

## **The complaint**

Mr B has complained that he is unhappy with the quality of a car he acquired in October 2020, using a hire purchase agreement with Creation Consumer Finance Ltd ("Creation").

## **What happened**

Mr B acquired a used Mercedes car in October 2020, using a hire purchase agreement. The cost of the car was £13,850, and of this, Mr B borrowed £10,033 over 60 months. The monthly cost was £224.04. The car was around five and half years old and the mileage was recorded as 21,790 at the point of sale.

Mr B said that problems began to arise with the car immediately after he acquired it. In summary, Mr B told us that the passenger-side indicator light on the mirror, and the steering-wheel functions including the horn, didn't work, the tread on the nearside rear tyre was close to the legal limit, the internal screen didn't work, there was water ingress to the car, and a bonnet malfunction message was showing on the dashboard.

Further issues were identified when the car was looked at by a mechanic – there were problems with the windscreen and the back seat wasn't properly secured.

These issues were repaired in March 2021, although Mr B was not reimbursed in full by the dealership – it contributed £262. Mr B paid £423.94 on top of that to get the repairs done, as well as a further £186 for reports on the car – so the cost to Mr B was £609.94 in total. Mr B was unhappy that he had to pay for these repairs.

Mr B then told us that two months later, in May 2021, the car had a serious oil leak. Mr B took the car to a local garage and the mechanic noted the fault as an excessive amount of oil in the coolant expansion tank and oil leaking from the coolant expansion cap. The mechanic suspected a faulty oil cooler. The car has been rendered inoperable and Mr B now wishes to reject it.

Creation said that it didn't think the current problem was there at the point of sale, and therefore it didn't consider itself responsible for it.

Our investigator thought the complaint should be upheld, and proposed compensation for Mr B. Creation didn't respond at first, so the complaint was passed to me for review. Creation then twice said it was awaiting comments from the dealer. But despite further contact from our investigator, Creation has not provided any further evidence or information.

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

Because Creation supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case of course, the car was around five and a half years old. And the price was lower than that of a new car. So it's reasonable to expect that parts of the car would have suffered a degree of wear and tear, and that a car of this age would likely need repair and maintenance sooner than a newer car.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

I set out above the information that Mr B provided about the sequence of events. The first faults occurred almost immediately after Mr B took delivery of the car, but he didn't, at that point, reject the car, so I am not considering the short term right to reject under the CRA here.

Mr B provided invoices for two reports he obtained, costing £186, and invoices for repairs (relating to the initial faults) costing £685.94, so he paid out £871.94 in total. Mr B confirmed the supplying dealer made a part contribution of £262 to the repairs, reducing his outlay to £609.94. Mr B also provided copies of several email exchanges with the dealer in relation to the initial faults, along with supporting photographic evidence. Mr B has not proceeded with repairs in relation to the oil leak, and now wishes to reject the car.

I also have a copy of the independent report on the car that was commissioned by Creation.

As I noted above, Mr B sent in a report from a local garage regarding the oil leak, with the suspected cause being a faulty oil cooler. The independent report goes into much more detail about the car, but it confirms the oil leak. It goes on to say that confirmation of the exact cause of oil entering the cooling system is not fully possible given the limits of the inspection, but *"oil cooler failure and cylinder head gasket failure are strong possibilities given the very large quantity of oil ingress to the cooling system."*

Creation didn't think the oil leak was its responsibility – the independent report said that *"There is no suggestion that the current issue with engine was present the point of purchase as the vehicle couldn't have driven 6000 miles plus since the date of purchase, therefore the current issues engine has obviously developed after the point of sale"*. The report also noted that the car had passed an MOT around the date of purchase.

I accept that Mr B had had the car for seven months when the oil leak occurred, and had driven just under 6,500 miles in that time. And the car was not new. But as I explained above, when looking at whether the car was of satisfactory quality I need to consider the durability of the components.

