

The complaint

Mr H has complained about the quality of a car he acquired under a hire purchase agreement with Creation Consumer Finance Limited.

Mr H has been represented but, to keep things simple, I'll refer to Mr H throughout.

What happened

The circumstances of the complaint are well known to the parties, so I won't go over everything again in detail. But, in summary, Mr H acquired a used car under a hire purchase agreement with Creation in May 2022. It was around three years old; it cost around £33,000 and had covered around 48,500 miles. The agreement was to be paid back over four years. Mr H also paid £450 for a 3-year warranty.

I understand the car broke down in July 2022 and was recovered to a third-party garage. The third-party garage inspected the car and said it found a gear oil leak from the rear differential, which had exploded. It said it believed this was down to the car having too much power at the rear wheels and suspected a performance map on the engine control unit (ECU). I understand the selling dealer eventually agreed to carry out a repair on the car and a courtesy car was supplied at the time.

Mr H said there were further problems with the car and so complained to Creation. I understand he said the car had no resonator, there were other faults, and that there were problems with the battery. He wanted to reject the car. Creation responded to say it had tried to contact Mr H to request a report showing the faults were present or developing at the point of supply but didn't receive what it asked for. It rejected the claim, and Mr H asked the Financial Ombudsman to investigate. In summary, Mr H complained about faults with the car, and that it had been modified but he was told it was a stock vehicle. The modifications impacted the insurance quotes he was able to obtain. And he was worried about getting an MOT on the car due to the modifications. The mileage as of around August 2023 was around 52,600.

One of our investigators looked into things and thought there was enough evidence to demonstrate there was a fault with the car that made it of unsatisfactory quality. But our investigator noted this initial fault had been repaired for Mr H, which seemed to have resolved the issue. Our investigator asked Mr H for evidence of further problems with the car but hadn't seen enough to show there were further faults that made the car of unsatisfactory quality.

Our investigator also thought about what Mr H had said about being misled about the car by the supplying dealer. He said that Creation could be held responsible for antecedent negotiations carried out by the dealer. He noted Mr H had said he specifically asked the dealer if the car had been modified and was told it hadn't been. Our investigator said he didn't know exactly what was spoken about at the point of supply but given Mr H didn't ask to reject the car when he found out the car may have been mapped, even if the supplying dealer did misinform Mr H, he didn't think this induced him into the agreement.

Our investigator did, however, think Creation should pay Mr H £350 in relation to the inconvenience caused as a result of being supplied a car that was of unsatisfactory quality. Creation paid this to Mr H. But Mr H didn't accept the outcome. In summary he said:

- He was disappointed with the outcome and didn't agree with the investigator's timeline of when contact was made.
- The supplying dealer didn't carry out repairs as promised. It repaired the faults that caused the car to break down but didn't resolve the resonator issue or bodywork problems as promised. It had one chance to repair all the issues and it failed to do that.
- He doesn't understand how it was beneficial for the supplying dealer to pay to transport the car to it for repairs and not have them carried out by a more local dealer to Mr H. The supplying dealer hadn't given him evidence of what work was carried out.
- The supplying dealer misled Mr H at the point of supply.
- It took a long time for Creation to respond.
- The supplying dealer told Mr H not to let the warranty company know about the resonator issue because it could void the warranty.
- The insurance costs went up significantly when Mr H sought quotes that included modifications, and that he wouldn't have bought the car if he'd known the insurance would have been that much.
- He was going to try to obtain call records so he could show when he tried to contact Creation about the problem post-repair.
- The compensation wasn't sufficient.

As things weren't resolved, the complaint was passed to me to decide. I asked our investigator to contact Mr H to set out a few points and to see if he wanted to add anything further. I noted Mr H hadn't supplied all the evidence our investigator asked for so wanted to give Mr H another opportunity to submit information. I asked our investigator to explain:

- We don't have any evidence of what repairs were undertaken in 2022 by way of job cards for example.
- We don't have sufficient evidence the car had actually been remapped or when that might have happened. We don't have any comments from the supplying dealer about whether the car was remapped before it was sold. Mr H also hasn't explained why the remapping can't simply be removed.
- We don't have sufficient evidence of anything currently wrong with the car which would have made it of unsatisfactory quality at the point of supply.
- We've not got a clear timeline setting out what happened from when the initial repair was carried out to when the complaint was investigated from March 2023.
- We've not seen what's happened to the car over the last few months and whether it's insured and being used.

