

The complaint

Miss H complains that a used car supplied by Creation Consumer Finance Limited under a hire purchase agreement (HPA) is of unsatisfactory quality.

What happened

Miss H acquired the car under a HPA that she signed on 9 December 2022. The car was delivered to her home about three weeks later and she noticed heavy condensation inside the vehicle shortly after delivery. Miss H had the car checked by a third party garage ("the TPG") in January 2023 who found the front windscreen was leaking, there were gaps in rear window seals that allowed water ingress and a rear fog light lamp was cracked. Miss H contacted the dealer (who I'll call C) to complain. C arranged for the windscreen to be repaired in mid-January and refunded the £90 fee Miss H paid for the TPG's inspection.

C said it would get in touch about resolving the two remaining issues but nothing happened and Miss H contacted C again in March 2023 stating that the media centre wasn't working. She says various engine management lights (EMLs) had illuminated by this stage as well. These issues weren't fixed and Miss H took the car to another garage (that I'll call W) for more checks in June 2023. W found the rear fog light and bumper assembly were damaged, rear door trims had dropped (or were fitted incorrectly) and needed replacing, an EML was on, there were multiple fault codes and the audio socket was inoperative. Miss H complained to Creation, who contacted C, but the faults reported weren't sorted out and she referred the matter to our service.

Our investigator recommended the complaint should be upheld. He's satisfied the car was probably of unsatisfactory quality at the point of supply – given the problems that appeared soon after delivery which were still present when W inspected the car in June 2023. He thought it was fair that Creation should arrange for the faults found early on to be repaired – or reimburse Miss H if she paid for repairs. He acknowledged additional issues W identified in June 2023 were raised within six months of supply but he didn't think there was enough evidence to show that these were present or developing at the outset. He said Creation should organise an independent inspection and take further action based on any recommendations arising from that - and pay Miss H £75 compensation for her distress and inconvenience.

Creation accepted the investigator's recommendations and asked for Miss H to arrange and pay for repairs, the cost of which would be refunded. Miss H didn't think that was fair. She says the evidence from W shows the car has additional faults (that she didn't cause) and these were likely present when she got the car. In addition, she doesn't think £75 is enough compensation for the inconvenience and distress she experienced. She says she relies on her car to get her disabled children to school, this matter has caused her mental health to deteriorate and she's been struggling to cope plus she's out of pocket for fuel costs - due to having to take the car for various investigations and repairs. And, whilst she's still driving the vehicle (as she has no other option), her use has been impaired from the outset.

Having considered the available evidence, I was minded to uphold the complaint and reach a different outcome overall. I thought it was fair to give the parties the chance to see my

provisional findings and make further submissions (if they wanted to) before I made my final decision so I issued a provisional decision on 25 April 2024. I've set out below (in italics) what I decided provisionally - and why – and this forms part of my final decision.

My provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Creation supplied this vehicle under a HPA, which is a regulated consumer credit agreement and our service is able to consider complaints arising from it. As the supplier of the car under this type of agreement Creation was obliged, under the Consumer Rights Act 2015 (CRA), to ensure that the vehicle was of satisfactory quality when it was supplied to Miss H. The quality of goods includes appearance and finish, freedom from minor defects, fitness for purpose and durability and the standard that's considered "satisfactory" will vary depending on individual circumstances.

In the case of a used car, it's generally reasonable to take the price, age and mileage at the point of supply into account. This car was around five years old with over 51,000 miles on the clock and cost around £25,000 when Miss H got it. As such, I think a reasonable person would accept it's likely to have some parts that were worn and would need replacing or repairing sooner or later (which is reflected in the lower price paid compared to the price of a brand new vehicle) but there's also a fair expectation that the car would be reasonably durable.

I'm satisfied that Miss H reported fairly significant issues soon after delivery. She supplied evidence from early January 2023 that refers to several faults including leaks from the windscreen and rear door seals as well as a cracked rear fog light. It looks as though the windscreen was fixed in January 2023 and the cost of that repair and the related inspection were refunded to Miss H. As far as that particular fault goes, I think this seems reasonable. The leaking door seals and the damaged fog light remained unresolved however. And Miss H says further issues appeared in February and March 2023 - in that various engine lights illuminated and the media system wouldn't work properly.

