

The complaint

Mr G complains about a car he acquired under a hire purchase agreement he had with Creation Consumer Finance Ltd ("Creation").

What happened

In June 2022 Mr G entered into a regulated hire purchase agreement with Creation in relation to a used car. The car's mileage was 27,143 miles, and its cash price was £19,600. He paid a deposit of £1,000, and the rest of the balance was to be repaid over 48 months at £280.97 a month, with a balloon payment after that if he wanted to keep the car.

Almost at once, Mr G encountered a number of problems with the car. The car shook while driving; the brakes were squeaking; there was a clunking noise coming from the gear box; the rear side light was fitted incorrectly; the number plate was not fitted correctly and was coming off; and the ash tray lid wouldn't close.

The car was taken to a main dealer garage twice. The first time, in July 2022, it was held overnight for all of the above matters to be investigated and repaired. (The mileage was 29,859.) However, on 18 August 2022 it was taken back to the same garage, and held there until 6 September, 20 days later. Work was carried out on the wheel balance, the brakes, and the ash tray. (The mileage was 30,254.)

Then on the dealership's advice, the car was taken to a third party garage in November 2022 to check the brakes. The mileage had only increased by one mile since 6 September.

Despite those three times the car was in the garage (all under warranty), the gears, the rear light and the number plate still had not been repaired and required further work. By then, Mr G had had enough. He did not agree to a fourth attempt. Instead he asked Creation to help. But Creation was misinformed by the dealership to the effect that no previous attempt had been made to repair the car, so it told him he would have to allow the dealership to attempt to repair it. Mr G brought this complaint to our service.

Our investigator upheld this complaint. He said it was not in dispute that the car had been faulty when it had been delivered to Mr G, and there was clear evidence that there had been two previous attempts at repairing it, both of which had been unsuccessful. So he recommended that the hire purchase agreement be ended with nothing further for Mr G to pay, and that the car be collected at no cost to him. He also said that the deposit should be refunded, and that Creation should pay Mr G £200 for his inconvenience.

The investigator went on to deal with Mr G's usage of the car, and his loss of use. He said that Mr G had stopped driving the car, as he did not believe it to be safe to drive, and that the mileage at that point was 34,446 miles, meaning that he had driven it a total of 7,303 miles while he had had it. The investigator said that, assuming an average of 1,000 miles a month, it would be fair to let Creation keep seven monthly payments – less one of them to reflect the fact that Mr G had been deprived of the car for 20 days in August and September – and to refund the rest. And he said that interest should be paid on all of the refunds at 8% a year.

Mr G accepted most of that decision, but he asked to also be reimbursed for the cost of transferring his personalised number plate to this car and to his next car.

Creation asked for an up to date mileage, so Mr G provided a photo of the odometer showing that the mileage had not increased. Apart from that, Creation has not substantively responded to the investigator's findings, other than to ask for more time. Since agreement had not been reached, this case was referred for an ombudsman's decision. As the investigator gave his decision in August 2023, and the updated mileage was given in November, I think that enough time has passed, and so I do not propose to wait any longer.

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.

The Consumer Rights Act 2015 requires goods hired by a consumer from a trader to be of satisfactory quality. Where that turns out not to be the case, the trader is entitled to one attempt to repair any defects, and if (and, generally, only if) that attempt fails, the consumer may reject the goods. In this case, although there was initially some confusion about whether such an attempt had already been made before, it now appears to be no longer in dispute that two attempts had been made, in July and in August to September 2022, and that neither of these succeeded in resolving all of the issues. But just in case I have misunderstood Creation's position and that is still in dispute, I will say that I am satisfied that the evidence provided by the dealership, via Creation, makes it clear that that is indeed the case. (The third visit to a garage appears to have been for diagnostic purposes only.)

Putting things right

Mr G is therefore now entitled to reject the car. He is entitled to a full refund, minus a deduction for his use of the car. I agree with the way the investigator has calculated this. Taking into account the mileage and the time that the car was in the garage, I think that Creation is entitled to keep six of the monthly payments (£1,685.82), and must refund the rest, with interest.

The car must be collected at no cost to Mr G, with one proviso: ignoring the defects for which Creation is responsible, it otherwise has to be in a driveable condition. I mention that only because at some point last year the battery was flat, so Mr G will need to fix that, or else Creation may have to tow the car, and it might charge him for that. (Of course, if it has to be towed anyway because the gears are still defective, then he won't be liable for that.)

Mr G is no longer insuring the car. I make no findings about that here (because I don't need to), but I will clarify that if any damage occurs (other than the defects which I have described above) before the car is collected, then this decision will not affect any liability Mr G might have under paragraphs 7, 9 or 14 of the agreement's terms and conditions.

If I told Creation to reimburse the cost of transferring Mr G's personalised number plate both to this car and also to his next car, then that would mean he would be getting it transferred from his previous car to the new one for free. Creation doesn't have to do that. But I think it would be fair for it to pay for one transfer, on production of proof of payment. That costs £80.

My final decision

My decision is that I uphold this complaint. I order Creation Consumer Finance Ltd to:

- End Mr G's hire purchase agreement with nothing further for him to pay;

- Collect the car at no cost to Mr G (subject to the exception I have mentioned above, if applicable);
- Refund his deposit;
- Refund all but six of his monthly payments;
- Pay simple interest on the above refunds at 8% a year;
- Pay Mr G £200 for his inconvenience; and
- On production by Mr G of proof of payment of the cost of transferring his personalised number plate to his next car, pay him £80.

If Creation considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr G how much it's taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate. Mr G should refer back to Creation if he is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 February 2024.

Richard Wood
Ombudsman