

The complaint

Mrs F has complained that the car she obtained through a Hire Purchase agreement from Creation Consumer Finance Ltd ("Creation") was not of satisfactory quality.

What happened

As this complaint was initially agreed by both parties at view stage last year, I won't go through all the details in full here but will summarise them and then focus on what happened afterwards with the resolution.

Mrs F obtained the car in October 2020 and reported issues with shaking and vibration at speeds over 55mph immediately to the dealership (she noticed it on the drive home from when she picked the car up). They advised her to get the tyres balanced as they were new, and they would refund the cost. This was done, however the problems persisted. The dealership then advised her to have the wheels aligned and they would cover the cost, which she did. But the problems continued.

The car was inspected at a main dealership in November 2020, and they identified the problem and recommended changing all 4 tyres. Mrs F asked the dealers to arrange this, but they ignored her requests. Shortly after this the coolant light came on, and when this was investigated in January 2021, a leak was found, which had caused other problems including with the steering rack bush.

By now Mrs F was discussing the issues with Creation as the dealership had stopped replying to her, and when she sent them the main dealer report on these problems, Creation asked for the dealership to inspect the car. In March 2021 the dealership collected the car and drove it away, despite Mrs F warning them the car wasn't safe to drive.

In May 2021 the dealership contacted Mrs F to say they had carried out all repairs on the car and she should collect it. But they didn't explain what they had repaired, and after the problems experienced previously, she wasn't confident to collect the vehicle and had lost faith in it. She told Creation she wanted to reject the vehicle, saying that they had the opportunity to repair the vehicle already when she'd contacted the dealership and been told to get the wheels and tyres aligned and balanced, so felt she was within her rights to reject the vehicle.

When Creation declined this request, she raised a complaint. In their final response, Creation said the repairs had been carried out, so they considered the matter resolved. At this point Mrs F brought her complaint to our service.

An investigator here looked at the case and gave their view in July 2021 that the vehicle wasn't of satisfactory quality, and there was evidence of at least 3 attempts at repair within the first few weeks. There was also an independent report carried out in April 2021 which identified issues with vibration and shaking when travelling at speed and recommended further investigation. It said if the problem was evident or developing at point of sale, it would have been evident within the first 500 miles. There was evidence of Mrs F telling the dealership about this problem on the drive home from collecting the car, so the investigator

felt Mrs F was entitled to reject the car under the rights provided by the Consumer Rights Act 2015.

Creation accepted this view, but Mrs F asked for some additional costs she had incurred to be considered, so the investigator updated their view on 20 August 2021 to include some additional costs. Creation accepted this updated view on 13 September 2021, and the case was closed on 15 September 2021 with confirmation that both parties had accepted the resolution proposed by the investigator.

This agreed resolution required Creation to do as follows:

- Cancel the finance agreement with nothing further owed
- Creation to collect the vehicle without any further costs to Mrs F
- Refund the monthly payments paid, less any usage charge for the mileage travelled by Mrs F, along with 8% simple interest calculated from the date Mrs F made her payments to the date the complaint is settled
- Refund of any deposit paid along with 8% simple interest calculated from the date Mrs F made her payment to the date the complaint is settled
- Refund a total of £206 which Mrs F paid to repair the vehicle
- To pay Mrs F a payment of £150.00 for the trouble and upset this has caused Her
- Refund the cost of the Road tax for a period of five months totalling £127.08
- Refund the cost of the vehicle insurance for a period of five months totalling £546.93
- Remove any adverse entries on Mrs F's credit file in relation to this credit Agreement.

In October 2021, having heard nothing from Creation, Mrs F contacted our investigator to ask if we could chase them up. There was communication from Mrs F to us and Creation, and from ourselves to Creation, through October, November, and December 2021, as Mrs F became increasingly concerned. The impact on her credit file was causing her problems, and she needed the money back from this resolution to buy a new car. She had never collected the car after it had been taken back to the dealership in March 2021, so the business had the car, but weren't engaging to complete the payments to her or to correct her credit file.

Finally, in December 2021, after neither Mrs F nor our service had managed to escalate this and get a response from Creation, Mrs F asked for the case to be re-opened for an Ombudsman to make a final decision on the case.

I issued a provisional decision on 12 June 2022. I made the following provisional findings:

I initially attempted just to chase through the previously agreed resolution with Creation. As both parties had already agreed this resolution, but it hadn't been actioned, this felt the sensible approach to get things resolved quickly. However, I suffered similar problems in engaging with Creation, and despite escalating this through agreed channels to them, it took until March 2022 for the business to respond and to begin resolving things. And when they did that and made an initial payment to Mrs F, it didn't include her £6,000 deposit. Creation emailed Mrs F on 12 April 2022 to say that she had to get the deposit back from the dealership herself, not from them.

I emailed Creation to confirm this wasn't the agreed resolution and it was their responsibility to give Mrs F her deposit back, and that I would complete a final decision to confirm this. But in the meantime, Mrs F has gone to the dealership and managed to get the deposit back from them. She was extremely upset however at having to do this, and the fact that it had

taken 7 months from the case being agreed at our service, for her to get the compensation she was due.

