

The complaint

Mr S complains about a car he acquired with finance provided by Creation Consumer Finance Limited.

What happened

In October 2022 Mr S entered into a regulated hire purchase agreement with Creation in relation to a used car. The car was two years old, its mileage was 26,983 miles, and its cash price was £68,990. He paid a deposit of £30,000, and the balance was financed by the agreement.

In April 2023 the car broke down. The car was taken to a garage, but the garage refused to undertake any work without a full service history, which Mr S was unable to get. In May, he asked Creation to let him return the car and refund him. Creation contacted the dealership to arrange a repair, but the dealership did not agree to repair the car right away and there were negotiations about who would pay for it. In September the dealership agreed to pay, and said that work would begin in four or five weeks. By then, in August, Mr S (and his wife¹) had brought this complaint to our service. He also instructed a solicitor, at a cost of £4,590.

In February 2024, Creation agreed to allow Mr S to reject the car and to refund the monthly payments he had made since the breakdown. However, Mr S also asked for the return of his deposit, a refund of his car insurance, road tax and legal fees, and compensation for his inconvenience.

Our investigator upheld this complaint. He said that Creation was responsible for refunding the deposit to Mr S (with interest), and that getting that money back from the dealership was a matter between Creation and the dealership; that should not have become Mr S's problem. He also thought that Mr S should be refunded his insurance and tax on a *pro rata* basis for the time while he was without the car. He recommended that Creation pay £150 for Mrs S's inconvenience, and remove any adverse information from his credit file. However, he was not persuaded that Creation was liable for Mr S's legal fees.

Creation did not disagree with that opinion in principle, but it replied in April 2024 to say that the car had been found to have £7,365 worth of damage, which it said Mr S was responsible for. It asked for this to be deducted from the deposit. It also asked for mileage charges to be deducted, at the rate of 25p per mile. Mr S did not accept that he had caused any damage to the car, and pointed out that he had not had the car since April 2023. He also said that Creation had previously told him that it would waive any mileage charges.

The investigator pointed out that under BVRLA guidelines, any damage found on the collection of a car should be reported to the consumer within four weeks, and this had not happened. Creation argued that those guidelines were not relevant, because nobody involved was a member of the BVRLA and the finance agreement was a hire purchase agreement and not a lease; FLA guidelines would be more relevant (although Creation is not

¹ Mrs S was not a party to the hire purchase agreement, so under our rules she is not eligible to bring this complaint.

a member of that either). It also said that when the car had been delivered to the garage in April 2023, this had not been to reject the car but only to repair it, so an inspection for damage not related to the breakdown would not have been carried out at the time.

The investigator did not change his mind, since he could find nothing of relevance in the FLA's publications. He thought Mr S should have been told about the damage sooner, and that he should have been given an opportunity to arrange his own repairs for the damage. He referred this case for an ombudsman's 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.

It is not in dispute that the car was not of satisfactory quality and needed to be repaired (leaving aside the disputed damage charges). Although Creation was entitled to attempt to repair the car before Mr S could exercise his right to reject it, section 23 of the Consumer Rights Act 2015 required this to be done "within a reasonable time and without significant inconvenience" to Mr S. That clearly did not happen, so I'm satisfied that Mr S was entitled to reject the car, and accordingly I uphold this complaint. I will require Creation to refund the deposit with interest; getting that money back from the dealership afterwards is a matter between the dealership and Creation.

As well as the deposit, Mr S is also entitled to his monthly payments back, except the ones he made before the car broke down, since Creation is entitled to charge him for his use of the car. I also think it would be fair for his tax and insurance to be refunded *pro rata* for the lengthy period when he was without a car. I have checked the investigator's figures and they are correct.

I now turn to the damage and excess mileage charges. The collection report is dated 17 May 2023, which is about six weeks after the car broke down. So it is not clear why Mr S was not told about this at the time, instead of eleven months later.

I have read the finance agreement. This includes a document titled "Goods Return Standards – Fair Wear & Tear Policy." That includes the following paragraph:

"Inspection of your vehicle will be carried out in accordance with the BVRLA (British Vehicle Rental and Leasing Association
<http://www.bvrla.co.uk/advice/guidance/returning-your-leased-vehicle>)

Any charges in relation to damage to your vehicle that are considered outside of the normal wear and tear guidelines will be invoiced to you separately for payment."

So notwithstanding that Creation is not a member of the BVRLA, it has chosen to incorporate that organisation's standards in its own terms and conditions.

I have consulted the BVRLA's "Fair Wear & Tear Guide" for cars, published in 2022. It says on page 9 that a customer must be advised about any charges for damage or for excess mileage within four weeks of when the car is collected or returned. Considering the length of the delay, I don't think it is fair to charge Mr S for these now.

(Even if I took a different view about that, the terms and conditions do not state a mileage limit, or say how much an excess mileage charge would be if there was a limit.)

I don't think it was necessary for Mr S to instruct a solicitor if he was also bringing a

complaint to our service, so I do not propose to hold Creation liable for his legal fees.

My final decision

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

- Unwind the agreement with nothing further to pay, and remove any adverse information about it from Mr S's credit file;
- Refund the monthly payments Mr S made from April 2023;
- Refund the entire deposit of £30,000, with no deductions for damage or excess mileage;
- Pay Mr S interest on each of the above refunds at the rate of 8% a year from the respective dates of payment to the date of settlement;
- Pay Mr S £321.03 (being a *pro rata* refund of his road tax);
- Pay Mr S £831.16 (being a *pro rata* refund of his car insurance); and
- Pay Mr S £150 for his inconvenience.

If Creation considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr S how much it has taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if he is entitled to. Mr S 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 S to accept or reject my decision before 22 July 2024.

Richard Wood
Ombudsman