

The complaint

Mr S complains that a car supplied to him by Creation Consumer Finance Ltd (“Creation”) didn’t have all the advertised features.

What happened

Mr S acquired a used car under a hire purchase agreement with Creation for around £19,000 in June 2021. Mr S made a deposit payment of £3,401 and under the agreement, he was required to make 59 payments of £341.33 followed by one final payment of £351.33. The car was around five years old and had covered around 72,000 miles when it was supplied to Mr S. Mr S also separately purchased a warranty for £599. The car was acquired from a dealership I’ll refer to as P.

The same day, Mr S complained to P. He said the car was mis-sold because many of the features that attracted him weren’t available or were faulty or damaged. He said he returned the car, cancelled his finance agreement and expected to receive a refund. Mr S said P didn’t respond. So, he referred his complaint to Creation.

Creation issued its response to Mr S’s complaint. It said Mr S had an opportunity to inspect the car and then made a decision to acquire it. It didn’t uphold his complaint.

Unhappy with this, Mr S referred his complaint to this service. He said he had returned the car during the cooling off period, as it had been misrepresented to him. He said P told him they were settling the finance, but he didn’t hear anything further. Mr S said he checked his credit file and noted that Creation had applied adverse information.

Our investigator looked into the complaint and he thought the car had been misrepresented to Mr S. He said the dealer had accepted that a number of features that it had listed in its advert for the sale of the car were incorrectly listed. He also said Mr S should have been entitled to withdraw from the agreement as he exercised this right within 14 days.

Creation responded and said that Mr S’s right to withdraw from his finance agreement was a different right to reject the car. It said that the Consumer Rights Act 2015 (“CRA”) said that Mr S couldn’t dispute anything which would have been evident upon inspection, where Mr S had an opportunity to examine the car. It also said P had provided Mr S with a disclaimer which said the specifications may not be accurate.

As Creation remains unhappy, the complaint has been passed to me to decide.

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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I’ve read and considered the whole file and acknowledge that Mr S and Creation have raised a number of different complaint points. I’ve concentrated on what I think is relevant. If I don’t comment on any specific point it’s not because I’ve failed to take it on board and think about it – but because I don’t think I need to comment on it in order to reach what I think is the right

outcome. For this reason, I haven't commented on our investigator's findings on Mr S's right to withdraw from the agreement.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. Creation is the supplier of the car under this type of agreement and so, is responsible for dealing with a complaint about its quality.

The CRA covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality. In Mr S's case, the car he acquired was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, given its age, mileage and price.

The same day Mr S acquired the car, he says he called P and explained a number of the car's features were missing or faulty. He then says he returned the car and was asked to write to P. I accept it's likely this is an accurate version of events, as Mr S has supplied a follow up email from five days after he acquired the car, in which he's referenced said call and said he's left the car with P. In addition, P in an email to this service, have said that shortly after Mr S was supplied the car he contacted them to complain that some features weren't present. And in this email, P reference that Mr S told them he saw the advert on the third party website Mr S has referred to.

In the email, Mr S has said the car had a number of faults with it and that a number of features the car was advertised with, were unavailable. He has said the start/stop system, the floor mats, the keyless go starting function, the seat lumbar support, the seat cushion depth adjustment, heated front seats, electrically folding mirrors, attention assist, sat nav and the variable speed limiter, were not features the car was supplied with. He's said the driver's seat leather had a six inch gash which was hidden by a cover and the cruise control only partially worked.

P say the advert that Mr S has referred to was displayed on a third party website. P say the advert on their own website had a disclaimer. I've seen a copy of the advert from the third party website that Mr S says he saw before deciding to acquire the car. It lists the items Mr S has said were not present with the car and there is no disclaimer with the advert.

