

The complaint

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

What happened

In July 2022 Mrs K was supplied with a car and entered into a hire purchase agreement with Creation. At the point of supply the car was around 5 years old and had covered 47,748 miles.

In August 2022 Mrs K contacted the dealership to complaint about the quality of the car. the issues included a faulty front bumper, poor alignment, worn brake discs, a cut on one of the tyres, a faulty turbo and faulty wiper blades.

The dealership agreed a rejection. Mrs K returned the car, but payments continued to be taken under the finance agreement. The dealership then said that it wouldn't accept a rejection because the car didn't have any faults.

Mrs K complained to Creation in August 2022. In response, it said that following a vehicle health check the car had been found to be roadworthy.

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

Our investigator upheld the complaint. She said the car wasn't of satisfactory quality when it was supplied to Mrs K and that Mrs K had asserted her right to reject within the first 30 days.

Creation didn't agree. It said the vehicle health check stated that the car was free from faults.

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. This 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 things such as the age and mileage of the car and the price paid. The legislation says that the quality of the goods includes their general state and condition and other things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mrs K was a used car, so I'd expect it to have a degree of wear and tear. In order to uphold this complaint, I'd need to be satisfied that the car had a fault at the point of supply which made it of unsatisfactory quality, as opposed to a fault which occurred due to general wear and tear.

I've considered all of the available information and I've thought about whether there was a fault with the car which made it of unsatisfactory quality. Based on what I've seen, I think it's likely that there was a fault with the car. the vehicle health check dated 18 July 2022 states

that there is a deep cut on the tyre, the front bumper has fallen off, the wipers are skipping, and the brake discs are scored and lipped.

I've also had regard to what Mrs K has said about the burning smell coming from the turbo. I haven't seen any engineering evidence or diagnostic evidence about the turbo, but I have seen a photo showing that the metal plate covering the turbo has been burnt.

Creation has said that the car underwent a vehicle health check after Mrs K had returned it to the dealership and that it was found to be fault free. I've looked at the vehicle health check. However, it appears to have been carried out after repairs were completed. I haven't seen any evidence to persuade me that Mrs K agreed to repairs, after she had exercised her short term right to reject. Because of this, I'm not persuaded that the vehicle health check relied on by Creation is representative of the condition of the car when it was supplied to Mrs K.

I've gone on to consider whether the car was of satisfactory quality when it was supplied.

The available evidence – including the vehicle health check dated 18 July 2022 and Mrs K's testimony about the faults with the bumper, the tyre and the brakes, is sufficient to persuade me that the car wasn't of satisfactory quality at the point of supply.

The evidence shows that Mrs K asserted her short term right to reject the car. I've seen evidence which shows that the dealership agreed to this and told Mrs K that it would unwind the finance package. I haven't seen any evidence to suggest that Mrs K retracted her request to reject and/or agreed to repairs.

Because Mrs K asserted her short term right to reject the car within the first 30 days, and because I'm satisfied that the car wasn't of satisfactory quality at the point of supply, I'm of the view that Mrs K should be allowed to reject the car.

Putting things right

I've already explained why I think Mrs K should be allowed to reject the car.

In relation to the storage charges and the vehicle health check fee sought by Creation, I don't think it's fair for Mrs K to pay this. Mrs K asserted her short time right to reject a car which wasn't of satisfactory quality. The request was accepted by the dealership. I'm not persuaded that there is any reasonable basis to charge storage and /or inspection fees. Creation should remove these charges.

Mrs K hasn't used the car since she acquired it because of the faults. I think it was reasonable for Mrs K not to drive the car. Because of this, I don't think it's fair for Mrs K to pay for a car she hasn't been able to use. Creation should refund all monthly payments made by Mrs K.

It's clear that Mrs K has been caused significant distress and inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. She's described the impact this has had on her wellbeing. I think it's fair to ask Creation to pay compensation to reflect this.

My final decision

My final decision is that I uphold the complaint. Creation Consumer Finance Ltd must:

End the agreement with nothing further for Mrs K to pay

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

Refund the advance payment of £250

Refund all monthly payments made under the agreement

Pay 8% simple interest on all amounts refunded calculated from the date of payment to the date of settlement

Pay £250 compensation for distress and inconvenience

Remove any negative information from Mrs K's credit file in relation to the agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 22 May 2023.

Emma Davy
Ombudsman