

The complaint

Ms B is unhappy that a car supplied to her under a hire purchase agreement with Creation Consumer Finance Ltd (Creation) was of an unsatisfactory quality. She is also unhappy that she was told that a fault with the car had been repaired – she said she wouldn't have taken it if she'd known it hadn't been fixed.

What happened

In June 2022, Ms B was supplied with a used car through a hire purchase agreement with Creation. The agreement was for £16,354 over five years; with 59 monthly payments of £272.55 and a final payment of £273.55. At the time of supply the car was around three and a half years old and had done around 64,503 miles.

Ms B said that she had noticed that the MOT done before she got the car had noted an oil leak. She said she raised this with the supplying dealer and she said they told her they had fixed the leak.

She said that in March 2023 there was a burning smell when she used the car's heating. She said a mechanic confirmed this was the sign of an oil leak. She said that the supplying dealer then fixed the leak, but due to the time it took, she had no use of the car from March 2023 to May 2023.

She said the dealer had offered her a hire car but she didn't take it as it had an excess of £5,000. She said she wanted two monthly payments refunded, other costs paid for, and a payment for the stress and inconvenience of being without a car for two months.

Creation didn't complete their investigation with the eight week period set out in the FCA Handbook, so Ms B brought her complaint to our service for investigation.

Our investigator said that there had been a misrepresentation by the dealer when it told Ms B that the oil leak had been repaired. He also said that Ms B wouldn't have entered into the hire purchase agreement if she'd known that the repair had not been completed.

He said the oil leak was a fault, but he felt it was due to wear and tear. And because of this he was satisfied the car was of satisfactory quality when it was supplied.

He said that Creation should pay Ms B £300 for the distress and inconvenience caused because she should've been given the correct information at the time.

Creation then sent their response to Ms B. They said they agreed with our investigator and agreed to pay her £300 for the inconvenience caused.

Ms B didn't agree with the amount of compensation suggested by our investigator. She said she should receive more than £800 to cover the costs when she wasn't able to use the car.

Because Ms B didn't agree, 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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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. Ms B was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Ms B entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Ms B 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.

Satisfactory Quality

In this instance, it's not disputed the car had an oil leak. When the supplying dealer repaired the car in April 2023 it accepted that the fault was present at the time it was supplied to Ms B.

I'm persuaded from the evidence presented that the fault was minor and was due to wear and tear. The independent inspection report option states that the leak was due to deterioration and perishing of the seals. And it goes on to say that this is what you would expect from a car with this mileage. It described the issue as a "*gradual concern*".

And the MOT test completed before Ms B acquired the car reported the oil leak as "*not excessive*". It is listed as an item requiring monitor and repair... "*if necessary*".

So I'm satisfied that despite the oil leak the car was of satisfactory quality when supplied. And in any case, even if I found this not to be the case, the appropriate remedy in this instance would've been a repair, and that has now been done. So there's no more Creation need to do to resolve this part of Ms B's complaint.

Misrepresentation

When considering whether or not there was a misrepresentation, I'm looking at two things: whether or not there was a false statement of fact and, if there was, whether or not the false

statement of fact induced Ms B to choose this particular car, and enter into the hire purchase agreement.

I'm satisfied there was a false statement of fact given by the supplying dealer. It said it had repaired the car. However, it appears that it did no more than wipe away oil, and then leave the car for an hour to see if more oil leaked.

We know from the MOT done in May 2022 that there was an oil leak, albeit noted as "*not excessive*". So, it appears that Ms B was told the repair was fixed, when it looks like the dealer had only investigated the leak and not found anything.

I'm also satisfied that this false statement of fact induced Ms B to enter into the agreement and take the car. If she had been told it had not been repaired, I'm satisfied from her testimony that she would not have taken the car at that time.

Putting things right

As I've found the car to be of satisfactory quality at the time of supply and has been repaired at no cost to Ms B, I'm not asking Creation to do any more about this. This means that I'm not holding them responsible for the additional costs incurred by Ms B as these were costs that arose from the normal maintenance of the car – not because it wasn't of a satisfactory quality.

But I do think Ms B has suffered significant inconvenience and distress arising from the misrepresentation. If she had been told the leak hadn't actually been repaired she wouldn't have taken the car at the time. Or if she did choose to accept the car knowing that the supplying dealer had only inspected the fault, she would've made arrangements at her own time and convenience, to have the leak fully investigated and repaired. But she had to wait until the fault developed, noticeable through the burning smell, which on its own would have been distressing.

I think an award of £300 fairly reflects the distress and inconvenience caused.

Therefore, Creation should pay Ms B £300 to compensate her for the distress and inconvenience caused by the misrepresentation.

My final decision

For the reasons explained, I uphold Ms B's complaint about Creation Consumer Finance Ltd and they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 8 October 2024.

Gordon Ramsay
Ombudsman