged interest for the period of time she was in possession of the car – this will be accounted for in the payments she made.

Finally, the CRA allows Toyota to charge Ms R for fair usage for the mileage she's done on the car while it has been in her possession. As I've explained above, Toyota should be allowed to keep some of the payments Ms R paid to reflect the usage of the car. So, no further mileage charge should be applied.

Given the above, Ms R's comments don't change my view, and I will now adopt my provisional decision as my final decision.

Putting things right

Toyota should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Ms R;
- remove any adverse entries relating to this agreement from Ms R's credit file;
- refund the deposit Ms R paid (if any part of this deposit is made up of funds paid through a dealer contribution, Toyota is entitled to retain that proportion of the deposit);
- refund the payments as detailed above;
- apply 8% simple yearly interest on the refunds, calculated from the date Ms R made the payments to the date of the refund[†]; and
- pay Ms R a total of £350 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (if the £100 originally offered by Toyota hasn't already been paid, Toyota should pay Ms R £350, if it has been paid, they only need to pay the £250 difference. Toyota must pay this compensation within 28 days of the date on which we tell them Ms R accepts my final decision. If they pay later than this date, Toyota must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires Toyota to take off tax from this interest, Toyota must give Ms R a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Ms R's complaint about Toyota Financial Services (UK) Plc. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 10 January 2025.

Andrew Burford
Ombudsman