

The complaint

Mr T is unhappy that a car supplied to him under a hire purchase agreement with Creation Consumer Finance Limited was of an unsatisfactory quality.

Mr T is being represented in this complaint by Mr D. However, for ease of reference, I'll refer to any comments or actions by Mr D as if they were made/done by Mr T.

What happened

In January 2023, Mr T was supplied with a used car through a hire purchase agreement with Creation. He paid an advance payment of £800, and the agreement was for £8,398 over 52 months; with 51 monthly payments of £223.56 and a final payment of £233.56. At the time of supply, the car was around seven and a half years old and had done 38,574 miles.

Mr T returned the car to the supplying dealership on 15 February 2023 as the engine felt sluggish and the engine management light (EML) was illuminated. The dealership cleared the fault codes and carried out a 56-mile road test. The car was returned to Mr T, having done 39,178 miles – 604 miles since supply.

However, the car was returned to the dealership shortly afterwards, as the EML had come on again and the car had gone into limp mode. The dealership recorded the return mileage as 39,178 miles, meaning Mr T had driven the car for less than a mile before the fault reoccurred. The dealership again cleared the fault codes and returned the car back to Mr T on 25 February 2023, this time after a 279-mile road test.

The car went back to the dealership in early March, where again fault codes were cleared, and the car returned to Mr T. The dealership says that after this repair, Mr T agreed to monitor the car and, if the fault reoccurred, then he would bring the car back for further investigation. The dealership also says that, as Mr T signed an acceptance of repair, the Consumer Rights Act 2015 (CRA) allows them to continue to conduct any necessary repairs to the car.

However, the fault reoccurred, and Mr T didn't take it back to the dealership. He continued to drive the car and, as long as he kept below 3,000RPM, it wouldn't go into limp mode. The dealership had offered Mr T the option to take the car to a local garage, as he lived over 200 miles from the dealership, which Mr T did. And a diagnostic scan revealed faults with the fuel injectors, air flow circuits, air intake temperature sensors, and the turbocharger sensors.

Mr T had raised his complaint with Creation, asking to reject the car. But Creation said the car had been repaired by the dealership. So, Mr T brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said there was a persistent fault with the car, which made it not of a satisfactory quality when it was supplied to Mr T. And, as there had been multiple attempts at repair, Mr T was now able to reject the car. And she thought Creation should pay Mr T £250 compensation for the distress and inconvenience he'd been caused.

After the investigator had issued her view, Mr T explained that the car was due to have an MOT in August 2023, and it was expected the car would fail this. He was concerned that, without the car, he would need to pay around £100 a week to get to work. The investigator amended her view to say that, in these circumstances, and with proof supplied by Mr T, then Creation should reimburse these travel costs.

Creation didn't agree with the investigator. While they didn't object to the finding that the fault made the car of an unsatisfactory quality when it was supplied, they said that Mr T had agreed to return the car to the dealership if the fault reoccurred. Which he didn't do.

Creation said that, given this, the CRA allowed the dealership to repair the car and that Mr T's agreement for this *"is something which cannot be taken away once agreed."* As such, this matter has been passed to me to make a final 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.

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 T was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The CRA says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Creation are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory 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, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Creation can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr T to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr T took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Creation to put this right.

In this instance, it's not disputed there was a problem with the EML light keep coming on, nor that this fault was present when the car was supplied to Mr T. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think Creation should do to put things right.

Putting things right

Section 24(5) of the CRA says “a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.” This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs – the first attempted repair is the single chance at repair. What’s more, if a different fault arises after a previous repair, even if those faults aren’t related, the single chance of repair has already happened – it’s not a single chance of repair per fault.

The CRA is clear that, if the single chance at repair fails, as was the case here, then Mr T has the right of rejection.

I appreciate Creation’s comments that Mr T had told the dealership he’d take the car back for further repairs if the fault reoccurred. Section 23 (6) of the CRA states “a consumer who requires or agrees to the repair of goods cannot require the trader to replace them, or exercise the short-term right to reject, without giving the trader a reasonable time to replace them.” However, it isn’t the short-term right to reject that’s being considered here, but the right to reject after a failed repair.

While Mr T may’ve said he’d bring the car back to the dealership if it failed for a third time, he didn’t do so. So, the car wasn’t presented for repair, which I’m satisfied means that Mr T didn’t agree to a third repair. And there’s nothing in the CRA which says that Mr T saying he would do something in the event of another event occurring i.e., he would return the car for repair if it failed again, is legally binding and he therefore must do so.

As such, for the reasons stated, I remain satisfied that Mr T has the right to reject the car.

Despite the quality issues, Mr T has been able to use the car while it’s been in his possession. And it’s my understanding that, while it was being repaired, he was also provided with a courtesy car to keep him mobile. Because of this, I think it’s only fair that he pays for this usage. So, I won’t be asking Creation to refund any of the payments he’s made.

Mr T has also raised the issue of the car failing its MOT and the alternate travel expenses he would incur as a result. The investigator has said that, in these circumstances, and with proof of his expenses, then Creation should refund these. The publicly available MOT record shows the car failed its MOT on 25 August 2023 due to an issue with a headlight, and not something connected with the fault with the car. The MOT record also shows that this issue was fixed the same day, and the car passed the MOT. Which would mean that Mr T was still able to drive it.

As such, as the circumstances in which the investigator said Mr T’s travel expenses should be refunded haven’t occurred, I won’t be expecting Creation to refund any alternate travel costs.

However, it’s clear that Mr T has been severely inconvenienced by having to drive a car that cannot go over 3,000RPM without it going into limp mode. And by having to take the car back to the dealership on multiple occasions for it to be repaired, and by these repairs being unsuccessful. So, I think Creation should compensate him for this. The investigator had recommended Creation pay him £250, which is in line with what I would’ve directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, if they haven’t already done so, Creation should:

- end the agreement with nothing more to pay;

- collect the car at no cost to Mr T;
- remove any adverse entries relating to this agreement from Mr T's credit file;
- refund the £800 advance payment Mr T paid;
- apply 8% simple yearly interest on the refund, calculated from the date Mr T made the payment to the date of the refund[†]; and
- pay Mr T an additional £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]HM Revenue & Customs requires Creation to take off tax from this interest. Creation must give Mr T a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr T's complaint about Creation Consumer Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 November 2023.

Andrew Burford
Ombudsman