

The complaint

Mr S complains that Creation Consumer Finance Ltd refused to let him reject a faulty car which had been misrepresented to him.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute so instead I'll focus on giving the 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons:

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Creation is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Creation have not fully engaged with this service in our dealing with this complaint and so I have to rely on evidence provided by Mr S including the independent report commissioned by Creation.

Firstly, I consider there has been a misrepresentation by the dealer. A misrepresentation is when a false statement of fact has been made and that false statement of fact induced a consumer to purchase the goods or services. In order to find a misrepresentation has occurred, there must be proof that a false statement of fact has been made and it needs to be decided that that false statement induced the consumer to enter into the agreement.

The car was described as having a full Ford service history when this was not accurate. I am satisfied this was an important matter for Mr S and that this influenced his decision to go through with the deal.

The car has a number of faults and the independent report states: “*..Based on the evidence which was available to ourselves at the time of inspection we do consider that the faults would have been present or in development at the point finance inception and subsequently it is the selling agents responsibility in our opinion..*”

Our investigator has set out the report’s findings in more detail, but it is clear that the car was faulty at the point of sale. Mr S identified the faults within a few weeks and although some repairs were carried out these were far from complete.

In summary Mr S acquired a car which had been misrepresented to him and was faulty at the point of sale so rejection is both fair and reasonable.

Putting things right

Mr S should be allowed to reject the car.

My final decision

My final decision is that I uphold this complaint and I direct Creation Consumer Finance Ltd to:

- end the agreement with nothing further to pay,
- collect the car at no further cost to Mr S,
- refund the deposit of £2,000,
- refund all repayments to the date of settlement as the customer reasonably stopped using the car within five days,
- pay Mr S compensation of £400 for the inconvenience and additional expenses as set out by our investigator,
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement,
- remove any adverse information from Mr S’ credit file in relation to the agreement.

HM Revenue & Customs requires Creation to take off tax from the interest. Creation must give Mr S a certificate showing how much tax they’ve taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 17 May 2022.

Ivor Graham
Ombudsman