

The complaint

Miss T complains about the quality of a used car she acquired through a hire purchase agreement with Creation Consumer Finance Ltd ('Creation'). Miss T says that the car she has acquired was faulty and she should be allowed to reject it. She also says trying to resolve this situation has caused her a significant amount of time and distress, and she should receive compensation for this.

What happened

Our Investigator thought the complaint should be partially upheld. Miss T disagreed with the Investigator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Miss T's complaint should be upheld in part. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

What I said in my provisional decision:

Miss T's complaint is about the quality of a car she acquired in May 2023. The car was used, and it was first registered in June 2018. So, it was about five years old when Miss T received it. It had covered about 32,500 miles. The vehicle had a retail price of £16,650.

Miss T acquired the car using a hire purchase agreement that was started in June 2018. She paid a £3,000 deposit meaning £13,650 was financed. This agreement was to be repaid through 49 monthly instalments, there were 48 monthly repayments of £225.09 and then a final instalment of £7,349.00. If Miss T made the repayments in line with the credit agreement, she would need to repay a total of £21,184.32.

Below is a summary of the issues complained about by Miss T and the investigation and repair work that has been carried out by the dealership and the garages that have worked on the car, alongside what has happened in respect of the complaint. There is also an independent report.

There has been a significant amount of correspondence over this long running dispute. I have read all of this, but I won't detail it in full. And Miss T has raised a significant number of issues over time. Again, I won't consider all of these in detail here, I'll concentrate on the issues, and evidence, I need to rely on to support the decision I am proposing to make in this complaint. Below is a broad summary of what has happened here:

Miss T received the car on 26 May 2023. She says that she received it in an unsafe and faulty condition. She has listed the faults as being:

- A faulty handbrake, the car would roll back slightly on a hill, and it was weak.
- The hill assist was not working reliably.
- There was a problem with the indicators.
- The driver seat would not move forward properly, and the seat rail was defective.
- An engine management light ('EML') came on briefly but went out after driving.
- The sound on the car navigation did not work.

Miss T emailed the dealership on 28 May 2023 informing it about the EML, that she had concerns that the brakes were not efficient (referring to the handbrake) and the navigation system had no audio.

The dealership fully responded on 10 June 2023 and said the car would be repaired. The dealership says that Miss T agreed to a repair on 14 June 2023, and she accepted the offer of a hire car at this time. The car was booked into a garage to be repaired on 21 June 2023 and Miss T was provided with a courtesy car.

I understand that the courtesy car broke down on 2 July 2023 and was collected by the hire car company. As far as I can see Miss T was not provided with a replacement.

I've seen some email correspondence that indicates Miss T informed the dealership that she wanted to reject the car around the 10th or 11th July 2023. I understand this was in a telephone call and I've not been provided with a copy of this.

Miss T made her complaint to Creation Finance on 26 July 2023. In addition to the problems with the car she was unhappy about making payments to Creation while she didn't have the use of any car.

The garage that worked on the car has said it repaired the EML, which was related to the car's indicators, and updated the navigation software. The brakes showed some wear but did not need action. The repairs were marked as completed on 27 July 2023. A health check was completed at this time.

The dealership says that Miss T's details were not added to the booking with the garage. I understand that the garage informed a third-party aftercare company that the repairs were completed but not Miss T.

Miss T didn't collect the car but requested that it was returned to her. She said the car had other faults and raised the issues with the handbrake again, the hill assist sensor and that it had a faulty driver seat rail. And she said that these had not been repaired.

The dealership agreed to have the car looked at again. I understand that the garage found that the handbrake, hill assist, and driver seat rail were not faulty. There has been a significant amount of correspondence between Miss T, the dealership, the repairing garage and Creation. Miss T was now maintaining that she wanted to return the car as it was faulty. And the repairing garage, the dealership and Creation said that the car didn't need any further repairs.

The dealership told Miss T on the 8 August 2023 that her request to return the car has been declined as it had been repaired. And there was no change in this going forward.