I asked our investigator to set out that without supporting evidence it's difficult to reach conclusions that there's anything wrong with the car that Creation is responsible for, or that Mr H was misled at the point of supply.

Mr H responded to say he was waiting for records from his mobile phone provider, but he was unable to supply them. He said he was unable to supply other evidence and that the supplying dealer wouldn't provide evidence of the repairs it had carried out. He reiterated he'd sent information from a third-party garage setting out what was wrong with the car. He said the supplying dealer told Mr H it would remove the remapping when it carried out repairs, but he was still unhappy he felt he was misled at the point of supply. He said he'd lost faith in the supplying dealer and reiterated the car was mis sold.

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 want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr H and Creation that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr H acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr H entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. Creation is the supplier of the goods under the agreement and is therefore responsible for dealing with a complaint about their quality.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of delivery.

In Mr H's case, the car was used when it was supplied and had already covered around 48,500 miles. I think a reasonable person would have different expectations of it compared to a new car. But I'm conscious it cost around £33,000. So I don't think a reasonable person would have expected it to have any significant issues with it when it was acquired.

Like our investigator found, on balance, I think there was a fault with the car based on what I've seen. It doesn't seem to be in dispute the car broke down a couple of months after it was supplied. We have an email from a third-party garage saying there was an oil leak from the rear differential, which had exploded. Given Mr H had only acquired it a couple of months before and taking into account the price paid, age and mileage of it, this fault likely made the car of unsatisfactory quality. The CRA sets out the trader is able to have an opportunity to repair faults in these situations. While I appreciate Mr H says it initially wasn't going to help, I understand the fault that caused the breakdown was repaired. And the supplying dealer gave Mr H a courtesy car, which seems broadly fair.

I also agree with our investigator that the matter no doubt caused some general distress and inconvenience to Mr H. The car broke down, it had to be recovered, and it needed to be collected and transported to the supplying dealer for repair. Our investigator recommended Creation pay £350 compensation for this, and it agreed. In the round, that seems broadly a fair way to resolve that part of the complaint. So I'm not going to direct Creation to do more.

What's left in dispute is whether the car was mis sold in the first place. And whether or not the car has faults now that make it of unsatisfactory quality at the point of supply. If there were current faults with the car that make it of unsatisfactory quality (at the point of supply), there might've been grounds for Mr H to seek to reject it because the trader has already had its chance of repair. Moreover, if there was sufficient evidence Mr H was misled by the supplying dealer, and that he was induced into the contract by a false statement of fact, there might've been grounds to end the agreement because under section 56 of the Consumer Credit Act 1974, Creation can be held responsible for antecedent negotiations

carried out by the supplying dealer (broker) in these sorts of scenarios. Generally speaking, Creation can't be held responsible for the service supplied by the supplying dealership after the agreement was entered into. I think this is important to note because Mr H has expressed dissatisfaction with service supplied from the dealer after he'd entered into the agreement.

The problem I have is that I don't have enough evidence that firstly Mr H was misled at the point of supply. And secondly that the car currently doesn't conform to the contract – in that it has faults that were present or developing at point of supply. Our investigator asked for supporting evidence. I also asked Mr H again prior to looking to write a decision, but Mr H hasn't been able to supply sufficient evidence.

I appreciate Mr H says the supplying dealer wouldn't provide him what he asked for. It would have been helpful had the supplying dealer provided comments about what was discussed at the point of supply, along with job cards for what work was carried out. But Mr H was given the opportunity to show us what is currently wrong with the car but hasn't done so. This didn't need to come from the supplying dealer. Without evidence of what's wrong with the car currently, I can't say that there are faults that make it of unsatisfactory quality, and which give him the grounds to reject it.

With regards to being misled at the point of supply, Mr H said he specifically asked whether there were any modifications to the car and was told there weren't. It's hard to reach firm conclusions on what was discussed verbally. But even if I were to accept what Mr H said, the only evidence I have the vehicle might have been remapped is an email from a third-party garage saying this was suspected. There's an indication this might've been removed from the car when repairs were carried out, but I've not been given supporting evidence of that. And I've not been given supporting evidence of any other modifications.

In all the circumstances, while I'm not saying something hasn't gone wrong, I don't think Creation acted unfairly by declining the claim, based on the lack of supporting evidence.

My final decision

Creation Consumer Finance Limited agreed to pay Mr H £350 to resolve the complaint. I think this offer is fair in all the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 February 2024.

Simon Wingfield

Ombudsman