

The complaint

Mr L is unhappy that Creation Consumer Finance Ltd rejected his claim under Section 75 of the Consumer Credit Act 1974.

What happened

In August 2019 Mr L was supplied with a car and entered into a fixed sum loan agreement with Creation.

In October 2019 Mr L noticed that the heater wasn't working. In November 2019 a warning light illuminated indicating that the coolant was low.

Mr L says he contacted the dealership but didn't receive a response. In December 2019 he raised a section 75 claim with Creation.

Creation investigated and contacted the broker. It said that the dealership had asked to inspect the car, but Mr L had refused. Based on this information, creation rejected the section 75 claim. It said the car needed to be inspected and that Mr L should contact the dealership to arrange this.

Mr L wasn't happy with the response and complained to this service. He's explained that the car went into limp mode in November 2020 and he hasn't been able to use it since.

Creation responded to the investigation by this service and said it thought the dealership should be allowed to inspect the car as the fault hadn't been diagnosed.

Our investigator didn't uphold Mr L's complaint at first. She said there wasn't enough evidence to show that the car wasn't of satisfactory quality and recommended that Creation arranged an inspection.

Mr L contacted this service to let us know that Creation had been in touch with him to arrange an inspection. But he explained that the car wasn't working, and he couldn't afford to transport the car to the inspection site.

Following this, another investigator reviewed the complaint. She found that Creation still hadn't arranged an inspection and she didn't think it was fair to expect Mr L to wait any longer or to provide more evidence. The investigator said that the heating and coolant issues had occurred in the first 6 months and that the car wasn't of satisfactory quality at the point of supply. The investigator said that Mr L should be allowed to reject the car and receive a refund of all payments made since November 2020, as he hadn't been able to use the car since then. She also said that Mr L should receive a refund of 10% of all payment made from July 2019 to November 2020 to reflect the impaired use caused by the heater not working and the coolant leaking. She also said that Creation should pay compensation for distress and inconvenience.

Creation didn't respond to the investigators view so I've been asked to make a final decision.

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 a right to claim against a supplier of goods or a provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mr L's complaint, I would need to be satisfied that there's been a breach of contract and that Creations response to the claim wasn't fair or reasonable.

The relevant law says that goods must be of satisfactory quality when supplied. If this isn't the case, then a breach of contract can be said to have occurred.

There hasn't been an independent inspection of the car in this case. Given that the issues with the heater and the coolant occurred within the first 6 months, there's a presumption that the issues were present at the point of supply and I think Creation should have arranged an inspection. It's not clear why an inspection still hasn't taken place, as Creation hasn't provided an explanation. I'm of the view that Creation should've done more to arrange the inspection within a reasonable time.

The only available engineering evidence is a report from Mr L's local garage dated October 2020. This states that the coolant levels were low and that the engine was misfiring.

Under the Consumer Rights Act 2015, where a fault occurs in the first 6 months, there's 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 attempt at repair. 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.

Based on what I've seen, the faults with the heater and the coolant occurred in the first four months. The presumption that these faults were point of supply faults therefore applies and it's up to the business to put things right.

There's a dispute between Mr L and the dealership as to whether an inspection was offered by the dealership. I haven't seen any evidence that the dealership offered to arrange an inspection, or to repair the faults. I prefer Mr L's version of events, which is that he reported the faults more than once, but no inspection or repair was offered. Because of this, I'm satisfied that the dealership was given a reasonable opportunity to repair the faults but failed to do so.

Putting things right

Taking everything into account, I don't think the car was of satisfactory quality at the point of supply. This means that there has been a breach of contract and Creation must take steps to put things right.

I've already said that the dealership has had the opportunity to repair the car and failed to do so. Having regard to the relevant legislation, Mr L should be allowed to reject the car.

Mr L hasn't been able to use the car since it broke down in November 2020. I don't think it's fair to expect Mr L to pay for a car he can't use, so all of his payments made since this date must be refunded.

Mr L has said that he only realised the heater wasn't working when he tried to turn it on in the winter. I think it's likely that the heater wasn't working before this. Mr L also had to keep

topping up the coolant. As a result of these issues, Mr L has suffered impaired use of the car. He should receive a refund of 10% of payment made from the start of the agreement to November 2020.

Mr L has explained that he's had to use public transport since the car broke down in November 2020, which has impacted on his employment and caused him inconvenience. I think it's fair to ask Creation to pay compensation to reflect 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 L
- Refund all payments made by Mr L since 1 November 2020
- Refund 10% of all payments made from the start of the agreement to 31 October 2020
- Pay 8% simple interest on all refunded amounts from the date of payment to the date of settlement
- Pay compensation of £200 for distress and inconvenience
- Remove any adverse information relating to the agreement from Mr L's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 March 2022.

Emma Davy
Ombudsman