Correspondence continued between all the parties. And of note is that on the 7 September 2023 the dealership said that Miss T could not now reject the car as she had committed to have it repaired. This had been done and it was now not faulty. And whilst it took thirty days to repair this was a reasonable time frame. It agreed that Miss T should have been informed that the car was ready. It offered to return the car to Miss T, she could inspect it, if any of the faults she had mentioned were still present then she could reject the car. Miss T didn't agree to this as she now wanted to reject the car.

To try and resolve this issue the dealership arranged for the car to be inspected by an independent reporting company. And this was completed on 6 December 2023. All parties to the complaint have seen the report and it has shown that there are no ongoing faults with the car.

Creation has considered this complaint, and it didn't uphold it. In its final response letter of 19 September 2023, it said that the car had been fully repaired and was awaiting collection by Miss T. It did accept there was initially a fault with the car lights, but this was remedied quickly. But as Miss T had agreed to have the car repaired, and these repairs had been completed, it didn't think that she should be able to reject the car.

Miss T didn't agree with this and brought the complaint to the Financial Ombudsman Service. Our Investigators, over several correspondences, have broadly concluded that.

- The car that was supplied to Miss T was faulty as when it was returned to the garage it was repaired.
- Miss T agreed to these repairs and so she didn't exercise her short term right to reject the car.
- The communication around the repair of the car could have been much better, particularly as Miss T didn't have a courtesy car for some of the time the car was being repaired.
- Miss T hasn't paid many of the repayments due under the contract, and it wasn't wrong for Creation to reflect this on her credit file.

Our Investigator (in her most recent letter to Miss T) recommended that Creation should refund the two payments she had made between June to December 2023, and pay £300 for any distress and inconvenience that had been caused to Miss T. Creation has agreed to this.

Miss T didn't agree with our Investigator. I don't think any material new issues were raised. But I've noted what she still thinks is not resolved in her most recent correspondence. And that I will address in my decision. Miss T says that:

- The short term right to reject is still in place. This is because whilst she accepted that the car could be repaired, this was not done in a reasonable timeframe. She was told it would take a few days, but it took much longer than this.
- She experienced significant inconvenience, and costs, due to the delay to the repair as she needed to use public transport.
- The handbrake and hill assist issues weren't properly looked at or repaired.
- She was given misleading information about what was, or wasn't, done to the car.
- The independent report is not reliable, and it didn't look at all the issues the car had. For example, it didn't test the car on a hill to look at the hill assist.
- When she did eventually inspect the car the battery and tyres were flat, she should have received more assistance with this.
- She hasn't made the payments under the contract as Creation have breached it by not providing a satisfactory car. Her credit report should reflect this rather than that she hasn't made the repayments.

Because Miss T didn't agree, this matter has been passed to me to make a final decision.

What I've provisionally 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 what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider was good industry practice at the relevant time.

The agreement in this case is a regulated hire purchase – so we can consider a complaint relating to it. Creation as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 ('CRA') is relevant 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'.

To be considered 'satisfactory', the goods would need to 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 car's history.

The CRA 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 can be aspects of the quality of goods.

This car was about five years old when Miss T acquired it and it had travelled around 32,500 miles. The cash price was about £16,500 at that time. I think a reasonable person would accept that such a vehicle would probably have some parts that are worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a new vehicle.

But there's also a reasonable expectation that a vehicle will be relatively durable - taking into account its age, price and mileage at the outset. So even though the vehicle wasn't new, Miss T should have been able to use it for a reasonable period of time before it needed significant work.

Was there a fault with the car and was it of satisfactory quality

I think it's reasonable to say there was a fault with the car. Ms T said straight away that she had found several issues with it. She contacted the dealership who sent it to a garage for repairs. The garage did discover some faults with the lighting system and the car needed a software update for the satellite navigation system.

But it's worth noting now that Miss T has said that she has also had problems with the handbrake and the hill assist system. There is an EML light at times and a front seat adjustment rail was faulty. The garage that has looked at the car, and the independent reporting company, have not been able to determine that the car had these faults.

