

The complaint

Mrs H complains that the car she acquired through a hire purchase agreement with Creation Consumer Finance Ltd (CCF) wasn't of satisfactory quality and the mileage was misrepresented.

What happened

Mrs H entered into a hire purchase agreement with CCF in February 2022 to acquire a used car. She made an advance payment of £4,500 and was required to make 48 monthly repayments of around £361 followed by a final payment of £6,952 if she wished to keep the car. The total amount repayable under the agreement was around £28,779. At the time of acquisition, the car was around five years old and had a recorded mileage of over 49,000.

Mrs H says that in May 2022 the car broke down because the gearbox failed, and she was told the car was unroadworthy and needed several repairs. She then carried out a check and discovered an issue with the mileage. She raised a complaint that the car wasn't fit for purpose. CCF didn't respond to Mrs H's complaint within the required timeframe and so Mrs H referred her complaint to the Financial Ombudsman Service.

Our investigator upheld this complaint. She looked at the car's MOT history and this suggested the car's mileage had been misrepresented. She also thought that the number of issues Mrs H had experienced within the first few months showed the car not to be of satisfactory quality. Given this she recommended that Mrs H be allowed to reject the car and have her deposit refunded along with any repayments made from May 2022 onwards.

CCF didn't agree with our investigator's view. It provided evidence from the car's service and vehicle history to show the mileage was correct and that the information on the MOT history website was incorrect. It said that Mrs H had sent an email to the dealership on 7 May 2022 about the gearbox failure and the cost of repair being £2,700. It said the warranty company was going to cover £2,000 and the dealership agreed to pay £700 meaning there was no cost to Mrs H. It thought this a fair resolution.

Our investigator considered the information provided about the mileage and thought this suggested the mileage was accurate. But she said that her view remained that the car wasn't of satisfactory quality given the issues that had occurred in the first few months of Mrs H's use.

CCF didn't agree. It said the dealership didn't service the vehicle at the point of supply as this wasn't needed but did carry out its checks. It said the dealership had said it would instruct an inspection of the timing belt and carry out repairs if necessary, but it didn't agree to unwind the agreement. CCF said the issue about the mileage had been resolved and it offered to have an independent inspection carried out because it didn't think the diagnostics showed the issues were present at the point of supply.

My provisional conclusions

I issued a provisional decision on this complaint. I concluded in summary:

- There was an initial concern that the mileage was incorrect on the car. However, on balance, having looked through the information provided (service history) and noting the comments of testimony to support the mileage being accurate, I found it reasonable to accept that the mileage recorded at the point of supply was not misrepresented.
- Given the car's age and mileage it was reasonable to expect it to have suffered some wear and tear. That said - and taking usual wear and tear into account - in order to be of satisfactory quality, the car needed to be sufficiently durable. Mrs H acquired the car on 18 February 2022 and in May 2022 the gearbox failed. I noted there was a gearbox service in 2019 when the car had been driven around 35,300 miles and the comments that a service wasn't needed before the car was supplied. However, in this case I didn't think the car could be considered sufficiently durable when a major component – the gearbox – failed in such a short space of time.
- Following the gearbox failure, Mrs H had the car inspected and as well as the gearbox failure, it was identified that the undercover was missing and that various consumable items needed replacing. I noted CCF's comments about this report not being the result of an independent inspection and I agreed it doesn't set out whether the points recorded were due to faults present at the point of supply. However, I thought the information was sufficient to consider whether the car was of satisfactory quality.
- Considering the issues raised (aside from the gearbox), I found it more likely than not that the undercover was missing at the point of supply, and I wouldn't have expected Mrs H to have checked for this at that time and so accepted she wouldn't have been aware it was missing when she collected the car. The other items listed were consumables. As the car wasn't new at acquisition wear and tear would be expected. So, while I noted that the tyres and front and rear brake discs and pads needed replacing, I didn't find I could say these components weren't of satisfactory quality at the point of supply. I said this because Mrs H had been able to drive the car for over two months and around 3,400 miles before the gearbox failure and the subsequent inspection. Also, the car passed an MOT in February 2022 before supply which would have noted had these items not been of satisfactory quality at that time. Other items such as the service and brake fluid change are part of general car maintenance and the wipers smearing was also general wear and tear.
- This left the issue with the timing belt and water pump. The inspection report said these needed replacing. While I didn't have further details, I noted the dealer had offered to have the timing belt inspected and carry out repairs if necessary.
- When a car isn't of satisfactory quality there are different remedies that can be applied. In this case Mrs H didn't reject the car within the first 30 days but did raise issues within the first six months. Given the timing and nature of the issues and noting that the dealer offered repairs to the gearbox in a timely way, I thought it reasonable that CCF was given a chance to carry out repairs. While I understood Mrs H hadn't been able to use her car since May 2022 and had acquired another car I needed to be fair to all parties and as a repair of the gearbox was offered and then subsequently an inspection and repair if needed of the timing belt was offered, I found this should be allowed. In the event the repairs weren't successful then Mrs H would have a final right to reject the car.

- While I accepted that offers of repair had been made, Mrs H hadn't been able to drive the car since May 2022 and there were delays in CCF responding to her complaint. Therefore, I thought it reasonable that she wasn't held liable for any repayments from May 2022 until the repairs have been completed and that her credit file was amended so that any adverse information recorded during that period was removed.

CCF agreed with my provisional decision. It then noted that a quote of £2,700 had previously been provided for the gearbox repair and confirmed that Mrs H could have this repaired at her local garage with the warranty company covering £2,000 and CCF covering the remainder. Once this repair had been completed it said it would have the timing belt inspected and if a new belt was needed this would be provided at no cost to Mrs H.

