

## **The complaint**

Miss Q complains that the car she acquired financed through a hire purchase agreement with Creation Consumer Finance Ltd wasn't of satisfactory quality.

## **What happened**

The details of this complaint are well known to both parties and have been laid out by the investigator, so I won't repeat them again here. I will focus on giving the reasons for my 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 agree with the conclusions reached by the investigator for these reasons:

- Creation Consumer Finance, as the supplier of the car, was responsible for ensuring it was of satisfactory quality when it was supplied to Miss Q at the point of sale. Whether or not it was satisfactory will depend on several factors, including age and mileage as well as the price that was paid for it.
- Satisfactory quality also covers durability. This means the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on several factors.
- The car supplied to Miss Q in October 2020 was around seven and a half years old and had been driven approximately 50,000 miles.
- On 2 May 2021 the car broke down. Miss Q paid £112 for a diagnosis of the problem. I've seen a copy of the invoice which included a summary of the work. It says "*suspect new engine and new turbo required*". At this point Miss Q had driven the car less than 5,000 miles since she acquired it. I don't know how the car was driven by the previous owner(s) or Miss Q nor do I know how well the car was maintained but generally, with average use and maintenance, I would expect a car engine and the turbo to last significantly longer than 55,000 miles. So it does seem likely, given Miss Q added under 5,000 miles, that the problem(s) with the engine would have been present or developing at the point of sale. And I'm persuaded it's likely the engine wasn't durable and hadn't lasted a reasonable amount of time.
- The dealer is entitled to one opportunity to repair the fault and it agreed to arrange for a new engine to be fitted at this stage. And it agreed that Miss Q would need to pay £1,200 towards the cost of this new engine, a total of £1,922.10.
- Creation said Miss Q would need to contact the installers directly to see if the works were covered by any kind of warranty or guarantee. It said Creation or the dealership could not be held liable for works carried out by a third party. But from the copy of the invoice provided it seems the dealer arranged for the engine to be replaced with the

third-party garage. And the dealer itself didn't charge Miss Q for the whole cost of the engine replacement. This indicates to me it accepted at least partial responsibility for the engine failure.

- On 8 August the car broke down again. It was recovered and Miss Q was told the engine had been badly fitted with a leak from the water outlet on the engine turbo.
- On 13 August the car was inspected by an independent engineer, at the request of Creation. In summary the engineer said:
  - *"We consider the engine issue is a result of the previous engine replacement.*
  - *We do consider the condition to be a failed repair in the vehicle's history.*
  - *We do not consider the fault to be wear and tear related or maintenance that has developed since purchase.*
  - *Faults are present which require further investigation into the coolant system in order to resolve them.*
  - *In our opinion the previous engine repairer is responsible for the cost of repairs to this vehicle."*
- Despite having the engineer's report and its conclusions Creation rejected Miss Q's claim. It said the dealer had sent it pictures of the car showing significant impact damage to the front nearside. It said due to the proximity of this damage to the affected areas of the cooling system the dealer believed this was the cause of the cooling issues which lead to the engine seizing up. But the damage to the vehicle occurred prior to the inspection from the engineer. No mention of this damage is on the engineer's report. And the engineer was quite clear on the report that it considered the engine issue was because of the previous engine replacement.
- I think it reasonable to expect that had the engineer suspected the impact damage had caused the engine issues he would have noted this on his report. I'm persuaded by the technical evidence provided in this report that the engine issue was caused by the failed engine replacement completed by the third party, which was commissioned by the dealer. As the repair itself has failed, I'm satisfied Miss Q should be allowed to reject the car.
- As the car has sustained external damage (unrelated to the engine issues), per the terms and conditions Miss Q is liable to pay for the repair to this damage.
- Miss Q has paid several invoices related to repairs and reports. As these costs are related to the car being of unsatisfactory quality I'm satisfied they should be refunded.
- The problems with the original engine and the replacement engine have caused Miss Q inconvenience and stress. I consider £200 in compensation to be fair and reasonable.

### **Putting things right**

In order to put things right Creation Consumer Finance Ltd must:

- Cancel the agreement with nothing further to pay;
- Arrange for collection of the vehicle at no cost to Miss Q;

- If the car is returned with damage to the front, Creation would be entitled to charge for the cost of repairing this (but only this damage and nothing relating to the issues set out in the independent report);
- Reimburse Miss Q £1,200 for the cost of the failed engine repair in May 2021\*;
- Refund Miss Q one monthly instalment for May 2021, to account for the time she was unable to use the car\*;
- Refund Miss Q any payments made since August 2021, to reflect the time she's been unable to use the car\*;
- Reimburse Miss Q £500 for the deposit she paid towards the agreement\*;
- Reimburse Miss Q £112.80 and £240 for the two independent inspection reports she arranged\*;
- Reimburse Miss Q £70 for the cost she incurred when the vehicle was towed\*;
- Pay Miss Q £200 compensation; and
- Remove the agreement from Miss Q's credit file.

\*8% simple interest should be added, from the date of payment to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint. Creation Consumer Finance Ltd must put things right as outlined above.

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

Maxine Sutton  
**Ombudsman**