

The complaint

Mr W complains that a used car he got with finance provided by Creation Consumer Finance Limited (CCF) is of unsatisfactory quality.

What happened

Mr W acquired this car near the start of April 2022. He noticed some issues straight away and contacted the supplying dealer. He sent an email on 6 April 2022 to say he'd only received one key, the passenger rear window wouldn't open, the passenger mirror didn't work from the driver's control pad and there was a loud knocking noise from the front left wheel. Mr W says the dealer asked him to have the car checked at a local garage and it would reimburse the cost of repairs. He took the vehicle to a local third party garage (which I'll refer to as MC) that checked it in mid-May and found a loose strut brace, a suspected fault to both front reaction arms, front brake discs were warped and new discs and pads were required. MC undertook relevant repairs in July 2022 but the problems returned and Mr W took the car to a main dealer for the brand (that I'll call MB) for more checks.

In September 2022, Mr W paid MB £294.86 to supply and fit brake discs and pads, the brake wear sensor and a key ring. Two months later, in November 2022, Mr W reported the problems had returned – the steering wheel shook on braking and the power window switch on the driver's door was faulty – and the roof was now leaking. MB inspected the car again and confirmed the power window switch needed replacing and there was a roof leak. Mr W paid for another inspection in December 2022 when MB removed the front wheels and inspected the brake discs. The relevant paperwork says MB found "*wheels refurbed on contact area...VHC Suspension – to brake discs caused brake discs to warp...VHC Drive Shafts – advise new front brake pads + discs + x 4 new alloy wheels*". At a visual health check (VHC) on 28 December 2022, MB found the left headlamp was broken, brake discs, pads and alloy wheels needed replacing and there were issues with the power switch, brake judder and the roof leak, which would all cost around £8,000 to repair.

The supplying dealer is no longer trading and Mr W complained to CCF - as it provided the car and the credit, in the form of a hire purchase agreement (HPA). CCF didn't think there was enough evidence to show that the issues reported were present or developing at the point of supply and didn't uphold the complaint so Mr W referred the matter to our service.

One of our investigators reviewed the evidence. He recommended the complaint should be upheld. He noted the HPA is dated about a month after Mr W received the car but he thought that probably reflected when the finance payments started to be taken from Mr W's bank account - in May 2022. He was satisfied that CCF provided the finance and the car to Mr W and he went on to consider whether the vehicle was of satisfactory quality at the point of supply. The investigator thought it was likely the car was of unsatisfactory quality at the outset as Mr W reported problems the day after he got it and MC identified faults with the brakes and suspension arms not long after. He was satisfied that repairs were attempted several times and these were unsuccessful - MB found the same issues were still present at the end of 2022. He considered it was fair for Mr W to be allowed to reject the car and have his £7,000 deposit refunded plus 20% of two monthly finance payments - to reflect his impaired use in July and September 2022.

Mr W told us he stopped using the car in November 2022 because of faults present since the outset. The investigator didn't think that was unreasonable in the circumstances and he recommended any monthly payments made from November 2022 should be refunded in full for this loss of use. He thought CCF should also refund the cost of repairs/inspections Mr W paid for totalling £1,382.29 – which didn't include the roof leak, as this wasn't reported until about seven months after supply and the investigator didn't think there was enough evidence to show it's likely to have been present when Mr W got the car. The investigator said CCF should also pay interest on any refunds plus £250 compensation for distress and inconvenience and remove any adverse information from Mr W's credit file.

CCF asked for evidence of Mr W's out of pocket expenses, the location of the car and more time to consider the investigator's conclusions. The investigator provided this information and agreed CCF could have some more time. The time set for CCF's response passed and it didn't supply anything further so the matter was referred to me for a decision. Having considered the available evidence, I was minded to uphold the complaint but I was inclined to reach a different outcome overall. I thought it was fair to give the parties the chance to see my provisional findings and make further submissions (if they wanted to) before I made my final decision. I issued a provisional decision on 6 October 2023 and I've set out below (in italics) what I decided provisionally (and why) – this forms part of my final decision.

My provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

CCF supplied this car to Mr W under a HPA and it was obliged to ensure that the car was of satisfactory quality at the outset, under the Consumer Rights Act 2015 (CRA). The quality of goods includes appearance and finish, freedom from minor defects, fitness for purpose and durability and the standard that is to be considered "satisfactory" will vary depending on individual circumstances. In the case of a used car it's generally reasonable to take into account the age and mileage at the point of supply. This car was nearly four years old with over 42,000 miles on the clock when it was supplied and cost £24,800. I think a reasonable person wouldn't expect a used vehicle to meet the same standard as a brand new one – and that's reflected in the price paid - but there is a reasonable expectation it will fairly durable when it's supplied.

I'm satisfied that Mr W experienced some fairly significant problems the day after he got this car. I've seen an email where he contacted the credit broker reporting that the passenger rear window and passenger mirror couldn't be operated from the control pad on the driver's side, there was a loud knocking noise coming from the front left hand wheel on full lock or going around a corner and the car was supplied with only one key. It looks as if the supplying dealer, which was located some distance from Mr W, suggested he get the car checked at a garage near to him and Mr W took the car to MC who charged £84 (incl VAT) to do so.

I'm satisfied that Mr W emailed the dealer with estimated repair costs in June 2022. I think the dealer seems to have accepted responsibility and agreed to supply relevant parts. And, when the parts hadn't arrived after a month or so, Mr W wrote again to say he'd pay for the repairs himself and the dealer could reimburse the cost. I've seen an invoice that shows MC carried out repairs in July 2022 at a cost of £708. This was a bit cheaper than the original estimate and I think that's probably because the parts had arrived from the supplying dealer – the relevant invoice confirms that Mr W supplied some parts. If I'm wrong about that, and

Mr W paid for these parts himself, he should let me know in response to this provisional decision (and provide evidence of any related cost).

It looks as if these repairs didn't fix things. Mr W says faults re-appeared and MB seems to have carried out further repairs in September 2022 that cost £294.86. Unfortunately this doesn't seem to have resolved things either. I can see Mr W took the car back to MB in November and December 2022 and further investigations revealed that the door switch needed to be replaced, the roof was leaking, there were issues with the suspension that caused brake discs to warp meaning new parts were required and repairs needed would cost in the region of £8,000.

Taking everything I've seen so far into account, I'm satisfied it's likely this car had relatively significant faults present at the point of supply – in that there was a knocking noise probably caused by a suspension fault that adversely impacted on other parts including the brakes and a power switch in the driver's door didn't work. I'm minded to agree the car was probably of unsatisfactory quality when it was supplied.

I've seen nothing to suggest that Mr W sought to reject the car within the first 30 days - he seems to have been content for the dealer to pay for relevant repairs. But it looks as if the various efforts to resolve the issues (by both MC and MB) didn't work - MB found the same problems were still there at the end of 2022. The investigator didn't think it was fair to expect Mr W to wait any longer for this car to be fixed. He recommended CCF should take the car back, end the HPA and refund the £7,000 deposit. I note that Mr W has indicated that he would still like to keep the car if CCF pays for the repairs needed. It's not clear to me which of the repairs set out on the VHC he means - or whether he considers all of these are CCF's responsibility. It's open to the parties to agree to repair the car (or any other resolution option) if they want to. However, on the current evidence and for the reasons set out above, I'm minded to find it's fair that Mr W should be entitled to exercise his final right to reject the car under the CRA and have his deposit back.