Mrs H provided further evidence. She said that the car wasn't of satisfactory quality when supplied and had underlying faults which caused the engine to fail within 11 weeks. She said that since her complaint was logged, CCF hadn't provided any proof that the mileage discrepancy was a mistake despite her requesting this. She said there were multiple mileage errors in the recorded history of the car which would cause her issues if she tried to sell the car. She said the fairest outcome was for her to be able to return the car and that having sought legal advice she was within her rights to do this. Mrs H said due to the significant amount of time it had taken for this issue to be addressed, she had needed to acquire a replacement car.

Mrs H then provided a further response saying that she would agree to the repairs if undertaken by a manufacturer approved garage. But was still concerned by the issue with the mileage. She reiterated the issue and her concerns about additional wear and tear and the value of the car. She said her intention when she acquired the car was to sell it or trade it in at some point in the future and she thought the issue with the mileage could put her at risk of either not being able to do this or doing so at a large loss. She said she couldn't accept keeping the car until adequate proof of the error had been provided. She asked that once the car was repaired, she would sell it to clear the finance at a settlement figure that reflected the removal of all interest and charges applied since the car's failure in May. She said if she faced any issues selling the car due to the mileage discrepancy then CCF should take back the car and her agreement be cancelled with no impact on her credit file.

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.

Mrs H acquired a used car through a hire purchase agreement with CCF. Under the regulations, specifically the Consumer Rights Act 2015, CCF can be held liable if the car wasn't of satisfactory quality at the point of supply. When assessing whether a car is of satisfactory it is reasonable to consider factors such as the car's age and mileage. In this case the car was around five years old and had been driven just over 49,000 miles at the point of supply.

Mrs H has said that the car wasn't of satisfactory quality when supplied. As I said in my provisional decision, given the timing of the gearbox failure I don't think the car was sufficiently durable and therefore not of satisfactory quality. This is further supported by the issue with the timing belt. So, while I note other issues such as the tyres and brake pads are reasonable wear and tear, I think the failure of the gearbox means that car wasn't of satisfactory quality and so CCF is required to remedy this, along any required repairs to the timing belt and water pump and the replacement of the undercover.

I understand Mrs H's concerns about the mileage. However, having considered the evidence provided (manufacturer's service history and the service history certificate) I find it reasonable to say that the high mileage recorded in the MOT history for June 2020 was more likely than not a mistake. The other mileage records support the June 2020 recording as being incorrect and I also note that for the June 2020 figure to be correct (77,650 miles) the car would have needed to have been driven over 40,000 miles in the previous seven months at a time when there were Covid restrictions in place, which appears unlikely. Therefore, on balance, I do not find I can say the mileage at the point of supply was misrepresented to Mrs H. I appreciate her concerns about the information and the issues this could cause at sale but the service evidence and history is available to her and as I do not find, on balance, that the mileage was misrepresented, I do not uphold this part of Mrs H's complaint.

Therefore, I have considered what a fair remedy is for the issues with quality of the car. I understand why Mrs H acquired a replacement car and that this means she will struggle making payments going forward on both this car and the replacement vehicle. However, I have to consider what a fair outcome is to this complaint about this car. I understand Mrs H wishes to reject the car but in this case, as I set out in my provisional decision, I think given the timing and nature of the issues, and noting that the dealer offered repairs to the gearbox in a timely way, I think it is reasonable that CCF is given a chance to carry out repairs.

CCF has agreed to the gearbox repair being undertaken at Mrs H's local garage and the cost (based on the £2,700 quote) being covered. To be clear, in the event the cost of the gearbox repair (as carried out by the agreed garage) costs more than the initial quote, I find that this is the responsibility of CCF to cover. In regard to the inspection of the timing belt and any subsequent repair, I note Mrs H's comments about her loss of faith in the dealer but I do not find that the dealer should be prevented from carrying out this work, although this can be disputed between CCF and Mrs H. I note the confirmation of repairs made by CCF but this didn't note the replacement of the missing undercover which should also happen at no cost to Mrs H.

As also noted in my provisional decision, to reflect the time Mrs H hasn't been able to use the car I find she shouldn't be liable for any payments for the period starting in May 2022 and ending when the repairs have been completed and any adverse information recorded on her credit file during this period should be removed.

I note Mrs H's suggestion for dealing with any issues if she tries to sell the car after the repairs, but in this case, having given consideration to the issues raised and all evidence provided, I find what I set out in my provisional decision is a fair remedy. That said, given the issues and Mrs H's concerns, I would expect CCF to work with Mrs H after the repairs in the event she does wish to exit her agreement.

Putting things right

Having thought about what is fair and reasonable in the circumstances of this complaint I think the offers made in regard to the inspection and repair are reasonable.

CCF should ensure that:

- the car's gearbox is repaired at no cost to Mrs H;
- the car's timing belt and water pump are inspected, and any necessary repairs undertaken at no cost to Mrs H.

Additional to the above, I also find that:

- the missing undercover should be replaced at no cost to Mrs H.

As Mrs H hasn't been able to use the car since May 2022:

- Mrs H should not be liable for any payments that fall due in the period starting May 2022 and ending on the date the car has been repaired and returned to Mrs H at no cost to her;
- CCF should remove any adverse information that has been recorded on Mrs H's credit file from May 2022 until the car has been returned.

My final decision

My final decision is that I uphold this complaint. Creation Consumer Finance Ltd should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 15 February 2023.

Jane Archer
Ombudsman