

The complaint

Mr S complains about the quality of a car that was supplied to him under a hire purchase agreement with Creation Consumer Finance Limited ("Creation").

What happened

In April 2021 Mr S took out a hire purchase agreement with Creation for a used car. The car was three years old and had travelled approximately 35,322 miles. The cash price was £37,937. Mr S paid a deposit of £4,000, followed by monthly payments of £588.40.

In October 2021 with 52,385 miles on the clock, the car broke down and had to be recovered. Mr S had the car looked at by a mechanic, who reported:

"upon my inspection I found that the underside of the vehicle is completely covered in engine oil. When the vehicle is turned over it appears to have little or no compression."

"When the oil cap is replaced the engine appears to breathe heavily from the left hand side. Without a full strip of ancillary components it would be difficult to suggest where this is from, although I believe it has a rupture of the cylinder block suggesting maybe a broken conrod."

Mr S complained to Creation that the engine shouldn't have failed within six months of having the car, and that it needed to be fixed. But Creation didn't uphold Mr S's complaint. They said the car had covered more than 17,000 miles without being serviced, so they considered the issue to be due to lack of proper maintenance.

Unhappy with this, Mr S brought his complaint to our service. He took the car to a garage that specialises in this type of vehicle. After carrying out a compression test on the car, the garage quoted for a replacement engine.

After looking into what had happened, our investigator said he didn't think the car was of satisfactory quality when it was supplied to Mr S. He felt it wouldn't be fair to insist Creation carried out a repair due to the costs involved. So, he said Mr S should be able to reject the car, end the agreement with nothing further to pay, and receive a refund of his £4,000 deposit.

The investigator said Creation should refund the monthly rental payments Mr S made from October 2021, because he hadn't been able to use the car since then. And he thought Creation should pay Mr S £250 to compensate him for the distress and inconvenience he'd experienced.

Mr S accepted the investigator's view. Creation didn't respond, so the case has come to me for a 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.

Mr S's complaint is about a car supplied under a hire purchase agreement. Entering into consumer credit contracts like this as a lender is a regulated activity. So, I'm satisfied I can look into Mr S's concerns about Creation.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there's an implied term that the quality of the goods is satisfactory.

The CRA says the quality of the goods includes their state and condition. It says things like fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account any description of the goods, the price and all the 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 its age, mileage, and history.

In this case, I take into account that the car supplied to Mr S was three years old and had covered approximately 35,322 miles. I don't think a reasonable person would have the same standards for this car as they would a newer one with less mileage. I think they'd probably expect some parts of the car to have suffered some wear and tear.

But I also bear in mind that this car cost £37,937 and was a model many consider to be a high end, premium brand. So even though it wasn't new, I think an average person would still expect it to be of relatively high quality. And I think they'd expect to be able to drive it for a reasonable amount of time without any major issues.

I've seen a copy of the advisory invoice Mr S obtained from the garage, dated 3 May 2022, quoting for a replacement engine. So, I'm satisfied that there's a significant fault with the car. The garage recorded the car's mileage to have been 52,385 at that time.

Creation say this problem occurred because the car had travelled around 17,000 miles without proper servicing. And I've seen that the advisory invoice Mr S obtained says:

"After checking the online service history for the vehicle, there is an outstanding service requirement for the 42k service which should have been completed at 09/10/2021 at 42652 miles..."

Mr S says he did have the car serviced – he's shown us a copy of the invoice. This is dated 9 July 2021 and records the car's mileage to have been 38,213 at the time. So, I'm satisfied that the car was serviced well in advance of the date and mileage the next service was due. For this reason, I'm not persuaded it's likely that the engine failed due to lack of proper servicing.

All things considered, I find the car wasn't of satisfactory quality when it was supplied to Mr S. I say this because I wouldn't expect this car to need a replacement engine after little more than three years and 52,000 miles. I think a reasonable person would expect the car to be more durable than this.

Putting things right

I note that Mr S wanted Creation to fix the car. Although the CRA gives Mr S a right to a repair, it goes on to say that he can't require Creation to do this if the cost of a repair would be disproportionate, taking into account the car's value. So, I've thought about whether any other remedy is more appropriate here.

The advisory invoice Mr S obtained from the garage states the cost of a new engine to be £11,500.96. It recommends the turbo and injectors are inspected at the time of engine removal. It goes on to say that, if these parts are also required, a new turbo would cost £2,135.40 and new injectors would cost £415.15 each. And I need to bear in mind that repairing the car might also involve other unexpected costs.

Having thought about all of this, I think the total cost of a repair is likely to be disproportionate in this case. For that reason, I think Mr S should now be given the right to reject the car. This means the agreement will come to an end with nothing further for Mr S to pay, and his £4,000 deposit should be refunded.

Mr S has told us he hasn't been able to use the car since October 2021. He says he wasn't offered a courtesy car, so he had to spend money on other transport. So, I think it's fair for Creation to refund the payments he's made under the agreement from 18 October 2021, which is the date he complained to them.

I think being without the use of a car has been inconvenient for Mr S. And I can understand his frustration at having to continue making monthly payments of £588.40 for a car he's been unable to use since October 2021. He's also had to arrange for the car to be inspected, to get this problem resolved. I think Creation should pay Mr S £250 to compensate him for the distress and inconvenience he's been caused here.

My final decision

For the reasons I've explained, I uphold this complaint and direct Creation Consumer Finance Limited to:

- Collect the car and end the finance agreement, at no further cost to Mr S.
- Refund the £4,000 deposit Mr S paid.
- Refund the amount Mr S paid under the agreement from 18 October 2021.
- Interest should be added to each of the refunded payments, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Pay Mr S £250 compensation for the distress and inconvenience he's been caused.

If Creation consider tax should be deducted from the interest element of the award, they should tell Mr S how much they've taken off. They should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax if he's eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 September 2022.

Corinne Brown
Ombudsman