

## The complaint

Miss P has complained that a Mini she acquired, using finance from Creation Consumer Finance Ltd, wasn't of satisfactory quality.

## What happened

On 7 September 2021, Miss P entered into a finance agreement with Creation. This was for a Mini, that was around nine and a half months old, and had 85,000 miles on the clock.

Unfortunately, Miss P had to contact the dealership on 28 February 2022, to explain the car wouldn't start. She said she'd have an independent check carried out, so there'd be no need for the dealership to collect the car to do a check. The dealership said this was fine. But it later said it wouldn't help further, as it had been Miss P's father who had carried out a diagnostic check, and he's not a qualified mechanic.

So, on 8 March 2022, Miss P complained to Creation. Then, on 22 March, she took the car to a third party garage. Its diagnostic report said the cams weren't moving and the engine wasn't turning. It put this down to a likely timing chain failure.

As Miss P didn't receive a response from Creation, she complained to our service. One of our investigators looked into what had happened. Having done so, he didn't think the complaint should be upheld. This was because he thought that, given the age and mileage of the car, it was reasonable to expect that there would be wear and tear. He considered the issues to have been caused by reasonable wear and tear, commensurate with the age and mileage of the car.

Miss P was unhappy with this, so her complaint was passed to me to consider afresh. I was minded to uphold it, so I issued a provisional decision, to explain why and give both parties the opportunity to respond with anything further. I said as follows.

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*Typically, I may well agree that a timing chain failure is reasonable wear and tear. As cars age, they need to be maintained, including repairing/replacing serviceable parts. However, there is a crucial difference here. A call to Mini UK customer service has confirmed that the timing chain for this make of car doesn't have a service life, and no maintenance of the chain itself is required.*

*Accordingly, I'm satisfied this means that its failure can't reasonably be attributed to wear and tear - as it is supposed to last for the lifetime of the car. So it follows that the car wasn't of satisfactory quality when it was supplied, as it had an inherent defect.*

*I note that since the complaint has been brought to us, the car passed an MOT in September 2022 - so presumably the repairs have been carried out. I ask Miss P to confirm this and provide an invoice/receipt, detailing the works carried out and the cost. If indeed the car has been repaired, I assume Miss P wants to keep it. Again, I'd ask her to confirm this.*

*To put things right, I'm minded to require Creation to refund Miss P's repayments in full, from the time the car broke down, to the time it was repaired. I'm also minded to require it to pay for the repairs, insofar as they relate to the timing chain and issues caused as a result of its failure.*

*Given the distress and inconvenience caused to Miss P by Creation's handling of the complaint, I consider £250 compensation fair to reflect this aspect of the complaint.*

*As a final point, I note that Miss P's father having a look at the car has no bearing on the outcome of the complaint. There's no evidence whatsoever that he caused any damage to it.*

*It's my provisional decision to uphold this complaint, and require Creation Consumer Finance Ltd to:*

- refund Miss P's repayments in full, from the time the car broke down, to the time it was repaired, adding 8% simple interest a year, from the date of each repayment to the date of settlement;*
- pay for the repairs, insofar as they relate to the timing chain and issues caused as a result of its failure, adding 8% simple interest a year, from the date Miss P paid for the repairs to the date of settlement; and*
- pay Miss P £250 compensation for the distress and inconvenience caused.*

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Miss P responded by providing an invoice for £10,286.08 (including VAT), dated 20 September 2022.

Creation responded with a screenshot from an autocentre chain's website, saying a timing chain should be replaced after 80,000 – 120,000 miles. It also provided a screenshot from an online manual for DIY mechanics, recommending that a timing belt should be replaced every 60,000 miles, or five years. It goes on to say that the Mini recommendation is 125,000 miles, but that it recommends 60,000.

### **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 am not departing from my provisional decision.

I think that the information given to this service by Mini UK customer service – specifically, that the timing chain for this make of car doesn't have a service life, and no maintenance of the chain itself is required – carries more weight than the information provided by Creation. This is because it comes directly from the specialist. I also note that the information set out in the DIY manual relates to a timing belt, not a timing chain. Miss P's car has a timing chain. Although both perform the same function, a belt is made of rubber, whereas a chain is metal.

On the basis of the evidence from Mini UK, which I find persuasive, I'm satisfied, for the reasons given in my provisional decision, that the timing chain had an inherent defect, so was not of satisfactory quality.

Accordingly, Creation should refund Miss P's repayments while she was without the car, and pay for the repairs. I note that £4,525 (plus applicable VAT) of the invoice relates to the car

being stored at the recovery garage. As I said in my provisional decision, I thought Creation should pay for the repairs. This doesn't include the storage sum, as Miss P was under a duty to mitigate her losses. I'm not satisfied that it was necessary for the car to be stored, incurring this high cost.

### **Putting things right**

To put things right, Creation should:

- (a) refund Miss P's repayments in full, from the date the car broke down (28 February 2022), to the date it was repaired (20 September 2022), adding 8% simple interest a year, from the date of each repayment to the date of settlement;
- (b) refund Miss P the garage's bill, insofar as it relates to the timing chain and issues caused as a result of its failure – adding 8% simple interest a year. For the avoidance of doubt, this sum would be:
  - the cost of all of the repair work, including sourcing parts, set out in the invoice dated 20 September 2022, plus applicable VAT;
  - the cost of recovery as set out in this invoice, plus applicable VAT; and
  - the cost of diagnostics as set out in this invoice, plus applicable VAT.

Interest at 8% simple a year should be added to the resulting total, from 20 September 2022, to the date of settlement.

- (c) pay Miss P £250 for the distress and inconvenience caused.

### **My final decision**

It's my final decision to uphold this complaint. I require Creation Consumer Finance Ltd to take the steps set out above, in the section 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 20 April 2023.

Elspeth Wood  
**Ombudsman**