This had caused her financial difficulties during this time period, and a lot of stress at having to contact us and the business dozens of times to try to get what she was due. She asked me therefore to consider still issuing a final decision because she had suffered far more distress and inconvenience since the initial view which had been agreed, and she said she also didn't think her credit file had yet been corrected.

I have investigated the complaint itself and agree entirely with the view issued from our service that the car was not of satisfactory quality, and Mrs F was entitled to reject it. All the evidence shows that the car had issues with shaking and vibration, along with, and possibly linked to, the coolant leak identified. These issues persuade me the car wasn't of satisfactory quality when it was supplied, as they began on the first day the car was supplied.

There were repairs attempted on several occasions from the first day the car was collected, and it's clear these repairs didn't resolve the situation, and so Mrs F was entitled to reject the car based on her rights under the Consumer Rights Act 2015. Additionally, she hadn't authorised the further repairs; Creation had asked the dealership to collect the car to investigate the problems, but there hadn't been an agreement to repair any issues, so the fact the dealership decided to do this isn't relevant to this complaint.

I'm also in agreement with the bulk of the resolution that was proposed and agreed by both parties at the time in July/August 2021 as detailed above.

It's clear however the Mrs F has suffered considerable further distress and inconvenience since that time, in trying to get things resolved. In considering this, I've thought about whether this is just as a result of complaint handling, which isn't part of our remit to consider.

But I don't think it is. Creation had accepted that Mrs F was entitled to reject the car in September 2021 and agreed what they needed to do to put things right. In not carrying this out, despite agreeing it, they've caused Mrs F to suffer further distress and inconvenience. This isn't about their complaint handling; it's about how they've dealt with her after agreeing to end her agreement and compensate her for the car being of unsatisfactory quality.

Mrs F didn't have the car anymore but hadn't been paid the money due back to her. Whilst it appears this money has been paid to her now, including interest, that doesn't recognise the inconvenience these delays caused her, and the upset and stress from not knowing what to do, and if or when she was even going to get her money back and her compensation. It will also have caused her further distress that our service also couldn't get any response from Creation when chasing this up too. She began to feel she wasn't going to get her money back, which caused considerable distress.

I think the additional distress and inconvenience caused here is considerable, so my provisional decision is that I intend to ask Creation to pay her an additional £500 for this, on top of the £150 they originally agreed to pay in August 2021.

I believe all of the originally agreed redress may now have been paid, but potentially the credit file hasn't yet been amended. So, my provisional decision is that I intend to direct Creation to ensure that all of the below has been carried out:

- Cancel the finance agreement with nothing further owed.*
- Creation to collect the vehicle without any further costs to Mrs F.*
- Refund the monthly payments paid, less any usage charge for the mileage travelled*

by Mrs F, along with 8% simple interest calculated from the date Mrs F made her payments to the date the money is paid back to Mrs F.

- Refund of any deposit paid along with 8% simple interest calculated from the date Mrs F made her payment to the date the money is paid back to Mrs F.*
- Refund a total of £206 which Mrs F paid to repair the vehicle.*
- Pay Mrs F the originally agreed payment of £150.00 for the trouble and upset this had caused her, plus an additional £500 now to recognise the considerable further distress and inconvenience described above.*
- Refund the cost of the Road tax for a period of five months totalling £127.08.*
- Refund the cost of the vehicle insurance for a period of five months totalling £546.93.*
- Remove any adverse information from Mrs F's credit file in relation to this credit agreement.*

My provisional decision

For the reasons I explain above, I intend to uphold the complaint, and I intend to ask Creation Consumer Finance Ltd to follow my directions above.

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.

Creation did not respond with any comments about my provisional decision. Mrs F responded that she agreed with it and my recommendations.

As such, I see no reason to depart from my provisional findings and the reasons for them. For the reason laid out in my provisional decision and repeated above, I am upholding this complaint.

Putting things right

I instruct Creation to ensure that all of the below has been carried out:

- Cancel the finance agreement with nothing further owed.
- Creation to collect the vehicle without any further costs to Mrs F.
- Refund the monthly payments paid, less any usage charge for the mileage travelled by Mrs F, along with 8% simple interest calculated from the date Mrs F made her payments to the date the money is paid back to Mrs F.
- Refund of any deposit paid along with 8% simple interest calculated from the date Mrs F made her payment to the date the money is paid back to Mrs F.
- Refund a total of £206 which Mrs F paid to repair the vehicle.
- Pay Mrs F the originally agreed payment of £150.00 for the trouble and upset this had caused her, plus an additional £500 now to recognise the considerable further distress and inconvenience described above.
- Refund the cost of the Road tax for a period of five months totalling £127.08.
- Refund the cost of the vehicle insurance for a period of five months totalling £546.93.

- Remove any adverse information from Mrs F's credit file in relation to this credit agreement.

If Creation considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mrs F how much it's taken off. It should also give Mrs F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I am upholding this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 26 July 2022.

Paul Cronin
Ombudsman