

## The complaint

Mr H is unhappy that a car supplied to him under a hire purchase agreement with Creation Consumer Finance Ltd was of an unsatisfactory quality.

## What happened

On 25 March 2022, Mr H was supplied with a used car through a hire purchase agreement with Creation. He paid an advance payment of £5,000 and the agreement was for £38,995 over 49 months; with 48 monthly repayments of £601.79, and a final payment of £17,492 if Mr H wanted to keep the car. At the time of supply, the car was around one and a half years old and had done 14,570 miles.

On 13 April 2022, Mr H complained to both the dealership and Creation that the car had developed an ABS fault. The dealership couldn't determine a fault, and the car was examined under the manufacturer's warranty. Again, no fault could be found, and the car was returned to Mr H on 22 April 2022. 39 miles later the car broke down and had to be recovered. It was examined again under warranty, and an issue with the ABS was found and fixed. The car was returned to Mr H on 6 May 2022.

On 9 May 2022, the engine management light (EML) came on, and the warranty company reset nine fault codes. But the EML came on again after one mile. So, on 10 May 2022, Mr H asked to reject the car. The dealership refused but offered to buy the car back for around £5,000 less than Mr H paid for it around 10-weeks earlier. Mr H didn't accept this offer and the car broke down again on 24 May 2022 due to another fault with the ABS.

Mr H had an independent report done on the car, and was told that, if it were to be repaired, there would be a substantial delay while waiting for parts. And he felt that he had no option but to sell the car, as he needed it to be able to get to work. On 31 May and 1 June 2022, the dealership's solicitors wrote to Mr H to tell him they considered the issues with the car to be "*merely trivial*", that his claim was "*wholly unproven*", and that he had no right of rejection.

Mr H sold the car for £37,283.90, which was a loss of £6,711.10 on what he'd paid for it. He also needed to pay Creation £1,033 for the shortfall in the agreement, bringing his total loss to £7,744.10. And he brought his complaint to us for investigation.

Our investigator said the evidence showed there was likely to be a fault with the car that was present when it was supplied to Mr H. And this made the car of an unsatisfactory quality. She said that, under the Consumer Rights Act 2015 (CRA), Creation were allowed one chance to repair the car, which they'd had. And whether or not each breakdown had been caused by the same underlying issue wasn't relevant. What's more, Mr H had only been able to do 1,300 miles in the car, while suffering multiple breakdowns, and he hadn't had much use of the car since 13 April 2022. So, she also didn't think the car was sufficiently durable.

Because of this, the investigator said that, under circumstances like this, Mr H should usually be allowed to reject the car. However, as the car had already been sold, she thought that Creation should treat the agreement as if the car had been rejected. And they should refund all payments Mr H had made since 13 April 2022; reimburse him the £7,744.10 financial loss

he'd incurred; and refund him £971.05 additional expenses he'd incurred relating to tax and insurance while the car was off the road, recovery costs, and inspection costs.

The investigator also said that Creation should pay statutory interest on the refunds; pay Mr H an additional £500 for the distress and inconvenience he'd been caused; and remove any adverse credit, relating to this agreement, from Mr H's credit file. Mr H agreed with the investigator, but Creation didn't respond to her view. Because of this, this matter has been passed to me to make 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 reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

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. Mr H was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The CRA says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Creation are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Creation can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr H to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr H took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Creation to put this right.

It's not disputed that Mr H had problems with the car shortly after it was supplied to him. I've seen an invoice for the repair that took place on 4 May 2022, which confirms that there were *"multiple ABS related warnings in display"* and there was a broken wire in the ABS module. The wiring fault was fixed under warranty. However, a breakdown report dated 24 May 2022 confirmed that the mechanic *"found loose wiring to abs module."*

I've also seen a copy of an independent report on the car, dated 16 June 2022. At this point the car had done 15,901 miles – 1,331 miles more than when it was supplied to Mr H. This said that the engineer has *"checked wiring to ABS module and found connector had melted. Vehicle will require new engine bay harness and possibly ABS module."* Mr H was charged £192 for this report.

