

The complaint

Mrs E complains that a car acquired with finance from Creation Consumer Finance Ltd wasn't of satisfactory quality.

What happened

In May 2021 Mrs E was supplied with a car and entered into a conditional sale agreement with Creation.

Prior to delivery of the car, the MOT issued an advisory for an oil leak. The supplying dealer said this would be repaired before Mrs E took delivery of the car.

When she got the car, Mrs E experienced noises and vibration. She took the car to a third party garage for a health check. This showed that the oil leak was still present. The garage advised Mrs E to change the air filter as the noise seemed to be coming from there.

Mrs E contacted the supplying dealer to advise it of the issues. She also arranged a further MOT. Further issues were found at MOT.

Mrs E contacted Creation. It advised her that the supplying dealer should be given the opportunity to repair the car. The car was returned to the supplying dealer for repairs.

When Mrs E collected the car, she noticed an issue with the gearbox and vibration. She took the car to a third party garage who recommended that she took the car to a specialist garage. Mrs E took the car to a specialist garage, who said the oil leak was still present and that damage had been caused to the gearbox. The garage said it wasn't able to check the oil levels because the dipstick was seized in the oil cylinder.

Mrs E wasn't happy to drive the car after this. She says it was declared SORN in July 2021.

Mrs E complained to Creation. It arranged an independent inspection of the car. The engineer found several fault codes. He was unable to check the oil level because the dipstick was seized. The engineer didn't test drive the car. The report concluded that because of the time and mileage elapsed since the point of supply the fault wouldn't have been present the point of supply.

Based on the findings of the independent report, Creation refused to allow a rejection.

Mrs E wasn't happy with the response and complained to this service.

Our investigator upheld the complaint. She was satisfied that the oil leak wasn't successfully repaired by the supplying dealer and said that Mrs E should be allowed to reject the car. The investigator said she didn't think the independent inspector had been provided with full details of the car's history and was unaware of the previous attempts to repair the leak. The investigator felt that the independent inspection would've reached a different conclusion if he had full knowledge of the facts.

Creation didn't agree. It queried why the dipstick was seized and said that because it wasn't

seized at MOT, this pointed towards interference or damage. It also said that an unauthorised change had been made to the car when the air filter was fitted.

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.

The Consumer Rights Act 2015 is relevant to this complaint. It says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. Satisfactory quality includes fitness for purpose, freedom from minor defects, safety and durability.

Under the legislation, where a fault occurs in the first 6 months, there's a presumption that the fault was present or developing at the point of supply and it's generally up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can reject the car. After 6 months, the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality.

At the point of supply, the car was around 8 years old and had covered around 90,515 miles. I'd expect a second hand car to have a degree of wear and tear and to require more repairs and maintenance than, for instance, a brand new car.

I've reviewed all of the available information. Based on what I've seen, I'm satisfied that the car had a fault. This is because Mrs E reported issues as soon as she got the car, a third party garage diagnosed an oil leak, a specialist garage diagnosed an oil leak and the independent inspector concluded that the car had faults.

I've gone on to consider whether the car was of satisfactory quality at the point of supply.

I can see that an MOT was carried out on the car prior to it being supplied to Mrs E. This identified an oil leak. Mrs E has provided evidence showing that the supplying dealer advised her that the leak had been repaired prior to her taking delivery of the car.

I can also see that Mrs E took the car for a health check in May 2021. This identified that the oil leak was still present. Because of this, I don't think the supplying dealers' repairs were successful. Under the relevant legislation, Mrs E would have been able to reject the car at this point.

The car was inspected in November 2021. The inspector found that the dipstick was jammed, so he was unable to check the oil level. But he said he found evidence of an oil leak around the sump pan area.

Based on what I've seen, I'm persuaded that there was an oil leak which was present at the point of supply. The supplying dealers' attempt at repair was unsuccessful on two occasions. The independent report identified the oil leak but concluded that it would have been present at the point of supply because of the time and mileage elapsed.

I have some concerns about the independent engineer's conclusion. It's clear from the car's history that there was an oil leak at the point of supply and that this wasn't successfully repaired on a subsequent attempt. But the engineer hasn't referenced the previous oil leak at all. This gives me reason to think that the engineer wasn't made aware of the full history of the car and reached his conclusion without being in possession of all of the relevant facts. In my view, the engineer's conclusion isn't reliable for this reason.

I've taken all the evidence into account. Having done so, I'm persuaded that the car wasn't of satisfactory quality when supplied. Under the relevant legislation, the business is allowed one opportunity to put things right. There's already been two attempts at repairing the oil leak, so the correct outcome here is a rejection.

I've taken into account the points made by Creation about the jammed dipstick and the air filter. I don't think these points are relevant to my finding that the car wasn't of satisfactory quality because of the oil leak. But I'll deal with the points for the sake of completeness. In relation to the dipstick, there's no evidence as to how, or when this happened. But I think it's reasonable to assume that the dipstick wasn't seized when Mrs E had the car checked in May 2021, because no mention of it is made. So, I think it seized sometime after this. It's clear from the evidence that there was an oil leak at the point of supply. There's nothing to suggest that the oil leak was caused by the seized dipstick.

The air filter was replaced as part of an attempt to resolve the noise issue. I've found that the car was of unsatisfactory quality because of the oil leak. There's no evidence to suggest that there's a fault with the air filter, or that changing the air filter caused the oil leak. The oil leak was present before the air filter was changed.

Putting things right

I've already explained why I don't think the car was of satisfactory quality when supplied and that Mrs E should be able to reject it.

It's clear that Mrs E has been caused a degree of distress and inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. She's had to take the car back to various garages and hasn't been able to drive it since November 2021. In fact, Mrs E says she had the car SORN prior to this but I haven't seen evidence of that, so I'm in agreement with the investigator that November 2021 is the relevant date for calculating any refund of payments under the agreement.

To put things right, Creation Consumer Finance Ltd must:

End the agreement with nothing further to pay

Arrange for the car to be collected at no cost to Mrs E

Refund all monthly payments made since 16 November 2021 together with 8% simple interest from the date of payment to the date of settlement

Pay compensation of £400 for distress and inconvenience

Remove any adverse information from Mrs E's credit file in relation to the agreement

My final decision

My final decision is that I uphold the complaint. Creation Consumer Finance Ltd must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 3 January 2023.

Emma Davy
Ombudsman