

## **The complaint**

Ms J complains Creation Consumer Finance Ltd (Creation) supplied her with a car which she believes wasn't of satisfactory quality.

## **What happened**

In July 2019, Ms J acquired a used car which she financed through a 48 month hire purchase agreement with Creation. The cash price of the car was over £18,900, it had travelled around 18,300 miles and it was approximately three years old.

Within a few of weeks, Ms J said she noticed an unpleasant egg like smell coming from the car, it was shuddering/juddering when pulling away and the washers weren't working. In December 2019, she reported the issues to the dealership.

They arranged for the car to be inspected by a third party garage in January 2020. A fault was found with the nox sensors. It was reset alongside the gearbox values, they also adjusted the engine cover as it was vibrating. They advised the washers needed to be looked at in more detail and if the fault came back with the nox sensors, it would have to be looked at again by the car manufacturer as they didn't have the diagnostic tools to replace them. Despite an extensive road test, the garage found no other faults with the car. Although Ms J was initially sent an invoice for the labour, the dealership agreed to cover the cost as a gesture of goodwill.

Despite the repair, Ms J reported she was still having issues with the car including the juddering. She complained to Creation and requested to reject the car.

In the meantime, as there was still issues including the nox sensor, in February and March 2020, the car was taken to the car manufacturer franchised dealership to see if they could rectify them. During these visits, the nox sensor was replaced as part of a safety recall. The engine was also inspected as Ms J reported it wasn't running correctly when the fan was on a certain speed level and the engine management lights were coming on and the car was going into limp mode. The car was taken on an extended road test however no faults could be found with the car.

In answering her complaint, Creation said repairs had been carried out under warranty and no other faults were found with the car. They were satisfied the repairs had fixed the issues at no cost to Ms J. They said if faults were still present, the onus was on her to prove it and they will review the matter.

Unhappy with their response, Ms J referred the complaint to our service. Our investigator recommended the case was upheld. They believed the car wasn't of satisfactory quality when it was supplied and both the dealership and Creation had been given the opportunity to fix the issue however the fault remained with the juddering. As repairs had already been attempted, they believed it was fair for Ms J to reject the car.

Creation disagreed as they thought the rejection of the car was excessive. They said the car had been in Ms J's possession for over five months before the issues came to light and it had been inspected twice and no faults were identified. They confirmed they were in receipt

of the videos of the car as provided by Ms J but they wished for an independent inspection to establish if there was a fault and how this could be rectified. Ms J said she wasn't happy to do so as she had noticed the intermittent issue within a few weeks and reported the issues in December 2019 which was a few months of acquiring the car. As Creation had more than their one opportunity to fix it, she wanted to reject it.

Ms J said she's worried about driving the car as she doesn't believe it's safe to do so and it could be putting her life and those of her children at risk.

As an agreement couldn't be reached, the complaint has been referred 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've decided to uphold Ms J's complaint. I'll explain why.

Ms J acquired the car under a regulated hire purchase agreement. Creation is the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 implies a term into the contract that the quality of the goods is satisfactory. To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of supply and the car's history. In this case, Creation supplied Ms J with a used car that was approximately three years old and had travelled over 18,300 miles. For used cars, it's reasonable to expect parts may already have suffered wear and tear when compared to a new car or one that is less travelled.

I've considered the evidence provided by Creation which included job cards and testimony from the dealership. I've also considered what Ms J has said, her videos and job cards. Having done so, on balance I believe there is a fault with the car. I say this because having watched the videos, they show the car to be juddering while stationary and also while driving. These videos are dated July and November 2020 which is after the car was looked at by the garages. From the outset, Ms J said this is an intermittent issue which may explain why it couldn't be replicated when the car was inspected by the garages.

Ms J's version of events throughout the complaint have been consistent and I find this to be persuasive. She said she noticed the issue with the juddering within a few weeks but it was intermittent so I can understand why she may not have reported it immediately. She reported the issues in December 2019 and by the time it was looked at in January 2020, it had travelled less than 2,500 miles from being supplied. Given how soon after supply she started to experience the issue and the low mileage covered, on balance I believe this fault was present and/or developing at the time car was supplied to her. Without a further inspection, it's difficult to say what is exactly wrong with the car but it would appear there is an underlying intermittent fault (possibly linked to the engine) and it's likely that has been there from when she acquired it.

I accept cars will display varying degrees of smoothness, noise and vibrations while being used and this may be impacted by different factors. While I recognise some level of juddering may be expected, there will be occasions where the extent is significant and beyond what a reasonable person would consider to be satisfactory. Based on the videos, I

believe the juddering of Ms J's car is beyond what I believe a reasonable person would consider to be satisfactory. So I can understand why it's negatively impacting on the enjoyment, comfort and sense of safety in the car for her and her children.

Alongside the fault with the juddering, I'm aware Ms J also had issues with the nox sensors and washers but from my understanding these have now been fixed following repairs so I won't go into further detail.

Taking everything into account, I don't believe Ms J's car was of satisfactory quality when it was supplied due to the faults with the juddering meaning there was a breach of contract. I note Creation's request for an independent inspection to be carried out. However given what has happened since the issue was reported and the fact it's been inspected by at least two separate garages without the juddering fault being fixed, I think it's fair for Creation to allow Ms J to reject the car.

Creation should end the agreement and arrange for the car to be collected at no cost to Ms J. While I accept the car wasn't performing as it should have, a recent reading of the odometer shows the car has travelled over 25,000 miles so it's evident Ms J has had use of it albeit the fault persists and is ongoing even now. Therefore it's fair she should pay to reflect that so I won't be asking Creation to fully refund the monthly payments. However I will ask them to refund 10% of the monthly payments from December 2019 (when the issues were first reported) onwards to reflect the loss of enjoyment and the general impact of the ongoing nature of the fault. Creation should also refund the £1,000. Ms J said as a result of the fault with the juddering she had to pay £99 (including VAT) for a diagnostic test to be carried out by the car manufacturer franchised dealer. She wouldn't have needed to do so had the fault not been present so I think Creation should refund this amount.

I'm sorry to hear the car wasn't performing as expected and due to the faults including the juddering, it meant Ms J had to return the car to the dealership and a third party garage on at least three occasions. I also acknowledge the level of trouble and upset it has caused her so for that reason I believe Creation should also pay £100 compensation.

### **My final decision**

For the reasons set out above, I've decided to uphold Ms J's complaint.

To put things right, Creation Consumer Finance Ltd should:

- End the agreement, with nothing further due from Ms J;
- Collect the car at no cost to Ms J;
- Refund the £1,000 deposit\*;
- Refund 10% of the monthly payments from December 2019 until the date of settlement\*;
- Refund the cost of the diagnostic test (£99)\*;
- Remove any adverse information about this hire purchase agreement from Ms J's credit file;
- Pay £100 compensation for the trouble and upset caused to Ms J.

\* Creation Consumer Finance Ltd should also pay 8% simple interest per year on all the above refunds calculated from the date of payment up to the date of settlement.

If Creation Consumer Finance Ltd considers tax should be deducted from the interest part of my award it should provide Ms J with a certificate showing how much it has taken off, so she can reclaim that amount if she is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 10 June 2021.

Simona Charles  
**Ombudsman**