That said, I think it's reasonable to say that the car wasn't of satisfactory quality due to the lighting and software issues that needed to be repaired straight away.

Does Miss T have a right to reject the car

Miss T says that because of these faults she should have, and still has, a right to reject the car. The CRA gives the consumer a short term right to reject if the request to reject the goods is made within the first 30 days for a fault that was present or developing at the point of supply. Miss T didn't make a request to reject the car within the first 30 days, instead she agreed to have the car repaired. And section 23 of the CRA part (6) says that:

A consumer who requires or agrees to the repair of goods cannot require the trader to replace them, or exercise the short-term right to reject, without giving the trader a reasonable time to repair them (unless giving the trader that time would cause significant inconvenience to the consumer).

So, Miss T doesn't have a short term right to reject the car as she didn't request that the car was rejected within the first 30 days. And she had to give the trader a reasonable time to repair the car.

I've considered if the car was repaired. There has been significant correspondence about this, and I won't go through it all in detail as all parties are aware of it. But I think it's reasonable to say that the repairs (that were needed to be made to the car) were completed by 27 July 2023. And the car conformed to the contract from this point onwards.

And this was confirmed by the independent report completed later that showed that none of the faults that Miss T had raised with the car were still present. The independent engineer has confirmed their duty is to the courts, not to the person who instructed or paid for the report. So, it's reasonable to rely on it.

Miss T has said that she doesn't think the independent report was completed properly. It may not have fully considered the hill assist and handbrake issues. But the report does consider these faults and it explains how it tested them. I don't think the inspection wasn't sufficient to determine that the car didn't now have the faults Miss T had discovered.

With this in mind, I've also considered whether Ms T has a final right to reject the car. The CRA under section 24 part (5) says that about the final right to reject:

'A consumer who has the right to a price reduction and the final right to reject may only exercise one (not both), and may only do so in one of these situations—

(a) after one repair or one replacement, the goods do not conform to the contract'

So, the starting point is that the car was faulty, and Miss T agreed to a repair, the car was repaired. And so, Miss T doesn't have a right to reject the car due to the quality of it (either short term or final) as the car now conforms to the contract after one repair.

Miss T thinks that she should have a right to reject the car as it wasn't repaired within a reasonable time. Section 23 of the CRA, part (2) says about the right to repair or replace the goods that:

'If the consumer requires the trader to repair or replace the goods, the trader must—

(a) do so within a reasonable time and without significant inconvenience to the consumer, ...'

So, Miss T is right to say that the time taken to do the repair should be considered. And I do think it took longer than it should have done to repair the car. It took about a month for the repairs that were made where Miss T was told that it would have been a few days. And she wasn't kept mobile for all the period that the car was being repaired. Creation has already agreed to this, and I don't think there is an ongoing dispute that it should have done better here.

But whilst the CRA does say the repairs should be made within a reasonable time frame it doesn't say what should be done where this has not happened. And it doesn't say that a right to reject the car is the (only) way to put this right. There are many ways a consumer could be compensated in this situation, and I need to consider what is right in the individual circumstances of this case.

I don't think that Miss T should now have the right to reject the car due to this delay. Around a month is too long to make what seem to be relatively minor repairs. But the car did conform to the contract after this time and the car was available for collection. So, whilst I can see that Miss T told the dealership and Creation that she wanted to reject the car or receive a 'better' replacement I don't think it needed to do this. And so, compensation shouldn't be based on this.

The customer service around the repair and the courtesy car

There is a lack of clarity about when Miss T was told that the repairs had been completed. But she was in active contact with all the parties involved with the car and I can see that by 8 August 2023 she was told the car was ready for collection (amongst other things). And whilst this was clearly poor customer service it seems reasonable to say that Miss T didn't want the car by this point, and she wouldn't have collected it or agreed to have it returned to her in any event.