The independent report doesn't suggest what might have led to the possible failure of the oil cooler or the cylinder head gasket. Our investigator asked Creation for further information on this point, but Creation didn't respond. In the absence of any additional information, I've

considered the expected lifespan of these parts, and I've seen no evidence from either the reports, or the age and mileage information about the car, to suggest that they were likely to have simply reached the end of the expected lifespan. What occurred seems to have been a significant fault and not something a reasonable person would expect in a car of this age and mileage. And I've not seen anything to make me think that Mr B caused or contributed to the fault occurring.

I've also kept in mind the earlier problems with the car, which were repaired in March 2021. As I noted above, Mr B sent in copies of several email exchanges with the dealer over the course of the period between him acquiring the car and the repairs being carried out – the first of these was almost immediately after he got the car. In summary, the repairs involved a problem with a clock spring, a tyre, a wing mirror, and water ingress into the car. The evidence suggests that these faults were present when Mr B acquired the car – again there is no evidence to suggest that Mr B caused or contributed to their occurrence.

So taking all of this into account, I don't consider this car was of satisfactory quality at the point of sale and therefore I am upholding Mr B's complaint.

Mr B said that he wants to reject the vehicle. It's not clear from the evidence I have that repairs will resolve the issues to bring the car to a satisfactory quality, and I think it's likely that they would take longer than Mr B ought reasonably have to wait, especially as he has not been able to use the car for some time. As a result I don't consider it would be fair and reasonable to require Creation to get the repairs carried out, or to expect Mr B to have to wait for them.

I've also taken into account that repairs had already been carried out on this car, for which I consider Creation liable. I've concluded that the car wasn't of satisfactory quality at the point of sale, and in those circumstances, the CRA gives Mr B a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality. This doesn't give Creation a further chance to repair different faults that also render the car of unsatisfactory quality. So I am satisfied that Mr B is entitled to reject the car. This means that Creation should end the agreement and collect the car at no cost to Mr B.

I also note that Mr B said he hasn't been able to use the car since 1 June 2021 because of the problems with it – he was advised not to drive the car with the oil leak. (I can see from the independent report that jumpstarting the car didn't result in the engine turning over during the inspection, and that the car '*carried clear indications that it had been immobile for some time*'.) I think it was reasonable for Mr B to stop using the car at this point, and therefore I think it fair that Creation should refund any monthly payments Mr B has made under the hire purchase agreement from 1 June 2021 onwards.

I also think that, although Mr B was able to use the car from 23 October 2020 to 12 March 2021, there were a number of issues - as I've explained above – that meant the car wasn't performing as it should have done, so I think it's fair to require Creation to refund a proportion of the monthly payments Mr B made during this period. I consider a ten percent refund of those payments fairly reflects the impaired use.

I've set out above the amount Mr B paid for the repairs to the car in March 2021. As I've concluded that the car wasn't of satisfactory quality when it was supplied, I consider it fair that Creation should refund the amount Mr B paid out. In addition, Mr B has experienced distress and inconvenience as a result of the problems with the car and I consider it fair for Creation to pay a further amount of £175 to reflect this.

## Putting things right

Creation should:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Mr B.
- Refund Mr B's deposit/part exchange contribution of £3,817.
- Refund all monthly payments Mr B made under the hire purchase agreement from 1 June 2021 to the date the compensation is paid.
- Refund 10% of the monthly payments Mr B made under the hire purchase agreement between 23 October 2020 and 12 March 2021.
- Refund £609.94 in relation to the repairs carried out in March 2021.
- Pay 8% simple interest\* on all refunded amounts from the date Mr B paid them to the date compensation is paid.
- Pay £175 for the inconvenience Mr B experienced due to the faults with the car.
- Remove any adverse information from Mr B's credit file (if any has been added).

*\*if Creation considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

## My final decision

For the reasons given above, I have decided to uphold Mr B's complaint and I direct Creation Consumer Finance Ltd to compensate Mr B as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 October 2022.

Jan Ferrari  
**Ombudsman**