I also consider it is reasonable for CCF to refund the cost of any relevant investigations and repairs that Mr W paid for - as he incurred those expenses due to faults present when the car was supplied. As far as I can see this adds up to £1,380.09 as follows:-

- MC invoice (investigations) 19/5/22 £84*
- MC invoice (repairs) 1/7/22 £708*
- MB invoice (repairs) 12/9/22 £294.86*
- MB invoice (investigations) 30/11/22 £207.03 (reduced for the reasons below)*
- MB invoice (investigations) 7/12/22 £86.20*

The invoice from MB dated 30 November 2022 totals £293.33 but this includes investigation work relating to a roof leak. I can't see that issue was mentioned previously - there's no reference to this in any of the earlier invoices or in the correspondence I've seen from Mr W to the dealer/broker in the first six months after supply. Like the investigator, I don't think there's enough evidence to safely conclude that the roof leak is likely to have been present when Mr W got this car so I can't reasonably hold CCF responsible for any related investigations or repair costs. I'm minded therefore to deduct £71.83 (plus VAT) from the total – for work done in regard to the roof leak – and find it is fair for CCF to refund £207.03 only in relation to the November invoice.

The investigator recommended that CCF should also refund 20% of two monthly payments - to reflect Mr W's impaired use of the car early on - and refund any payments made after November 2022 in full because he stopped using the car then due to safety concerns. After the matter was referred to me, Mr W told us he'd started using the vehicle again - as it's the family's only car. He supplied a photo of the odometer showing the car had accrued around

62,450 miles – that's about 10,000 more than the mileage recorded in the last December 2022 invoice. I think it's fair that Mr W should pay for the use he had of the car so I'm not persuaded that CCF should provide a full refund of monthly payments from November 2022.

Looking at all the available evidence however, I am minded to find it's more likely than not Mr W's use of the car was impaired from the outset. I'm satisfied he reported fairly significant issues the day after he got the car, which the dealer seems to have accepted warranted repairs. Then the car was off the road several times over the next six months for various checks and repairs which didn't resolve matters - the same issues appeared after a few weeks. Mr W told us he's now resorted to having a friend replace discs and pads, just to keep mobile, but he's not driving the car the way he otherwise would have - due to ongoing problems. He also said his wife won't drive the car at all due to concerns about safety as it continues to judder. Taking everything I've seen into account, I'm minded to find it is reasonable for CCF to refund 10% of any monthly payments made since the start of the HPA to reflect Mr W's impaired/lost usage.

I agree it's fair that CCF should pay interest on any refunds. I'm also satisfied Mr W has likely experienced a good deal of distress and inconvenience as a result of being supplied with this faulty car – he had to chase the broker/dealer numerous times and take the car for various repairs and inspections. I consider the £250 compensation the investigator recommended sounds fair. And I also agree that any adverse information recorded about the HPA should be removed from Mr W's credit file.

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 invited the parties to consider what I've said and let me have any further comments or evidence that I hadn't seen before by 20 October 2023 and I'd review all the evidence available after that and make my final decision.

Mr W has accepted my provisional decision and CCF hasn't provided any new evidence or raised any objections to my provisional findings. I see no reasonable grounds to depart from my provisional conclusions in the circumstances. I remain of the view this car was unsatisfactory quality when it was supplied to Mr W and it is fair and reasonable for CCF to take the steps I've set out to put things right.

My final decision

For the reasons I've given above, my decision is I uphold this complaint and I require Creation Consumer Finance Limited to:-

1. end the HPA with nothing further to pay, record the finance as settled and collect the car at no additional cost to Mr W;
2. refund the advance payment of £7,000;
3. refund 10% of any monthly payments made to reflect Mr W's lost/impaired use;
4. reimburse Mr W's out of pocket expenses incurred as a result of being supplied with this faulty car, in the sum of £1,380.09 (as detailed above);
5. pay 8% simple yearly interest on all refunds from the date of payment until the date of settlement;
6. pay Mr W £250 for associated distress or inconvenience; and
7. remove any adverse information recorded about the HPA from Mr W's credit file.

If CCF does not pay the compensation for inconvenience and distress within 28 days of the

date on which we tell it that Mr W accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

If CCF considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr W how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs, if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 November 2023.

Claire Jackson
Ombudsman