

The complaint

Mr S complains that Creation Financial Services Limited won't refund to him the money that he's claimed for a car that he says wasn't of satisfactory quality.

What happened

Mr S bought a used car in March 2019. The price of the car was £6,780 and he part-exchanged a car which had a value of £5,878. He used his Creation Financial Services credit card to pay a deposit of £250 to the dealer and then the balance of £800 (as he paid £49 for a two year warranty and an admin fee of £99).

The engine management warning light came on in April and May 2019 and both times Mr S returned the car to the dealer where it was repaired without further charge. The car broke down in July 2019 and Mr S called out a recovery service. He then part-exchanged the car in August 2019 for a new car with another dealer for a value of £4,200 - which he says was £2,728 less than he'd paid for the car.

He complained to the dealer and then claimed that amount from Creation Financial Services under section 75 of the Consumer Credit Act 1974. It said that there was no evidence to confirm that car was faulty when it was bought by Mr S. He wasn't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. He couldn't say that there had been a breach of contract or misrepresentation about the car that was bought by Mr S so he thought that Creation Financial Services was correct to reject his claim.

Mr S has asked for his complaint to be considered by an ombudsman. He says, in summary, that:

- the car had proven to be unreliable on three separate occasions within the first four months so he wasn't willing to take the risk of keeping hold of a depreciating asset which would then add to his financial loss;
- the car wasn't fit for purpose or of satisfactory quality and the three faults related to its primary function (whether or not they were linked); and
- he's been treated unfairly and is out of pocket as a result.

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.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr S's complaint about Creation Financial Services, I must be satisfied that there's been a breach of contract or misrepresentation by the dealer and that Creation Financial Services' response to his claim

under section 75 wasn't fair or reasonable. I'm not determining the outcome of Mr S's claim under section 75 as only a court would be able to do that.

There would be a breach of contract by the dealer if the car wasn't of satisfactory quality when it was bought by Mr S. Whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it. Mr S bought a car that was five years old, had been driven for 41,500 miles and had a price of £6,780. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

The first issue with the warning light occurred about a month after the car was bought by Mr S and the dealer says that it related to a leaking intake system seal which was repaired without charge. The second issue with the warning light occurred about a month after the first issue and the dealer says that it related to a blocked map sensor which was also repaired without charge.

The third issue occurred about two months after the second issue - so about four months after Mr S had bought by the car. The breakdown report shows that there was a fault code and recommended further investigation and the dealer says the fault code was unrelated to the other issues.

Mr S complained to the dealer but then part-exchanged the car towards the cost of a new car from another dealer and the car had a value of £4,200 - which he says was £2,728 less than he'd paid for the car.

I've seen no evidence to show that the issue that caused the fault code in July 2019, and the car to go into idle mode, was present when Mr S bought the car. The breakdown report shows that the car's mileage at that time was 45,724 miles - so in the four months that he'd had the car he'd been able to drive more than 4,000 miles in it.

The car had passed an MOT test in March 2019 - before it was bought by Mr S - and there's no independent evidence to show that the car was faulty when it was bought by him or that it wasn't of satisfactory quality at that time. I can understand Mr S's disappointment and frustration because of the issues that he's had with the car - and for the loss that he incurred when he part-exchanged it in August 2019. But I'm not persuaded that there's enough evidence to show that the car wasn't of satisfactory quality when it was bought by Mr S or that there's been a breach of contract or misrepresentation by the dealer.

I consider that Creation Financial Services' response to Mr S's claim has been fair and reasonable in these circumstances. So I find that it wouldn't be fair or reasonable for me to require it to refund to him any of the money that he's claimed - or to take any other action in response to his complaint.

My final decision

For these reasons, my decision is that I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 June 2020.

Jarrold Hastings
Ombudsman