

The complaint

Miss M complains that a used car she got with a hire purchase agreement (HPA) from Creation Consumer Finance Limited (CCFL) was of unsatisfactory quality.

Miss M is represented by a relative but I'll refer to everything that's been said on her behalf as if Miss M had said it herself, to keep things simple.

What happened

Miss M entered into the HPA on 22 May 2021. An engine management light (EML) came on not long after and she took it to a third party garage (TPG) for checks. She was told the car had defective tyres and needed a new front brake, amongst other things. She contacted the supplying dealer (that I'll call T) in early June. T said these were service issues and asked to inspect, saying it would repair any major issues. Miss M was unhappy, she was worried about safety and she'd lost faith in the car - and in T. She wanted to reject the vehicle and get her deposit back. She wrote to T on 12 June 2021 formally seeking to reject under the Consumer Rights Act 2015 (CRA) on the grounds the car was of unsatisfactory quality.

About ten days later Miss M obtained paperwork from the TPG that set out the faults it had identified and estimated repairs would cost over £1,000. Amongst other things, the TPG said rear brake drums were worn above minimum specification and needed replacing, the exhaust was leaking and needed work, front brake discs were very close to the minimum specification and some tyres were heavily perished and on the legal limit of being roadworthy.

Disappointed with T's response, Miss M complained to CCFL in August 2021. CCFL said once the HPA was signed it couldn't cancel the finance unless major faults were identified and the car was unroadworthy. CCFL considered rejection was at the dealer's discretion and T wouldn't take the car back unless they found a major fault that was beyond repair.

Miss M didn't think that was fair so she contacted our service and one of our investigators considered the evidence. He thought the car was probably of unsatisfactory quality when Miss M got it - given the number and nature of faults identified soon after supply. He didn't think a reasonable person would expect so many faults like these so soon in a car of this age, price and mileage. He was satisfied that Miss M has a short term right to reject under the CRA and she'd exercised this in time. The investigator recommended the complaint should be upheld and CCFL should collect the car and refund the deposit of £3,000. Miss M had driven the car over 1,500 miles at that stage and he found it fair she should pay one instalment for use. He said CCFL should refund all but one of the monthly payments, plus interest and pay Miss M £200 compensation for associated distress and inconvenience.

Miss M accepted the investigator's recommendations but CCFL didn't agree and the matter was referred to an ombudsman for a decision. In summary, CCFL refers to section 75 of the Consumer Credit Act 1974 (CCA) and says T should have had the chance to inspect and repair the car but Miss M cancelled two appointments T made. And the paperwork from the TPG is an invoice not an inspection report which outlines faults but doesn't indicate how they arose.

Having considered the evidence available, I was minded to uphold the complaint but my reasons weren't quite the same as the investigator's - and I'd seen some new evidence. I issued a provisional decision on 23 June 2022 to let the parties consider my provisional findings and make further submissions (if they wanted to) before I made my final decision.

I've set out what I decided provisionally (and why) below and this forms part of my final decision.

My provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

CCFL has referred to Section 75 CCA in correspondence but I'm satisfied that Miss M brings her complaint to our service because she acquired this car with a HPA. And CCFL, as the supplier of the car under the HPA, is responsible for ensuring that the car was of satisfactory quality at the point of supply under the CRA.

What amounts to "satisfactory" quality will vary depending on individual circumstances, but it's generally reasonable to take a vehicle's age, cost and mileage at the point of supply into account. This car was around five years old, cost about £6,000 and had around 44,000 miles on the clock when Miss M got it. As such, I think most people would accept that it was likely to have some parts that were worn and would need replacing or repairing sooner or later – which is reflected in the lower price paid compared to the price of a brand new vehicle.

From the evidence I've seen, I'm satisfied that Miss M had concerns about the quality of the car within a week or so of getting it. It looks as if she contacted T and she was so disappointed by the response that she contacted an advice agency and took the car to be checked by a TPG. I'm satisfied that the TPG identified a number of faults estimated to cost more than £1,000 to put right. And I think a reasonable person would not expect a car like this to need this sort of work so soon after supply.

