

The complaint

Miss D is unhappy that a car supplied to her under a hire purchase agreement with Creation Consumer Finance Limited (Creation) was of an unsatisfactory quality.

When I refer to what Miss D has said and what Creation have said, it should also be taken to include things said on their behalf.

What happened

On 18 July 2022 Miss D was supplied with a used car through a hire purchase agreement with Creation. The retail price of the car was £48,995. Miss D was given a part exchange allowance of £10,000, of this £1,935 was used to settle outstanding finance and the remainder as a deposit. Miss D then had to pay 47 monthly payments of £683.29 with a final option to purchase payment of £16,649. At the time of supply the car was a year old and had travelled 5,200 miles.

Miss D is complaining that in October 2022 the car unexpectedly cut out whilst driving late at night. The car was recovered to the supplying garage where an issue with the alternator was diagnosed. As part of the evidence I have reviewed there are a number of work cards that show the car has been seen by the garage on several occasions. The work card for 7 November 2022 was headed job card and the others headed "repeat repair quality check". The work cards supplied as evidence are as follows:

7 November 2022 car recovered, and investigation work carried out by the garage.

7 November 2023 to 6 December 2023 including reading and clearing fault codes, circuit voltage below threshold, auxiliary belt replaced and coolant pump belt renewed.

8 January 2024 to 9 January 2024 airbag light on dashboard, passenger airbag deployment fault found. Loose connections found and repaired.

8 January 2024 to 10 January 2024 engine management light on and confirmed to be an issue with glow plug voltage codes. The codes were cleared, and the fault reappeared on a test drive. The PCM had an internal fault and was replaced.

9 January 2024 confirmed low battery message and due to failure, a new battery was required.

8 February 2024 to 14 February 2024 investigate engine management light being on an several fault codes recorded. These relate to plugs, circuits and failure to start.

In late 2023 Miss D contacted Creation to explain that due to the continuing faults with the car she wished to reject the car. She was advised to email to that effect, which she did on 20 December 2023. On 27 December Creation requested that Miss D provide them with an independent inspection report due to the length of time between supply and her contacting them.

On 22 January 2024 an inspection was undertaken by an independent automotive expert. The expert's report that I have seen includes references to a timeline of issues from 21 October 2022 through to the end of 2023. It also references documents (emails and warranty invoices) that highlight on going issues with the car. Whilst not able to replicate the faults that Miss D experienced, the vehicle failed again shortly after being returned to her. The expert did contact the garage and as a result of that contact one of their conclusions was "we can confirm that the vehicle is currently out of service and requires additional support from the manufacturer, it is clear from the date of purchase that the car has continuously failed to meet expectations." The report states that the car had travelled 8,900 miles between supply and the inspection.

On 16 February 2024 Creation wrote to Miss D informing her that they were not able to respond to her complaint in the required time frame so she could complain to us, should she wish to do so. Which she did on 19 February 2024.

Our investigator upheld the complaint. They believed that there was fault with the car based on the evidence supplied. Creation had said in their submission to us that because of the time that had elapsed from supply, Miss D had to provide evidence that the fault was there on supply. Our investigator felt that it was unfair to ask Miss D to provide more evidence and they had sufficient evidence to show that the car was of unsatisfactory quality when supplied. They felt that the first failure as shown by the invoice dated 7 November 2022 was within six months and the car had been experiencing similar problems since. As Miss D had given the supplying garage several attempts to repair, she was able to reject the car. This was in part due to the relatively new age and low mileage of the car on supply. Taking into account the price paid, the usage that Miss D had from the car and any distress in upholding the complaint they directed Creation to:

- End the agreement with nothing further to pay
- Collect the car with nothing further to pay by Miss D
- Refund Miss D her part exchange contribution of £8,064.16
- Refund Miss D 20% of payments from 7 November 2022
- Pay 8% simple yearly interest on all refund amounts from the date of payment to the date of settlement
- Pay a further amount of £250 for any distress caused due to the faulty car

Creation challenged the investigators decision due to:

- Conflicting statements within the independent expert's report
- The length of time between when the issue first arose and subsequent complaints
- The second issue in 2023 being down to corroded wires, which is a usage issue rather than an inherent fault

Our investigator did not agree with the points Creation raised and stood by their decision to uphold the complaint.

Because Creation 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.

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.

Miss D 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.

Before I explain why I've reached my decision, I think it's important for me to set out exactly what I've been able to consider here, and how.

The Consumer Rights Act 2015 (CRA) is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". The CRA says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. Where goods are second hand, as in this case, due regard must be had to the price, age and any description applied to the car.

So, if I thought the car was faulty when Miss D 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.

As stated earlier the age, mileage and price of any vehicle has to be taken into account when deciding what is satisfactory quality. Cars also have an element of fair wear and tear that needs to be taken into account when coming to any decision.

Miss D was supplied with a car that was just over one year old and had travelled 5,200 miles. Whilst the car is second-hand and this needs to be considered; the age and mileage at the time of supply means that Miss D can expect a smaller amount of wear and tear, than for an older second-hand car. So the relative newness of the car needs to be considered as part of my decision.