And I've borne in mind that much of the inconvenience Miss T refers to, took place after the car had been repaired on 27 June 2023. Whilst I can see that Miss T disagrees that the car was ready to collect, I think it's now clear that it was. I don't see any reason why Miss T couldn't have done this and started using the car. And I think that much of the inconvenience Miss T suffered could have been avoided if this had happened. And this included the problems she had much later on, such as the car having a flat battery, when she went to look at the car.

And Miss T had a courtesy car for some of this period. I understand this broke down and wasn't replaced. It's not entirely clear why this was, but again this is something that should have been rectified by Creation.

But, overall, I accept, as does Creation, that it's correspondence should have been better here and the car should have been repaired sooner. I think the £300 suggested by our Investigator for the distress and inconvenience she experienced due to this is fair.

The finance payments Miss T made and her credit report.

Creation has agreed with our Investigator that the payments she made while the car was being repaired and the complaint considered should be refunded to her. This is the two payments she made between June and December 2023. I also think this is reasonable compensation for the mistakes that were made here.

Miss T has said her credit report is showing missed payments which isn't fair. I don't think Creation should amend Miss T's credit report. Ms T should receive compensation for the time she didn't have use of the car, but this doesn't mean I think she didn't need to pay the car finance. And Creation has an obligation to accurately report the repayment status of loan payments and it should do this here.

Lastly, I don't think it's right that Miss T receive a full refund of the insurance and any other costs that she has paid. The car would need to remain insured even when being repaired and this was for a relatively short period. And the compensation below is partly for this in any event.

Developments

Creation, and Miss T, received my provisional decision. Creation agreed with what I had said.

Miss T didn't agree with my provisional decision she did provide significant responses and a summary of these is below. I haven't summarised all of what she has said. I don't need to refer to everything in order to come to my decision, but I have read all of it. Miss T said:

- She provided some examples of consumer rights case law and statute, and some legal cases involving the Financial Ombudsman. She provided some background on how the Financial Ombudsman Service was set up and our 'fair and reasonable' remit.
- She said the dealership had been dishonest as to the timeframe the repairs would take, and upon knowing it would take longer than it had said, the dealership took no steps to inform her of this so she could decide if she wanted to reject the car. Miss T noted I had accepted that the dealership had taken too long to repair the car and that the communication about this could have been better.
- She accepted a repair to the car during her short term right to reject time (the first 30 days of ownership) on the basis that it would take two to three days to fix the car and if she was told that it would take longer than this she would not have agreed to the repairs. And she would have rejected the car.
- She was put to significant inconvenience when the car was being repaired and afterwards. This was partly due to the courtesy car breaking down and a replacement not being provided. She also paid tax and insurance costs and so on when the car was being repaired.
- Miss T doesn't think the car was properly repaired. She did not think that all the issues with the car were repaired by 8 August 2023 as claimed by the dealership, and the hill assist, handbrake and seat rail were not properly investigated. These were only raised in September 2023 and so they couldn't have been fixed earlier.
- Taking five months to inspect a vehicle is not reasonable. It did not inspect the hill assist or handbrake and seat rail adjustment until 13 December 2023.
- She says that she has been provided misleading and incorrect information by the dealership and Creation about what was investigated by the garages that worked on the car.
- Regarding the information that has been reported to the credit reference agencies. Creation had marked payments late from November 2023 and she had paid more than two payments during June and December 2023, and she would like the credit issue to be looked at again.
- She provided commentary, and court case examples, which she said showed that Creation was not 'required' to report the missed payments in the way that it was

doing. In any event she was legally withholding payment due to Creation's breach of contract.

- She had raised new issues that had not been considered. These were problems with the car battery after the car had been left, that she needed to purchase a new car and the storage charges that were being applied. And there is also some evidence to show the car had a faulty shock absorber and was sold like this.

Given all of this, Miss T still thinks she had the right to reject the car as the issues she had brought to the dealership's attention had not been adequately fixed. And her credit report should reflect that she should not have been making repayments to the car finance as she should have rejected the car.

As no agreement has been reached, I have gone on to issue my 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.

