

## **The complaint**

Mr S complains about the quality of a car he has been financing through an agreement with Creation Consumer Finance Ltd ("Creation").

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my 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.

I know it will disappoint Creation, but I agree with the investigator's opinion. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr S acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then Creation, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they 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, such as the mileage and age of the car when supplied.

The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply, when Creation were responsible for the car's quality, unless they can demonstrate otherwise.

I'm not persuaded Creation have provided sufficient information to dispute that assumption. Mr S had only just taken receipt of the car when it first broke down. It was therefore much more likely that the swarf in the system had been generated at some time before he took receipt of the car than during his very limited time in possession.

The relevant legislation gives consumers a right to reject the goods if a fault is identified in the first 30 days. In those circumstances they don't have to give the business an opportunity to repair the goods.

Mr S returned the goods to the dealership within 30 days but was advised he couldn't reject them. I think the business should have allowed Mr S to invoke his 30-day short-term rejection right and I don't think it matters that he didn't talk to Creation about that until he'd exhausted the process with the dealership. He'd already made his request.

### **Putting things right**

Mr S has explained that he sold the car and settled the agreement with Creation. I can see that Creation responded to us about that in March. They said they couldn't check their system at the time to see if Mr S had settled things and they explained he didn't own the car to sell it.

I've no reason to doubt Mr S's version of events, he says the car was bought by a dealership in the summer of 2021 and they settled the finance. So, it seems that there is nothing outstanding on the agreement and no longer a car to return.

But it's clear that Mr S's use of the car was impacted by the fault he had with it. He's explained that he couldn't use the car after it broke down for a second time in June 2020 and until it was repaired in August 2020. Creation should therefore refund any payments Mr S made towards his agreement in those months as he had no use of the car in that time. They'll need to add interest to that refund as Mr S has been deprived of the money. Mr S has suggested his use was impacted even more than that, but I don't think I have sufficient evidence to demonstrate that was the case.

Mr S has explained that he incurred some expenses as a result of the problems he had with the car. He's provided a receipt for £428.98 that he paid to diagnose the fault. But I've not seen evidence of the other costs he seeks to recover and in the absence of that evidence it wouldn't be fair to ask Creation to refund anything other than the charge for the diagnostic.

Mr S has clearly been inconvenienced by these matters. He's broken down a couple of times on the motorway and has needed to be recovered, and he's had to escalate his complaint to this service when I think it could have been resolved earlier. In those circumstances I'd agree with the investigator's suggestion that Creation pay him £300 in compensation.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell Creation Consumer Finance Ltd to:

- Refund any finance instalments paid by Mr S in June, July, and August 2020 in respect of the impaired use he had from the car, adding 8% simple interest per year from the date of payment to the date of settlement.

- Refund the £428.98 he paid for the diagnostic report, adding 8% simple interest per year from the date of payment to the date of settlement.
- Pay Mr S £300 to compensate him for the distress and inconvenience caused.
- Remove any adverse reports they may have made to Mr S's credit file in relation to this issue.

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

Phillip McMahon  
**Ombudsman**