

The complaint

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

What happened

In March 2022, Mr F was supplied with a used car through a hire purchase agreement with Creation. The agreement was for £34,415 with 59 monthly repayments of £506.78, and a final payment of £516.78. At the time, the car was about seven years old, and the mileage was given as 44,977 miles.

Mr F said that he reported a number of issues to the supplying dealership in the first few months he had the car. In April 2022 he reported that the brake warning light came on, and the car key didn't always work. And he had to replace the windscreen wipers.

He said the ABS/speed sensor failed in June 2022.

He said that in July 2022 the key was still not working properly.

In July 2022 Mr F obtained a diagnostic report from a main dealer. He said it found that the mileage had been tempered with, the exhaust had been modified, there was an oil leak, the rear springs were corroded, the front lower ball joints had split, and low temperature in the coolant system.

The report also found the front bumper had been poorly repaired. Mr F said he was told this could've been after a front end collision.

The report also found that the front strengthening plate was missing a number of bolts. It said this meant the car was unsafe to drive.

Mr F said the garage also found the car's power had been reduced due to a misfiring cylinder.

He complained to Creation in August 2022 after he said the dealer was unhelpful.

Creation wrote to Mr F in October 2022 to say they weren't able to complete their investigation into his complaint due to internal delays. So Mr F brought his complaint to this service.

Our investigator was satisfied that the car wasn't of a satisfactory quality when supplied. She said this was based on the video evidence provided, along with invoices, and the vehicle health check. She said there was no guarantee that repairs would resolve the issues with the car. So she said Mr F should be allowed to reject the car.

Creation didn't respond to the investigator's view, so the matter was passed to me for final decision.

I can see that Creation has now accepted the investigators assessment. But there has been further delays in resolving the complaint, and the car has still not been collected from Mr F.

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

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Creation are responsible. What's satisfactory is determined by what a reasonable person would consider, 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.

Mr F reported faults with the car not long after Creation supplied it to him. I see that he attempted to resolve these with the supplying dealer. Frustrated with the response, he obtained his own diagnostic report, supplied by a main dealer.

I find that report persuasive. It details the issues that Mr F was complaining about. And it has uncovered more serious issues – so serious that he was unable to drive the car until it was fixed.

I don't think it's reasonable to expect a car to have such serious defects that mean it is unsafe to drive so soon after he got it. And it shouldn't have been supplied with a modified exhaust that required replacement.

I've reviewed the video supplied with the diagnostic report and I'm satisfied that it shows evidence of a poor quality repair to the front bumper, and damage to the underside of the car.

I've seen nothing from Creation, or from the supplying dealer, that challenges or disputes the evidence supplied.

I'm satisfied that the car supplied to Mr F wasn't of satisfactory quality as I think the issues identified in the diagnostic report were more likely than not to be present or developing at the point of supply. I say this because they were found less than three months after Creation supplied the car to Mr F.

Mr F has submitted persuasive evidence that the mileage on the car had been altered. But I've also seen the service records and MOT history supplied by the dealer that indicate they checked the mileage before supply.

Like our investigator, I'm not going to reach a conclusion on the disputed mileage because it doesn't affect the outcome I've reached.

Putting things right

I'm satisfied that Creation supplied Mr F with a car that wasn't of satisfactory quality. A car that he hasn't been able to drive since 26 July 2022. Given the potential seriousness of the issues, I'm not convinced that an affordable repair is feasible. And a reasonable time to carry out those repairs has passed. So Mr F has the right to reject the car under the CRA.

Mr F incurred extra costs arising from the supply of a car that wasn't of a satisfactory quality. He had to replace a sensor, and he had to pay for his own diagnostic report. Creation should refund those costs.

Mr F has been caused unnecessary distress and inconvenience. He's spent a considerable amount of effort and time seeking to get this matter resolved, corresponding with the supplying dealer and with Creations, and visiting garages to have faults checked and fixed.

And Creation failed to respond promptly to his complaints. Leaving him further frustrated and paying more than £500 every month for a car he was unable to drive.

So, I direct Creation to:

- end the agreement with nothing further to pay and remove any adverse information from Mr F's credit file about this agreement
- collect the car at no further cost to Mr F, and without any further delay
- refund to Mr F the deposit/part exchange contribution of £3,999 he paid*
- refund to Mr F all payments made towards the agreement from 27 July 2022 to the date of settlement as he was unable to use the car from this point*
- refund £196.48 for the replacement sensor and £49.50 for the diagnostic report *

*These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Creation considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr F how much it's taken off. It should also give Mr F a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

I remind Creation that it is their responsibility to ensure the actions I've described above are carried out promptly and without further delay.

My final decision

I uphold Mr F's complaint about Creation Consumer Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 21 June 2023.

Gordon Ramsay
Ombudsman