

## **The complaint**

Mr P complains about the quality of a car he bought using a hire purchase agreement with Creation Consumer Finance Ltd. He wants to reject the car.

## **What happened**

Mr P entered into a hire purchase agreement with Creation in early 2021. The car he got was just over five and a half years old and covered around 97,500 miles. The agreement was for £8,475. This was the cash price of the car less the £1,000 deposit Mr P had already paid.

Mr P told us that when he got the car, he noticed various issues with it. These included, but weren't limited to: issues with the airbag; missing wheel nuts; damaged headlights; dented bonnet; damaged undertray; problems with the key; damage to the dash and steering wheel; broken trim; misaligned body panels; poor paint finish and cosmetic damage.

He raised this with the supplier and Creation. He said he wanted to reject the car. Creation didn't agree to this. Briefly, it said an independent report had shown the car was legal, roadworthy, and only had cosmetic damage.

Mr P wasn't happy with this. He brought his complaint to our service where it was looked at by one of our investigators. Mr P also provided an independent report which concluded the car wasn't fit for purpose when it was supplied. Our investigator thought Mr P should be allowed to reject the car. She set out what Creation needed to do to put things right.

In reply, it supplied us with a copy of the earlier independent report it had relied on. This was carried out by the same company as the one Mr P used and, as above, it said the car was fit for purpose when it was supplied. This didn't change our investigator's opinion about what Creation needed to do to put things right.

Creation didn't confirm whether or not it agreed with our investigator. As the matter remains unresolved, it's been passed to me for a final 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.

Having done so, I've decided to uphold it. I'll explain why. First, I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is at the heart of the matter here: was the car supplied to Mr P by Creation of satisfactory quality?

If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail. I've focussed on those that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

Mr P got the car using a hire purchase agreement in early 2021. As the finance provider, Creation is responsible for the quality of the car obtained using it. Here, the relevant legislation dealing with the quality of goods is the Consumer Rights Act 2015 (CRA 2015). Briefly, this sets out that the car provided under the agreement should be of satisfactory quality. When reaching my decision, I'm required to take relevant law into account. I'm also required to reach a fair and reasonable outcome in all the circumstances of this complaint.

When deciding if a car is of satisfactory quality, there are number of factors to think about. These include, but aren't limited to, things such as the age of the car, the mileage and durability. This car was about five and a half years old and had done around 97,500 miles. So, it's likely it would have shown signs of wear and tear. Such wear and tear wouldn't in itself automatically mean a car was of unsatisfactory quality or that Creation would be responsible for this. But it would be responsible for other issues you wouldn't expect (or reasonably be aware of) with a car of this age and/or mileage, such as problems with durability or safety.

There's no dispute that there were faults with the car when Mr P got it. This is shown by the independent reports supplied by both Mr P and Creation. What I need to decide is if those faults make the car of unsatisfactory quality. As I've said above, both reports were carried out by the same company and, indeed, by the same engineer. The report supplied by Creation is from May 2021. The one Mr P sent us is from January 2022.

By and large, both reports identify similar issues to those listed above. The crucial difference is that the later report also identifies that the pedestrian airbags are missing from the bonnet and there were issues with the front safety belt reels. This was in addition to the safety issues outlined in both reports including a missing wheel nut and the windscreen washers not working.

It's not apparent why the additional problems identified in the later report weren't picked up first time round by the engineer. I do note the weather conditions for the first inspection were stated as wet. While the engineer said this could mean minor bodywork blemishes might not be noticeable, it's not clear if the conditions affected the actual inspection in any other way.

In any event, the later report clearly identified health and safety issues that weren't picked up before. The engineer concluded the car wasn't in a satisfactory condition and that it wasn't fit for purpose at the point of sale. He also stated there was no suggestion Mr P caused any of the damage.

I can see from the mileage recorded in both reports that this was around the same amount as when Mr P got the car, meaning he'd used the car only minimally, if at all. He'd certainly not used it between the dates of the two inspections. This supports the engineer's statement that there's no suggestion Mr P caused any of the damage.

I've considered both reports at some length. As above, I can't be certain why the first inspection didn't pick up all the health and safety issues listed in the second report. But the later report clearly identifies these as issues, and I'm satisfied it's fair and reasonable for me to rely on this report. It follows, given the findings of that report, that I'm also satisfied the car provided to Mr P by Creation wasn't of satisfactory quality.

The CRA 2015 gives Mr P a short term right to reject the car if it wasn't of satisfactory quality. The available evidence shows he complained about the quality of the car within 30 days of getting it and wanted to reject it. Given I'm satisfied the car wasn't of satisfactory quality when it was supplied, I think Mr P should have been able to reject it at that point.

## **Putting things right**

As I've said, Mr P should have been able to reject the car. I'm satisfied, for the reasons I've outlined above, he should now be allowed to do so. I've taken into account that Mr P has had minimal, if any, use of the car as outlined above. This is further supported by the car not having a valid MOT after the date of the later inspection.

To put things right Creation should now do the following:

- Collect the car at no cost to Mr P;
- Cancel the hire purchase agreement with nothing further to pay;
- Refund the £1,000 deposit\*
- Refund all the payments Mr P has paid since the start of the agreement until it's cancelled\*
- Refund the £195 Mr paid for the later inspection on 7 February 2022\*; and
- Update Mr P's credit file to reflect the cancellation of the agreement and remove any adverse markers, if applicable.

\*Creation should add 8% annual simple interest on these amounts from the date they were paid until the date of settlement. If it thinks it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

## **My final decision**

My final decision is that I uphold this complaint. Creation Consumer Finance Ltd should now settle it in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 November 2022.

John Miles

**Ombudsman**