

The complaint

Mr D complains that the mileage of a car that was supplied to him under a hire purchase agreement with Creation Consumer Finance Limited wasn't correct.

What happened

A used car was supplied to Mr D under a hire purchase agreement with Creation Consumer Finance that he electronically signed in September 2020. There were some issues with the car and Mr D paid a manufacturer's dealer £198 for a vehicle health check in June 2021. The health check identified the required work but also identified that the car's instrument panel had been manipulated and that there was a discrepancy on the car's mileage. The warranty company said that it wouldn't pay for the required work so Mr D contacted the dealer. He also complained to Creation Consumer Finance and then to this service.

Our investigator recommended that his complaint should be upheld. He was satisfied that there was sufficient evidence to suggest that the car wasn't as described because the mileage had been tampered with before the car was supplied to Mr D and that, had he been aware of the accurate mileage, he wouldn't have purchased it. He said that the misrepresentation may cause problems should Mr D wish to sell the car in the future. He recommended that Creation Consumer Finance should unwind the contract, collect the car and return the deposit.

Both Creation Consumer Finance and Mr D have asked for this complaint to be considered by an ombudsman. Creation Consumer Finance says that the dealer has informed it that there appear to have been a number of repairs carried out on the car under warranty and the warranty would have been invalidated if the car had a genuine mileage discrepancy. It also says that the car passed an MOT test in February 2022 when its mileage was recorded as 43,662 so a full refund is completely unreasonable. It says that both it and the dealer don't agree with the recommended outcome.

Mr D says that he's done nothing wrong but has paid the deposit and made monthly payments of nearly £500 with the intention of keeping the car so returning it means that he's paid over £7,000 for a car that he won't have. He says that if he returns the car he wants all the money that he paid for it back so that he can invest in a new car. He says that he'll accept a similar car of his choice with the same equivalent value.

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 agree with the outcome recommended by our investigator for these reasons:

- Mr D entered into a hire purchase agreement with Creation Consumer Finance in September 2019 for a used car to be supplied to him – the car was about 18 months old, its mileage was shown on the agreement as 16,654 miles and it had a price of £22,199;

- Mr D made an advance payment of £107 for the car and agreed to make 59 monthly payments of £493.59 and a final payment of £494.59 for the car to be supplied to him;
- there were some issues with the car and Mr D paid a manufacturer's dealer £198 for a vehicle health check in June 2021 - the health check identified the required work but also identified that the car's instrument panel had been manipulated and that there was a discrepancy on the car's mileage;
- it provided a vehicle history which showed the following mileages for the car: 9 miles in March 2019, 69,315 miles and then 6,930 miles and 6,934 miles in October 2019, 71,399 miles in January 2020, and 26,292 miles and 27,075 miles in June 2021;
- the manufacturer's dealer's invoice says: "*Vehicle has had the instrument cluster manipulated*";
- Mr D said in December 2021 that the car's mileage was 36,000 miles and the car passed an MOT test in February 2022 when it's mileage was recorded as 43,662 miles (which was about 27,000 miles more than when the car was supplied to him);
- the mileage of 69,315 in October 2019 could be an administrative error as the other mileages at the time were 6,930 and 6,934 but I don't consider that it's likely that a second administrative error would have been made when the car's mileage was recorded as 71,399 in January 2020;
- I consider it to be more likely than not that there's an issue with the car's mileage and that its instrument cluster was manipulated before the car was supplied to Mr D;
- I don't consider that Mr D would have entered into the hire purchase agreement if he'd known about the mileage discrepancy and that the instrument cluster had been manipulated and I'm not persuaded that those issues can now be adequately corrected;
- I don't consider that any warranty repairs carried out on the car before June 2021 are enough to show that the car doesn't have a mileage discrepancy; and
- I find that it would be fair and reasonable in these circumstances for Creation Consumer Finance to allow Mr D to reject the car and to take the other actions described below.

Putting things right

I find that Creation Consumer Finance should end the hire purchase agreement and arrange for the car to be collected from Mr D – both at no cost him. The hire purchase agreement shows that Mr D paid a deposit of £107 for the car and I find that it would also be fair and reasonable for Creation Consumer Finance to refund that deposit to him.

Mr D was able to use the car to drive about 27,000 miles between September 2020 (when it was supplied to him) and February 2022 (when it passed an MOT test) and the car has remained available for him to use since then. I consider that it's fair and reasonable for him to pay for the use that he's had from the car. He clearly feels that he should receive a refund of his monthly payments but I find that it's fair and reasonable for Creation Consumer Finance to keep his monthly payments as payment for the use that he's had from the car.

I don't consider that it would be appropriate for me to require Creation Consumer Finance to supply an equivalent replacement car to Mr D or to take any other action (other than as described above) in response to his complaint.

My final decision

My decision is that I uphold Mr D's complaint and I order Creation Consumer Finance Limited to:

1. End the hire purchase agreement and arrange for the car to be collected from Mr D – both at no cost to him.
2. Refund to Mr D the deposit that he paid for the car.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 May 2022.

Jarrold Hastings

Ombudsman