Whilst I've not seen a copy of the advert on P's own website, I've noted that other adverts displayed on their website contain a disclaimer. So, I think it's likely this disclaimer was present on the advert for the car Mr S acquired on P's own website. The disclaimer says the specification listed on its website is for a typical vehicle of this model and year when manufactured. It says there may be differences to the specification of the car and asks the reader not to rely entirely on it. It asks the reader to check to confirm the features are present that will influence their decision to acquire the car, so it meets the readers requirements and expectations.

P have said that Mr S didn't rely on the advert on the third party website, as he had time to inspect the car before agreeing to be supplied with it. They say Mr S didn't mention the advert until some days after he acquired the car. P have also said they didn't supply the third party website with any advert. They said all adverts they supplied carried the disclaimer.

I've thought carefully about this and having done so, whilst I take on board what all parties have said about the advert, I'm satisfied that it's more likely than not that Mr S relied on the advert from the third party website. I say this because I'm persuaded that Mr S did call P the

same day, to let them know that certain features of the car were faulty or missing. These features were listed on the third party website without any disclaimer and the advert referred Mr S to contact P if he was interested – which Mr S says he did.

P have said that the advert is irrelevant as Mr S had an opportunity to inspect the car before agreeing to be supplied with it. However, the CRA says that where goods are supplied by description, the goods must be as described. Here I'm satisfied the description is that in the advert on the third party website. The CRA goes on to say that goods can be supplied by description, even if they are made available for a consumer to see and select. As P have pointed out, Mr S did have a chance to see the goods. But P haven't said that they told Mr S about their disclaimer prior to supplying the car to him. So, I'm not persuaded the description of the car was accurate and neither am I persuaded that Mr S was told some of the features of the car may not be available, before he entered into the hire purchase agreement.

P have confirmed in an email to our service that some of the features of the car supplied to Mr S were missing. These are the keyless go starting function and the heated front seats. P have provided evidence that the lumbar support and electronic folding mirrors were available. I've also seen some call notes between P and Creation taken 10 days after Mr S was supplied the car. These say that a diagnostic test has been carried out which showed a couple of faults due to voltage and the battery had failed. No further supporting information has been provided by either party to suggest any of the other features Mr S complained about were missing or faulty. What is clear, is that the car didn't match the description on the third party website, as it had some faults and it had some advertised features missing. And so, I'm satisfied the car wasn't as described and that Mr S was entitled to exercise his right to reject the car when he returned the car to P, within five days of being supplied the car.

I've gone on to consider what Creation need to do to put things right.

As I'm satisfied Mr S exercised his right to reject the car, Creation should cancel the hire purchase agreement with nothing further to pay from Mr S. It should also remove any information about the agreement from Mr S's credit file, as he only had the car for around five days.

I've considered whether Mr S should be charged anything for his use of the car. But given that the car was supplied to Mr S with 72,050 miles and he has shown he returned the car with a mileage reading of 72,125, I don't think it is fair or reasonable to charge Mr S for his use of the car for only 75 miles.

Mr S made deposit payments totalling £4,000 towards the cost of the car. The deposit payment included the cost of the warranty, which I have not seen a copy of, but all parties accept this cost Mr S £599. The finance agreement lists the deposit amount as £3,401, but this amount doesn't include the cost of the warranty. I think Mr S should be refunded the cost of the warranty as he hasn't had benefit of it. P have also confirmed that Mr S made a successful chargeback of £2,200. Mr S has also let us know he raised a chargeback and a received a refund through that process. So, Creation should refund Mr S the remaining £1,800 of the deposit. It should also pay Mr S 8% simple interest on this amount from the date of payment until the date of settlement, to compensate him for not having access to these funds.

My final decision

For the reasons I've outlined above, I uphold Mr S's complaint. I instruct Creation Consumer Finance Ltd to:

- End Mr S's agreement with nothing further to pay;
- Pay Mr S's deposit of £1,800;
- Pay Mr S 8% simple interest on this amount from the date of payment until the date of settlement*; and

- Remove any information about the hire purchase agreement from Mr S's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 July 2023.

Sonia Ahmed
Ombudsman