

The complaint

Mr D complains that the vehicle he acquired through a hire purchase agreement with Creation Consumer Finance Ltd wasn't of satisfactory quality. He wants to reject the car and have his costs refunded.

What happened

Mr D acquired a used vehicle through a hire purchase agreement with Creation. The agreement was entered into in August 2022 and the car delivered on 30 August. Mr D also bought a two-year warranty.

Within a few days of using the vehicle, the engine management light (EML) came on. Mr D contacted the dealer and was told to take the vehicle for repair and that the warranty would cover the cost. On 11 November, Mr D took the vehicle for repair. He paid for the diagnostics report which identified issues with the under bonnet sensor and exhaust system. He spoke to the dealer and was told the repair cost would be covered. He was then told he would need to pay for the repair and claim the cost back. Mr D says that although he paid for the repairs the issues with the vehicle continued. He sent the repair invoices to the warranty company, but it said the selling dealer would need to pay for the work. Mr D raised his complaint with Creation and contacted the selling dealer, but the issue wasn't resolved.

Mr D says he has had to spend time chasing Creation and each time he had to start the process over and resend invoices. He says the car can't be used as it is unreliable.

Creation issued a final response letter in January 2023. It said that Mr D contacted it on 16 December in regard to his claim about the vehicle being faulty. It contacted the broker which said the dealer had agreed to carry out the repair under warranty, but Mr D had requested an additional repair which wasn't covered by warranty. It said if Mr D wished to accept the repair agreed by the dealer under the warranty, he would need to contact it directly.

Mr D said he hadn't requested an additional repair and that the oil and filter change was required for the DPF regeneration needed after the repair. Mr D referred his complaint to this service.

Our investigator upheld this complaint. He thought the evidence showed the vehicle wasn't of satisfactory quality at the point of supply. Mr D had allowed an opportunity for the vehicle to be repaired but as this hadn't resolved the issues our investigator thought it fair he was now allowed to reject the vehicle. He also noted the consequential losses Mr D had incurred and said these should be refunded.

Mr D accepted our investigator's view but as Creation didn't reply, this case has been passed to me, an ombudsman, to issue a 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.

Mr D acquired a used vehicle through a hire purchase agreement with Creation. Under the regulations Creation can, in certain circumstances, be held liable if the car wasn't of satisfactory quality at the point of supply. The Consumer Rights Act 2015 (CRA) sets out that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory. In this case relevant factors to be taken into account include the vehicle's age, mileage and price. At the time of acquisition, the vehicle was six years old, had been driven around 25,800 miles and cost over £30,000.

Mr D acquired a used vehicle and so it is reasonable to expect it would have suffered some wear and tear. However, part of the vehicle being of satisfactory quality is that it is sufficiently durable. Mr D reported the issue with the car within two weeks (and he has noted that the vehicle was delivered the day before he went away for a week, so the vehicle had only been driven for a week).

Mr D contacted the dealer on 12 September to report the EML being on and the car vibrating. A diagnostic report was completed on 11 November, which recorded urgent issues with the vehicle. This shows that the car had faults that were confirmed on 11 November and as Mr D raised these on 12 September, I find it reasonable to accept that the faults were present at supply and so I find that the vehicle wasn't of satisfactory quality.

When a vehicle is found not to be of satisfactory quality at supply there are different remedies that can be actioned. In this case Mr D took the vehicle to be repaired. Mr D has provided copies of two invoices. The first from 11 November 2022 which includes the cost of diagnostics and a vehicle check. The second invoice is from 17 January 2023 when the repair to the DPF was undertaken. Mr D says that he paid the invoice for the DPF repair and expected to be able to claim this back but was only offered a contribution from the warranty company. Having considered the short time that Mr D had the vehicle before any issues arose and the nature of the repair work undertaken, I find it reasonable that Mr D would be refunded all payments that he made for the diagnostics and DPF repair work.

While Mr D had accepted repair as a remedy to the vehicle not being of satisfactory quality, he then reported that issues persisted after the repair. Under the CRA, if the repair isn't successful the consumer has a final right to reject. As Mr D allowed the business the opportunity to repair the vehicle and this hasn't fully resolved the issues, I find it fair that he is now allowed to reject the car and have his finance agreement ended with no further liability.

As well as the repair costs that Mr D has incurred which I have already explained should be reimbursed, Mr D has incurred the cost of transferring his personal numberplate. While I find the transfer from Mr D's previous vehicle was a cost Mr D would always have incurred, I agree with our investigator that the cost of having to transfer the number plate again to a new vehicle is a consequential loss that should be reimbursed.

Mr D has had some use of the vehicle, but I can understand that his use has been impaired as he has noted the car isn't reliable. In June 2023, Mr D showed the vehicle's mileage was around 30,600 which suggests he had driven the vehicle around 5,000 miles in 10 months. Given this I agree with our investigator's recommendation that Mr D be refunded 50% of his monthly repayments. I also agree with our investigator's recommendation that Mr D be paid £200 for the distress and inconvenience he has been caused by being provided with a vehicle that wasn't of satisfactory quality and which he has needed to facilitate diagnostics and repairs on.

In conclusion, I find that the vehicle Mr D acquired in August 2022, wasn't of satisfactory

quality at supply. While repairs were undertaken, as these weren't successful, Mr D should now be allowed to reject the vehicle and be refunded the repair costs and his consequential losses.

Putting things right

Creation should:

1. End the finance agreement and collect the car at no cost to Mr D;
2. Refund the net deposit Mr D paid and delivery charge;
3. To the extent refunds haven't already been provided, Creation should refund Mr D the following costs he has incurred (Mr D has provided copies of the invoices and receipts):
 - a. Invoice 1 dated 11 November 2022 – £135.73
 - b. Invoice 2 dated 17 January 2023 - £829.93
 - c. Cost of transferring personalised number plate – £80
4. Refund 50% of all finance instalments that have been paid in respect of the loss of use and lack of enjoyment Mr D has experienced
5. Pay Mr D £200 to compensate him for the distress and inconvenience caused

Creation should add 8% simple interest per year to items 2, 3 and 4 from the date of payment to the date of settlement.

HM Revenue & Customs requires Creation to deduct tax from any award of interest. It must give Mr D a certificate showing how much tax has been taken off if he asks for one.

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 Mr D to accept or reject my decision before 8 December 2023.

Jane Archer
Ombudsman