

## **The complaint**

Ms J complains that the car she acquired through Toyota Financial Services (UK) PLC ("TFS") wasn't of satisfactory quality. She wants TFS to buy back her car at market value or compensate her for the faults.

## **What happened**

Ms J entered a hire purchase agreement in January 2022 to acquire a used car. At the time of acquisition, the car was approaching four years old and had been driven just over 28,000 miles. Ms J says the clutch failed eight months later and, when she tried to sell the car, some bodywork issues came to light. She says this means the car wasn't of satisfactory quality and because of this, TFS should buy back her car at market value or compensate her for the faults. Ms J told us:

- When the clutch failed, she was told she'd need to pay to have the car examined, and would face a repair bill of around £900 if it was found that the clutch had failed through fair wear and tear;
- the car had only been driven around 40,000 miles at this point and she'd had it serviced at the required mileage;
- although the dealership ultimately offered to inspect the car for free, she decided to have the clutch repaired elsewhere because it was cheaper;
- in November 2022, she decided to sell the car, but when an independent assessor inspected it, they concluded that the front bumper was slightly mis-aligned, and an adjacent panel appeared to have been repainted in the wrong colour – there'd been some repair work – so the sale did not conclude;
- the car was unfit for purpose, and it was clearly being offloaded by the dealership.

TFS rejected this complaint. It said it hadn't seen any evidence that the problems with the clutch or the issues identified by the independent assessor were present or developing at the point of supply. And it noted Ms J had used the car for more than 8 months and had been able to drive around 10,000 miles before a fault occurred, so the issue with the clutch could not have been present or developing at the point of sale.

Our investigator looked at this complaint and said she didn't think it should be upheld. She said there was no dispute that there was a fault with the car but – given the time Ms J had been in possession of it, and the mileage she'd driven – she thought it was most likely that the issue with the clutch were as a result of normal wear and tear. She also said that as Ms J had purchased a warranty that wasn't covered by the agreement with TFS, she should raise the issues about the warranty with the warranty company. And she may be able to pursue this matter further with The Motor Ombudsman.

Ms J disagrees so the complaint comes to me to decide.

## **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 agree with our investigator – I don't think this complaint should be upheld – and I'll explain why.

When looking at this complaint I need to have regard to the relevant laws and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Ms J is a regulated consumer credit agreement this service is able to consider complaints relating to it. TFS is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 ("CRA") there is an implied term that when goods are supplied "the quality of the goods is satisfactory". The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that 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 the goods. So, what I need to consider in this case is whether the car *supplied* to Ms J was of satisfactory quality or not.

The CRA also says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless TFS can show otherwise. But, if the fault is identified after the first six months, then it's for Ms J to show the fault was present when she first acquired the car.

I don't think there's any dispute that Ms J has experienced problems with the car. That has been well evidenced by both her testimony and the information she's sent us. But, whilst I accept that there have been issues with both the clutch and the front bumper and panel, TFS would only be responsible for putting things right if I'm satisfied that these issues were present or developing when the car was supplied – that is to say, the car wasn't of satisfactory quality when Ms J acquired it in January 2022.

I've considered very carefully the subject of *durability*. But, having done so, I can't uphold this complaint. I say this because the clutch needed replacing more than six months after the car was supplied, so it's for Ms J to *prove* that this fault existed (or was developing) when she first acquired the car. And I haven't seen anything, for example, an independent engineer's report, that shows me there was a fault with the clutch when the car was supplied to Ms J.

Furthermore, if the car had done limited mileage since Ms J took possession of it, I might've thought it possible that the issue with the clutch was there when the car was supplied. But she'd completed 10,000 in around 8 months – a greater level of mileage than the average driver. And this greater usage also means that it's *more likely* that the car's components would have been subject to a greater degree of testing, stress and general wear and tear.

The clutch is a high wear and tear item. And the actual lifespan of it is dependent upon a number of different factors i.e. a car that's used for short journeys in heavy traffic will suffer more clutch wear than a car that's used for long motorway journeys. And the wear on the clutch is also affected by driving style. As such, I don't think that a clutch failing at 40,000 miles is, in itself, enough to say that the clutch wasn't sufficiently durable.

In conclusion, I'm not persuaded there was a fault with the clutch when the car was supplied to Ms J.

I've gone on to consider the issues Ms J reported with the car's bodywork – these were issues that became apparent when it was inspected prior to its intended sale. Although I understand Ms J's frustration that these issues resulted in the sale falling through, it wouldn't be right for me to hold TFS responsible for this. This is because Ms J had had use of the car for 8 months before these things were discovered, and again, there's no evidence that I've seen, to suggest that this damage was present at the point the car was supplied.

Because of this, considering all the relevant circumstances, I'm not persuaded that Ms J's car was of unsatisfactory quality when supplied. So, I can't hold TFS responsible for the problems Ms J has experienced with it.

Finally, Ms J has also raised the issue of the warranty she took out with the car, and that it didn't cover the cost of the repairs to the clutch. From the evidence I've seen, the warranty was provided by the dealership, and the cost didn't form part of the agreement with TFS. As such, the warranty isn't something I can hold TFS responsible for. And Ms J will need to raise her issues with the dealership or warranty company direct.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 17 October 2023.

Andrew Macnamara  
**Ombudsman**