

The complaint

Mr O complains that Tesla Financial Services Limited ("TFS") supplied him with a car which was of unsatisfactory quality.

What happened

Mr O entered into a conditional sale agreement with TFS in February 2022. This was to acquire a new car on a six year agreement. Fairly soon into the agreement, Mr O complained in April 2022 about problems he was having with the car. Within the first few months the car had several separate issues, which have been documented and evidenced to our service. I won't go into all the details here, as this isn't the crux of the complaint now.

TFS responded in July 2022 with their final response letter. They upheld his complaint, but only agreed to investigate the faults further, and pay Mr O £180 compensation. Discussions were ongoing however as Mr O continued to have problems. After further problems, TFS said that as a commercial decision, they would allow him to return the car and end the agreement, refund his deposit, but not the monthly payments he had made. They also said they would refund any payment he had made for some acceleration boost software.

Mr O wasn't happy with this, so referred his complaint to our service in December 2022. He told us that he felt he should be given a one off payment of £10,000 to cover his loss of value, or to return the car and receive a full refund including all monthly payments.

An investigator here investigated the complaint and partially upheld it. They said that the car should be rejected as being of unsatisfactory quality under the Consumer Rights Act 2015 (CRA). They said TFS should end the agreement with nothing further to pay, take the car back, refund Mr O's deposit, and pay Mr O £250 for the distress and inconvenience caused. But they didn't agree that Mr O should get any monthly payments back, as he had been able to use the car so should pay for the use of it. They said that as per the CRA, TFS were entitled to payment for his fair usage of the car, and the monthly payments could be kept as these fair usage payments.

Mr O didn't agree with this and asked the investigator to propose to TFS that he would keep the car, but they would pay him £5,000 compensation. TFS agreed with the original view by the investigator that the car could be rejected but didn't agree to Mr O's counter proposal to be paid £5000 compensation instead. With no agreement, Mr O asked for an Ombudsman to make a final decision on the case. He felt it was unfair that all of his monthly payments were being kept for fair usage.

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.

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. Mr O was supplied with a vehicle under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

Both parties have now agreed that the car was not of satisfactory quality when supplied. I won't therefore spend time going through all the details of this, but it's important for me to outline that when considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – TFS here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, I'll consider here that the car supplied to Mr O was brand new and cost over £50,000. This means I think a reasonable person would have very high standards for the quality of the car. I think they would expect it to be in mint condition, free from even minor faults and would expect trouble free motoring for some time.

Mr O suffered many faults with the car in the first few months, meaning he had to take several trips to and from the dealership to get things repaired and became increasingly frustrated. I agree that the combination of several faults meant that the car was of unsatisfactory quality, and that after several attempts to repair things had been undertaken, he was within his rights to reject the vehicle. As I say, both parties have accepted this now so I will move on to focus on how things should be put right.

Mr O proposed keeping the car but being given a cash compensation payment by TFS. That isn't a remedy under the CRA, nor does it fit with a situation where the parties have agreed that rejection is the fairest outcome. So, whilst Mr O was entitled to ask TFS if they were prepared to do this, it's not something that I would be proposing in these circumstances.

Rejection of the car involves giving it back and ending the agreement with TFS. In these circumstances, we'd generally expect TFS to return any deposit paid by Mr O, cover any other costs incurred like repairs to the car, and potentially to make a payment to recognise any distress or inconvenience caused.

In my investigation, I noted that before the case came to our service, TFS had offered to refund Mr O for some acceleration boost software that he said he had purchased for the car. This hadn't been considered when our investigator had provided their view on the case, so I reached out to both parties to discuss this. Mr O confirmed he felt he should be refunded for this, and TFS agreed that they would be prepared to refund it but said they hadn't been able to find any evidence on file of the car having this software or Mr O paying for it.

I confirmed at this point with both parties that if the car was rejected, provided it was proven that the software had been purchased, TFS would refund it, and both parties agreed.

The stumbling block which hasn't been agreed and is therefore left for me to decide upon is Mr O's monthly payments. He originally felt he should get a full refund of these, but our investigator confirmed the details about a business being able to retain some payments or to charge a customer to recognise "fair usage" of the car, when processing a rejection.

Different finance providers approach this in different ways, but at our service, our preference and our starting point is to consider any monthly payments made, where suitable, to reflect the fair usage of the vehicle. Mr O confirmed when the case was investigated that the car

had travelled around 11,000 miles in the first nine months whilst suffering problems and faults, so I think it's clear that Mr O has been able to use the car significantly and the faults haven't impacted on this. As such, the CRA outlines that it is fair for TFS to keep fair usage payments to recognise this use, even when the car is being rejected.

Mr O feels the monthly payments for this are too high and don't fairly recognise "fair usage". Unfortunately, the CRA does not outline any specific way that these payments should be calculated, so it falls to me to decide, whether in these circumstances, what TFS have offered is fair. Mr O was paying £729 per month for six years for this agreement. He feels that because it's a conditional sale rather than some sort of lease or hire purchase agreement, he should not have to give up all of this monthly payment for fair use. He also feels that he'll have lost value/equity in the car that he's built up as he moves through the agreement towards owning the car.

Whilst I appreciate his arguments, I'm afraid I don't agree with them. The value/depreciation of cars over time is extremely difficult to predict. Whilst historically, we expected to see the value of a car drop significantly fairly quickly once it ceased being a "new" car and became "used", with some unusual circumstances in the market, and difficulties supplying new cars in the last few years, there are examples of car's holding their value significantly and not depreciating at anywhere near the rate they have previously.

What is clear is that this can't be accurately predicted, and it doesn't feel practical or fair to vary what is considered fair usage for a car based on short term spikes and changes in car valuations. It may be that currently, Mr O feels his car is worth more and he's losing that if he gives up his monthly payments and gives the car back. But equally, a few years ago, we wouldn't expect a consumer to pay more than their monthly payments generally to recognise "fair usage", despite the fact that potentially the car may have lost 20-30% of its value almost as soon as it was driven away from the forecourt and would be being returned to the business at a much lower value often after a very short period.

Our service feels that generally, a business keeping the monthly payments to reflect fair usage is a simple and broadly effective way to treat all parties as fairly as possible. In these circumstances, I'm not persuaded that TFS keeping the monthly payments to reflect fair usage on rejection is unfair.

Overall, I agree that the car was of unsatisfactory quality for the reasons detailed briefly above, and already agreed by both parties.

Putting things right

I instruct Tesla Financial Services Limited to put things right as follows:

- End the agreement with nothing further to pay
- Collect the car at no cost to Mr O
- Refund Mr O's deposit *
- If Mr O can provide evidence of his purchase of the acceleration boost software for this vehicle, refund the cost of this to him. *
- Pay Mr O £250 to recognise the distress and inconvenience caused
- Remove any adverse information from Mr O's credit file in relation to this agreement

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If TFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr O how much it's taken off. It should also give Mr O a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue and Customs if appropriate.

My final decision

I am upholding this complaint, and direct Tesla Financial Services Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 19 January 2024.

Paul Cronin
Ombudsman