I find it understandable that Miss M was concerned about the nature of the issues found – which involved brakes and tyres, among other things, and might have safety implications. I think this was probably all the more troubling given T had provided a 99 point vehicle safety check (which included brakes and tyres) dated a few days before supply. And I can see why Miss M lost faith in the car - and in T.

Taking everything into account, I think a reasonable person would consider this car was of unsatisfactory quality when it was supplied. I'm satisfied the CRA says Miss M has a short term right to reject within thirty days in this situation - there's no obligation to allow the supplier the chance to repair. I think Miss M exercised that right when she wrote to the dealer on 12 June 2021 and this should have been accepted at the time.

CCFL has suggested that Miss M didn't supply evidence of the faults found when she complained. But I'm satisfied (from emails I've seen between her representative and CCFL) that she supplied evidence from the TPG to CCFL in August 2021.

CCFL has acknowledged that the paperwork from the TPG confirms faults were found but it says the TPG doesn't say how they arose. Looking at the time Miss M had the car and distance travelled when she first complained to T as well as the timing of the TPG's inspection, I think it is more likely than not these issues were present when Miss M got the

car. I'm not persuaded they're likely to have resulted from something Miss M did or didn't do. And I don't think a reasonable person would expect a car of this age, price and mileage at the point of supply to have such issues within days of acquiring it.

In light of my provisional findings above, I'm minded to agree with the investigator that it's fair CCFL should allow Miss M to reject the car now. Paperwork I've seen indicates Miss M paid a deposit of £3,000. If that's not correct the parties should let me know in response to this provisional decision. I find it fair that she should have the deposit paid refunded, plus interest.

I understand Miss M has continued to drive the car while her complaint was ongoing – albeit with some reluctance - as she had no other means of transport. In May this year Miss M told us the current mileage is about 55,000. That means she has travelled about 11,000 miles in the year or so since the car was supplied. I think it's fair Miss M should pay for that use. So, on the current evidence, I can't fairly find CCFL should refund any monthly payments.

Miss M told us she's had to pay for some repairs to the car during this time. She hasn't been able to supply the relevant paperwork unfortunately. And I can't reasonably conclude that CCFL should reimburse this cost, on the evidence I have.

I'm satisfied it's likely Miss M experienced upset and inconvenience because she was supplied with this faulty car. Amongst other things, she visited and telephoned T several times and she took the car to the TPG for checks. I think it's probably been a very worrying time for her and I find it is fair and reasonable for CCFL to pay £200 compensation for the distress and inconvenience she experienced.

I've seen nothing to suggest that CCFL has recorded any adverse information about the finance on Miss M's credit file. And Miss M told us she was able to maintain her monthly repayments throughout so I don't think I need to consider whether any amendments should be made to her credit record. Again, if that's not correct, the parties should let me know in response to this provisional 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.

I invited the parties to consider my provisional findings and let me have any comments and/or new evidence by 7 July 2022. I said I'd review all the evidence available after that and make my final decision.

Miss C has confirmed she has nothing further to add. CCFL said it needed more time and we allowed until 29 July 2022 for a response. That date has now passed and CCFL hasn't objected to my provisional conclusions or made any further submissions. I see no reasonable grounds to depart from my provisional decision in the circumstances. I remain of the view Miss M's complaint should be upheld and it is fair and reasonable for CCFL to take the steps below to put things right.

My final decision

For the reasons I've explained, my decision is I uphold this complaint and I require Creation Consumer Finance Limited to:-

1. End the finance agreement and take the car back at no additional cost to Miss M;
2. Refund the deposit paid of £3,000 plus interest at 8% simple a year from the date of

payment to the date of settlement; and

3. Pay Miss M £200 compensation for distress and inconvenience.

If CCFL does not pay the £200 compensation within 28 days of the date on which we tell it that Miss M accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 30 August 2022.

Claire Jackson
Ombudsman