In their response to Mr H's complaint, Creation have said they would need to inspect the car to "confirm if it is a second fault" and that "the dealer has a right to repair if it is a different fault." However, section 24(5) of the CRA says:

*A consumer who has the right to a price reduction and the final right to reject may exercise one (not both), and may only do so in one of these situations –*

*a) after one repair or one replacement, the goods do not confirm to contract*

And the explanatory notes for the CRA make it clear that "if the consumer's goods continue to be substandard after the consumer has ... already undergone one repair or replacement of the goods by the trader ... the consumer may ... reject the goods and obtain a refund."

It's clear that the CRA only allows a single chance at repair, and not one chance to repair each fault. And this single chance of repair took place on 4 May 2022, when an ABS fault was fixed. It's also clear that this repair failed because the car broke down again on 24 May 2022. As it happens this was also with an ABS fault, but the CRA doesn't require these faults to be linked. As such, I'm satisfied that Mr H has the right to reject the car.

### **Putting things right**

Mr H was in possession of the car from 25 March to 5 August 2022, when it was sold. In a situation like this, I'd expect Mr H to return the car to Creation, and for them to unwind the agreement. But this isn't possible, as the car has been sold, and the agreement repaid in full. As such, while the car can no longer be rejected, I'd expect Creation to treat the agreement as if it had.

Where a car had been rejected, I'd expect a financial business to refund any deposit paid, as well as clearing the remaining amount on the agreement at no cost to the customer. So, for Creation to put Mr H back in the position he should've been, had rejection been accepted on 10 May 2022 (when Mr H asked for this), I expect Creation to refund Mr H the difference between what he paid for the car and the sale price, plus the additional amount he was required to pay them to repay the agreement in full – a total of £7,744.10.

While I would expect Mr H to pay for the car while he had use of it, I also need to take into consideration the period when it was in his possession but undrivable due to the faults. Mr H said that he had no issues with the car for the first two weeks, that it was in for inspection and repair for around six weeks, and the car broke down completely on 24 May 2022. As I've not seen anything to show me that Mr H was provided with alternate transportation while the car was in for inspection/repair, I'm in agreement with the investigator that Mr H should only pay for the first two weeks of use, plus the few days use he had until 24 May 2022. As such, Creation should refund him any payments he made after 13 April 2022.

I'm also in agreement that Mr H should be refunded for the insurance and road tax payments he'd made while the car wasn't in use, plus the cost of the recovery and inspection he paid for. And I've seen evidence that this comes to a total of £971.50.

Finally, Mr H has suffered a substantial amount of distress and inconvenience with what's happened, given the multiple breakdowns, the multiple trips to garages, and the sheer number of times he's needed to chase or liaise with multiple parties. And this has had an impact on his mental health, resulting in him having to take time off work and being prescribed medication. Given this, I'm also in agreement that Creation should pay Mr H an additional £500 compensation.

So, Creation should:

- end the agreement with nothing further to pay;
- pay Mr H £7,744.10 to put him back in the position he would've been had they allowed the car to be rejected;
- refund all the payments Mr H has made after 13 April 2022;
- reimburse Mr H £971.50 for the road tax and insurance he paid while the car was off the road, for the cost of recovery, and for the cost of the inspection on the car;
- apply 8% simple yearly interest on the above, calculated from the date Mr H made the payments to the date of the refund †;
- remove any adverse information relating to this agreement from Mr H's credit file; and
- pay Mr H an additional £500 for the distress and inconvenience he's suffered as a result of being supplied a car that wasn't of a satisfactory quality.

†HM Revenue & Customs requires Creation to take off tax from this interest. Creation must give Mr H a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr H's complaint and Creation Consumer Finance Ltd should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 December 2022.

Andrew Burford  
**Ombudsman**