

The complaint

Mr D complains about the quality of a car he has been financing through an agreement with Creation Financial Services Limited, who I'll call Creation.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my 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.

I know it will disappoint Creation, but I think this car wasn't supplied in a satisfactory condition and they should therefore put things right for Mr D. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr D acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Creation, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr D. The car here was about three years old and had already completed about 30,000 miles. So, I'd expect it to have some limited wear and tear and not to be fault free, as would perhaps be the case with a new car.

The advert for the car said it was supplied with a Full Audi Service History, but I don't think that was the case as the Audi technician's report says "*All wheel drive coupling oil change was due 07/21*" but there is "*no record of the oil change on ELSA*" which is a repair and service software used by the main dealerships.

Whilst Creation have suggested the oil change wasn't mandatory, I haven't been provided with any further proof of that, and it seems unlikely a service regime would provide an optional programme as I can't see how that would serve much purpose.

So, I think this car was misrepresented to Mr D as he was given a false statement of fact about the service condition, and I think that would be likely to be a significant reason why he'd have been interested in proceeding with the deal.

I also think the car was of unsatisfactory quality because I don't think the differential was durable. It seems from online research and information I've gathered from internal experts, that differentials are expected to last the lifetime of a car with regular maintenance and oil changes, and that's clearly not been the case here.

Putting things right

The relevant legislation gives the business an opportunity to fix a fault that is present when the car was supplied, and I think that would be the most reasonable solution here. But as the car has already been repaired I think it would be fair for Creation to refund the cost of the repair. Mr D has provided this Service with evidence that he paid £2,200 for the replacement differential. He's not been able to evidence the labour costs of the repair. So, I think Creation should therefore refund the cost he has evidenced, and they'll need to add interest to the refund as Mr D has been deprived of the money.

Mr D appears not to have been able to use the car from 22 September 2022 to 25 November 2022 and it's not fair for him to have been paying for a car that was not available to him due to a quality problem. Creation should therefore refund any finance instalments that have been paid during that period and they will, again, need to add interest to the refund.

Mr D has also been inconvenienced by these issues. He's explained he's had difficulty with child arrangements, has had to use alternative transport, and has had to get the car to the dealership for the fault to be diagnosed. He's also had to escalate his complaint to this service when I think it could have been resolved earlier. In those circumstances I think Creation should pay him £250 in compensation. I can see our investigator's view on compensation was a little confusing, as in the body of her view she suggested a payment of £250 was fair but she then went on to suggest a £200 payment. For clarity, I'm persuaded that £250 is reasonable in the circumstances.

My final decision

For the reasons I've given above I uphold this complaint and tell Creation Financial Services Limited to:

- Refund the £2,200 Mr D paid for the replacement differential and add 8% simple interest per year from the date of payment (21 November 2022) until the date of settlement.
- Refund any rentals paid from 22 September 2022 to 25 November 2022 (inclusive). Waive any that were due and were not paid in that period. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Pay Mr D £250 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse information they may have reported to Mr D's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 May 2023.

Phillip McMahon
Ombudsman