On the balance of probabilities, with the evidence presented to me, I do find that there is an inherent fault with the car. The number of times the car has been seen by the garage and had to be recovered; along with the independent expert's report is sufficient to persuade me of this fact.

The latest issues with the car occurred in early 2024, some 18 months and 8,900 miles after being supplied the vehicle. Miss D states that the issues first occurred in October 2022 and this is supported by a job card dated 7 November 2022, just over three months after supply. Whilst Creation state that there is no indication that there is a connection between the later faults and those found in November 2022, I have to consider the car as a whole and what is fair in the circumstances. Looking at the work cards supplied as evidence they show a variety of faults as follows:

7 November 2022 car recovered, and investigation work carried out by the garage.

7 November 2023 to 6 December 2023 including reading and clearing fault codes, circuit voltage below threshold auxiliary belt replaced and coolant pump belt renewed.

8 January 2024 to 9 January 2024 airbag light on dashboard, passenger airbag deployment fault found. Loose connections found and repaired.

8 January 2024 to 10 January 2024 engine management light on and confirmed to be an issue with glow plug voltage codes. The codes were cleared, and the fault reappeared on a test drive. The PCM had an internal fault and was replaced.

9 January 2024 confirmed low battery message and due to failure, a new battery was required.

8 February 2024 to 14 February 2024 investigate engine management light being on an several fault codes recorded. These relate to plugs, circuits and failure to start.

While not containing detailed analysis of the faults they do contain sufficient information to highlight that they are all related to electrical faults with the vehicle. Creation also stated in their submission to the investigator that they felt the second issue that occurred in 2023 was due to corroded wires, making it a usage issue. Creation stated in their submission they hadn't seen the full texts of the reports from the garage, so this is supposition on their behalf. The job card 7 November 2023 through to 6 December 2023 does not contain any reference to corrosion. It does state at one point "Checked wheel arch connections C1DC12B and C11P23, found secure and clean."

The independent expert's inspection is informative, as is the number of job cards supplied. Whilst the expert was unable to replicate the fault it is clearly an intermittent fault, as can be shown by the car failing within 100miles of it being returned to Miss D. The independent expert had the consumer's experience and information from the servicing garage to help inform their conclusion.

Second-hand cars are also required to be durable, taking into account the age and mileage of the car. The car was a year old and had only travelled 5,200 miles at the time of supply, so is relatively new. Taking all evidence into account I find that there is an inherent fault with the car and that fault was first discovered in November 2022 and continued intermittently after this. As this is within the first six months after supply the presumption under the CRA is that the fault was present at the time of supply. I find nothing that Creation has stated or provided in evidence compelling enough to change this presumption. I therefore uphold Miss D's complaint.

In upholding Miss D's complaint, I need to consider what is the right thing for the business to do to put things right. Miss D has had use of the car and any payment returned to her needs to reflect this usage. This needs to reflect both impaired usage associated with the faults and any loss of use where Miss D did not have access to either her car or a courtesy car. I note that Miss D kept the vehicle off the road from March 2024 to July 2024 when she started to use the car again, as she had no access to another car. As the car has been in a usable state since July 2024 it is difficult to conclude that the car would not have been usable from March to July 2024. In assessing both loss of use and impaired usage I believe that a 20% refund of the monthly payments Mrs D has made, as set out by the investigator in their decision, does represent a fair means of resolution that balances the use she has had against her loss.

Because Creation have supplied a car that was of unsatisfactory quality, I have to consider the impact of the inconvenience and distress to her because of this. I feel in addition to rejecting the car and refunding payments as outlined below a payment of £250 is fair for this additional distress caused by the car breaking down and the inconvenience of numerous trips to the dealer.

Putting things right

The CRA says that Miss D may reject goods where one attempt at repair has been attempted already. There have been several attempts by the dealer to repair the car but these happened before Miss D referred her complaint to Creation. Given these attempts did not address the underlying issue and given the intermittent nature of the problem in this case there is no guarantee that allowing Creation an attempt at repair would fix this. Indeed it seems likely that Creation would have instructed the dealer to look at the car and its already apparent that they have been unable to get to the bottom of the problem. So, all things considered I find the fairest thing to do in this case is to allow Miss D to reject the car. In upholding the complaint, I direct Creation to:

- End the agreement with nothing further to pay by Miss D
- Collect the car with nothing further to pay by Miss D
- Refund Miss D her part exchange contribution of £8,064.16
- Refund Miss D 20% of her monthly repayments from 7 November 2022 until the date of settlement
- Pay 8% simple yearly interest on all refund amounts from the date of payment to the date of settlement
- Pay a further amount of £250 for any distress caused due to the faulty car

My final decision

My decision is that I do uphold this complaint against Creation Consumer Finance Limited. In order to settle this case they are directed to follow the redress above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 18 March 2025.

Leon Livermore
Ombudsman