

The complaint

Mr S complains that a car acquired with finance from Creation Consumer Finance Ltd wasn't of satisfactory quality.

What happened

In August 2020 Mr S was supplied with a car and entered into a hire purchase agreement with Creation. At the point of supply the car was around 7 years old and had covered mileage of around 28,400 miles.

Mr S experienced faults with the car a few days after getting it. The wheels wobbled when braking, the brake pad warning light illuminated, and the steering wheel juddered. Mr S also discovered that the rear windows and locks didn't work. Mr S reported these issues to the supplying dealer. It said the brake pads were the cause of the wheel wobble and that these were wear and tear items. It said it couldn't find any faults with the car.

Mr S continued to experience these issues. He obtained an independent inspection of the car, which found wheel wobble, vibration, brake light illuminated and rear windows inoperative.

Mr S replaced the tyres and brake pads on the car. This resolved the wheel wobble and vibration issues. He obtained a further independent report which confirmed a fault with the rear windows.

Mr S complained to Creation. He asked for the car to be repaired, or to be allowed to reject it. In response, Creation said that tyres and brake pads were perishable items which would not be expected to be new on a second hand car. Creation offered £240 towards the cost of the tyres as a gesture of goodwill and said that Mr S would have to obtain an independent report showing that the faults were present at the point of supply.

Mr S wasn't happy with the response and complained to this service.

Our investigator upheld the complaint. He said there was a fault with the car which had occurred within the first 6 months as evidenced by the independent report, and in respect of which the business hadn't offered repairs. The investigator said that Mr S should be allowed to reject the car, and that he should receive a refund of 10% of all payments he'd made to reflect impaired use. The investigator also said that Mr S should be refunded for the repairs he'd paid for, and for the reports he'd obtained, and that he should be paid compensation for the distress and inconvenience caused to him.

Creation didn't agree. It said it would agree to the uphold provided that a usage fee was applied, which it said it had calculated at £6,769.25.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. I would expect a second hand car to have a degree of wear and tear, so in order to uphold this complaint I would need to be satisfied that there was a fault with the car at the point of supply, as opposed to a fault caused by general wear and tear.

Under the Consumer Rights Act 2015, where a fault occurs in the first 6 months, there is a presumption that it was present or developing at the point of supply and it's up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can reject the car. After 6 months the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality when supplied.

An engineer's report can help to determine whether a car is of satisfactory quality. Mr S has obtained two reports. The first report, dated September 2020, states that the car has serious vibration issues when braking and wheel wobble. It states that the brake warning light is illuminated and that the rear windows don't operate. This inspection was carried out around one month after Mr S got the car, so it's persuasive evidence that the faults were present at the point of supply. The second report, dated April 2021, states that the rear windows and locks are inoperable. It also states that the daytime running lights aren't working and that there's a fault with the parking sensor. The engineer thought these faults might be related to corrosion in the central junction box.

Based on what I've seen in the reports, I'm satisfied that there were faults with the car and that these occurred in the first 6 months. Creation asked Mr S to obtain an independent report to show that the faults were present at the point of supply, but I don't think a further report is necessary. Under the relevant legislation, faults which occurred in the first 6 months are presumed to be present or developing at the point of supply and it's up to the business to show otherwise.

I've taken the nature of the faults into account when considering whether the car was of satisfactory quality. Mr S has already replaced the tyres and brakes and hasn't experienced any further issues with these. Creation said these were perishable items and that wear and tear was to be expected. Whilst I agree that tyres and brakes are serviceable items, I don't think it's reasonable that Mr S was supplied with a car with warped brake pads which caused wheel wobble and vibration. For this reason, I don't think the car was of satisfactory quality when supplied.

I can see from the engineering reports that the rear windows and locks don't operate. Mr S hasn't had repairs carried out to these. These items aren't perishable, and the reports show that the faults were present in the first 6 months. So again, for this reason, I don't think the car was of satisfactory quality.

Taking everything into account, I'm satisfied that the car wasn't of satisfactory quality when supplied. From what I've seen, Creation hasn't offered to repair the faults. I think Creation has had reasonable opportunity to arrange repairs, and I don't think it's fair to expect Mr S to pay for repairs himself, or to wait any longer. Mr S should be allowed to reject the car.

Putting things right

Mr S has been able to use the car throughout, but the rear windows and locks are still not working. This has impacted on Mr S's use of the car as it has safety and security implications. In the circumstances, I think it's reasonable to ask Creation to refund 10% of all

payments made by Mr S to reflect impaired use.

Mr S has had to pay for repairs to the brakes even though this is a fault which the business should have put right by carrying out repairs. Mr S has also had to pay for two reports, which again is something I think the business should have paid for because the faults arose in the first 6 months. Creation should refund Mr S these costs.

It's clear that Mr S has suffered a significant degree of distress and inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. Creation should pay compensation of £150 in recognition of this.

My final decision

My final decision is that I uphold the complaint. Creation Consumer Finance Ltd must:

End the agreement with nothing further to pay

Arrange for the car to be collected at no cost to Mr S

Refund the deposit of £2300

Refund 10% of all rental payments

Refund £518.14 for repair costs and report costs

Pay 8% simple interest on all amounts refunded from the date of payment to the date of settlement

Pay £240 towards the tyres (if not already paid)

Pay compensation of £150 for distress and inconvenience

Remove any adverse information from Mr S's credit file in relation to the agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 March 2022.

Emma Davy
Ombudsman