

## **The complaint**

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

## **What happened**

In November 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 5 years old and had covered around 67000 miles.

When he was looking at the car before agreeing to buy it, Mr S noticed that there were warning lights illuminated relating to the rear set and low tyre pressure. One of the tyres had a puncture which the dealership said it would repair before Mr S collected the car.

When Mr S collected the car, he discovered that the puncture hadn't been repaired. He purchased a tyre himself but within a short time the low pressure warning illuminated again. Mr S took the car back to the dealer who found that an issue with the alloy wheels was causing repeated punctures. This was rectified at no cost to Mr S.

Whilst the car was with the dealership, Mr S advised that the rear seat warning light was still illuminated. He says the dealership never investigated or resolved this.

In May 2021 the car went into drivetrain mode and the warning light illuminated. The car was recovered and taken to a specialist, who found that the diesel particulate filter was blocked and that due to poor oil condition the turbo charger had failed. The specialist quoted repair costs of around £5,500.

Mr S complained to Creation about the quality of the car. In response, Creation said the issue was due to lack of oil and that neither it nor the dealer would be liable if the car hadn't been maintained correctly.

Mr S wasn't happy with Creations response and brought his complaint to this service.

Our investigator upheld the complaint. She said that based on the information from the specialist garage, there was a fault with the drivetrain which was likely to have been caused by a lack of servicing. The investigator said that because the car was sold to Mr S as being "fully serviced", Creation needed to put things right. The investigator said that Mr S should be allowed to reject the car and receive a refund of costs he'd incurred in relation to tyre repairs and diagnostic tests.

Creation asked for copies of the invoices but didn't say whether it accepted 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.

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'd expect a second hand car such as that supplied to Mr S to have a degree of wear and tear, and to require repair and maintenance more often than a brand new car. So, in order to uphold this complaint, I would need to be satisfied that that car was of unsatisfactory quality at the point of supply, as opposed to being affected by a fault which occurred due to general wear and tear.

Based on the evidence I've seen, I'm satisfied that the car has a fault. In relation to the tyres, Mr S says that he paid for replacement tyres before the fault with the alloy wheels was diagnosed and rectified by the dealership. The issue hasn't occurred since the repairs were carried out by the dealership, so I'm satisfied that the repairs were successful. But because there was a fault with the alloy wheels which caused repeated punctures, I think Creation should refund Mr S any costs he's incurred in relation to the tyres up until the time when repairs were carried out.

In relation to the warning light for the rear seat, Creation said that it would arrange for the dealership to resolve this at no cost to Mr S. I think this was a fair offer as resolution for this aspect of the complaint.

In relation to the drivetrain fault, I've reviewed the information provided by the specialist garage. This says that the fault has been caused by poor oil condition and that the car's service history doesn't correlate with the on board service record.

I've looked at the service history. This shows that the car was serviced in May 2017 (21,707 miles), in July 2018 (47,516 miles) and in November 2020 (67,891 miles).

Based on what I've seen, the car wasn't serviced at all in 2019. The specialist garage has said that the fault with the drivetrain occurred due to poor oil and lack of servicing. On balance, I'm persuaded that the car wasn't of satisfactory quality at the point of supply due to lack of servicing/missed servicing. Mr S has said that the car was sold to him described as "fully serviced". This isn't supported by the service history I've seen.

### **Putting things right**

I've explained why I don't think the car was of satisfactory quality at the point of supply. The relevant legislation states, amongst other things, that where a car isn't of satisfactory quality, the business is allowed one opportunity to repair. In this case, the dealer has already had an opportunity to repair the alloys. Given the amount of time which has now passed, I don't think it's reasonable to expect Mr S to agree to further repairs. Taking everything into consideration, I think Mr S should be allowed to reject the car.

The drivetrain fault occurred in May 2021 and Mr S hasn't been able to use the car since then. He stopped making payments because of the fault and hired another car. Mr S has provided an invoice for car hire for £534.22. Because Mr S hasn't made any payments since May 2021, I'm not asking Creation to refund any monthly payments.

Mr S has said that he cancelled the insurance and tax on the car and has incurred storage costs to keep it off the road as he wasn't able to use it. I've thought about whether Creation should refund these costs but on balance, I'm not persuaded that it was reasonable for Mr S to cancel the insurance and tax. He could've mitigated his losses by maintaining the insurance and tax and keeping the car parked on the road. So, I won't be asking Creation to refund any storage costs.

I've considered the impact on Mr S. He's suffered distress and inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. He's had to return the car to the dealership several times and had to arrange for the car to be taken to the specialist garage. He's also been unable to drive the car for a long time and has had to arrange alternative transport. I think it's fair to ask Creation to pay compensation for this.

Mr S has incurred some other costs in relation to the car which are directly attributable to the fault. He paid £220 and £15 for tyre repairs and £355.20 and £610 to the specialist garage. He also paid £432 to a third-party garage to get the car from the dealer to the specialist. I think Creation should refund these costs.

### **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 costs incurred by Mr S for tyre repairs being £220 and £15, the costs in relation to the specialist garage being £355.20 and £610, and the costs for transportation being £432

Refund £534.22 for car hire costs

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

Pay £200 compensation for distress and inconvenience

Write off the arrears and amend Mr S's credit file so that it shows no negative information 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 6 June 2022.

Emma Davy  
**Ombudsman**