I have reconsidered everything that Miss T has provided (and that she and Creation have provided earlier). But I won't respond to each of Miss T's points, or all that she has raised as I have considered most of it in my earlier decision. I need to decide what is a fair outcome here and say why I think this is, I won't do more than that here.

Miss T, in response to my provisional decision, and extensively throughout the complaint, has raised complaints and concerns about the actions of the dealership. This complaint is against Creation in its role as finance provider and is the entity responsible for the quality of the car. There is a clear connection here between the dealership and Creation, but it isn't right to consider any customer service issues Miss T has with the dealership as part of this complaint.

The most important finding I made in my provisional decision is that I think the car was repaired by July 2023. And this was confirmed later by an independent reporting company. I don't think there is anything significant to dispute this, and even the later visual inspection provided by the dealership (from October 2024) shows that, age issues aside, the handbrake and hill assist are working as expected. And I haven't seen any evidence of continuing problems with the driver side seat adjustment.

Miss T says that Creation can't have arranged all the repairs to the car as she didn't raise them when the car was first sent for repair. It's not clear to me why she didn't do this (if she didn't), or how she could have expected them to be repaired if Creation wasn't aware of these problems. But in any event, the independent report that took place after the repair did confirm that the car didn't have the problems with the seat rail, the handbrake and hill assist. It confirmed that there were no ongoing faults with the car.

So, as I said before, as Miss T had agreed to have the car repaired, and it had been repaired, then I don't think the short term, or any right to reject the car, is still in place.

As I said in my earlier decision, I also don't think that Miss T should now have the right to reject the car due to the delay in the repair. I still think a month is too long to make what seems to be relatively minor repairs. But the car did conform to the contract after this time and the car was available for collection. I still think the same compensation is reasonable for this delay.

Again, much of the issues Miss T has raised essentially concern what happened after the car was repaired in July 2023 and it was available for her to collect in August 2023. But I think it's still reasonable to say that these could have been avoided if the car had been collected. And this would include any storage fees.

And it does make it very difficult to put a large amount of weight on what Miss T says about the repairs not being successful when she didn't take ownership of the car or, as I understand it, inspect it herself at all until much later. And I must consider that what she says about the repairs being unsuccessful is contradicted by an independent business that did inspect the car. And the independent engineer has confirmed their duty is to the courts, not to the person who instructed or paid for the report. So, it's reasonable to rely on it.

Miss T has raised some potential problems with the car later on, when she did inspect it in 2024, such as the problems with the battery and the shock absorbers. I think these are too remote from the time of supply, and the repair to the car, to alter my findings.

As I said in my provisional decision, I can accept that, at times, Creation could have provided better customer service. But I have already considered this and my findings about it are as I said earlier and for the same reasons.

I can see that Miss T has made more than two repayments over the time I specified in my provisional decision. But this doesn't change that I still think my proposed compensation is reasonable. I think she should have two repayments returned to her due to the poor customer service.

Miss T has provided significant information in which she essentially says that Creation isn't 'required' to provide information to the credit reference agencies about how the finance has been repaid. My role here is to consider whether Creation has acted fairly. As I think the car was repaired and so conformed to the contract then I can't say that Miss T shouldn't have made the agreed repayments to the car finance. As Miss T didn't do this, I think it is reasonable for Creation to accurately report how the finance has been repaid to the credit reference agencies.

And it is a requirement by the Information Commissioner's Office that businesses report accurate information to credit reference agencies. And, whilst I appreciate a court can of course think this may not be the best course of action in some circumstances, it is what a business should generally do, and what I think Creation is right to do here.

Given all of the above, I am upholding Miss T's complaint in part and Creation should now put things right as below.

Putting things right

I uphold this complaint against Creation and it should now:

- Refund two payments Miss T has made to the finance which I understand is £450.18 (£255.09 twice) to reflect the loss of use of the car and the poor customer service over this time.
- Pay £300 for the distress and inconvenience Miss T has suffered.

My final decision

For the reasons I've explained, I partly uphold Miss T's complaint.

Creation Consumer Finance Ltd should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 11 April 2025.

Andy Burlinson
Ombudsman