Broadly speaking, the CRA says goods that don't conform to the contract at any time within the period of six months beginning with the date of delivery must be taken not to have conformed to it then - unless it's established they did conform on that day. I'm satisfied (from paperwork I've seen) that all of the faults identified by W in June 2023 appeared within six months of supply. I've seen nothing to suggest these were caused by anything Miss H did (or didn't do) and, based on the current evidence, I think it's more likely than not these were present when the car was supplied meaning it was of unsatisfactory quality at that point.

The CRA provides a short term right to reject within 30 days (in certain circumstances) but I've seen nothing to show that Miss H sought to exercise that right here. After the first 30 days the CRA allows for a price reduction or a final right to reject goods if there's been one repair or replacement already - and there's still a problem or repair or replacement is impossible or disproportionate or the consumer has asked for a repair or replacement but the trader hasn't done so in a reasonable time and without significant inconvenience to the consumer.

I'm satisfied that Miss H gave C the opportunity to repair faults in early 2023 but not all of the issues she reported were fixed. I've seen nothing to suggest that C had good reason for

failing to undertake these repairs – and, if Creation had any doubts about that, it had the option to instruct an independent expert when Miss H raised her complaint and it could then have arranged for repairs as appropriate.

Instead, Miss H was left with a faulty car for some months. I think she's likely already experienced more distress and inconvenience than is acceptable. I consider she's waited long enough for the matter to be resolved and it's unfair to expect her to wait any longer. I'm minded to find it is fair and reasonable Miss H should be allowed to exercise her final right to reject the goods (under the CRA) and require Creation to end the HPA, take the car back and provide a refund.

According to the HPA, Miss H paid deposit of £4,000 and I think it's reasonable this amount should be refunded to her, with interest. I've also thought about the use Miss H had of the car. I've seen some suggestion that she was unable to drive it for a time - she mentioned in a phone call to our service that she was struggling without it - however she's also indicated in correspondence that she's still driving the car, albeit her use is impaired.

I've seen nothing to show that the car is unsafe or Miss H was advised not to drive it. I accept however leaking rear door seals, EMLs and faulty audio are likely to mean using the car has been unsettling and uncomfortable and Miss H probably didn't get the use she reasonably expected. Taking everything I've seen so far into account, I'm minded to find Creation should refund 10% of each monthly payment made from the start of the HPA until the car is collected for impaired use.

I think it is likely Miss H has also experienced some distress and inconvenience as a result of being supplied with this faulty car – she's had to take it for various investigations and repairs and contact various parties to try and sort things out. I find it fair that Creation should pay her £200 compensation to reflect this. And, if any adverse information has been reported about the HPA, this should also be removed from Miss H's credit file.

Miss H asked us to consider some out of pocket expenses in the form of extra fuel costs for trips back and forth for the various investigations and repairs. She supplied evidence from her bank account showing payments made for what looks like fuel in December 2022 and June 2023. I accept she took the car to the TPG and W for work in January and June 2023 and she wouldn't have had to do that if it was of satisfactory quality when it was supplied. I don't have enough evidence however to reasonably find these specific fuel payments relate solely to the journeys in question. And, taking everything into account, I'm minded to find the redress overall seems fair in all of the circumstances. I'm not presently persuaded that Creation should reasonably be required to provide a further refund.

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 invited the parties to consider what I'd said and let me have any further submissions by 10 May 2024. I said I'd review all the evidence available after that and make my final decision.

Creation has accepted my provisional decision. Miss H thinks she should be entitled to further refunds. She supplied some additional paperwork and states that she paid a non-refundable premium guarantee of about £900 plus about £400 for tyre and alloy insurance, which she won't now get the use of. In addition, she says she never received the refund of £90 - for the TPG's inspection in or about January 2023 - that I referred to as having been refunded already in my provisional decision.

Dealing with the £90 fee first, I think it was reasonable for Miss H to have the car inspected in this situation. I consider the amount paid for the inspection seems reasonable. And I'm satisfied Miss H wouldn't have incurred this cost if the car was of satisfactory quality when it was supplied. I find it is fair and reasonable for Creation to provide an additional refund in this respect provided the £90 fee hasn't been refunded already and Miss H supplies proof of payment.

Looking at the tyre insurance Miss H refers to, I thought the premium seemed to be refundable pro-rata. We'd reasonably expect a consumer to contact the provider in this situation and seek a refund on that basis - as she had the benefit of the cover while she had the use of the car - so I asked the investigator to contact Miss H. He explained that I'd need to be satisfied she'd taken reasonable steps to mitigate her losses and allowed Miss H until 8 July 2024 to provide additional information. She hasn't sent us anything else about the tyre cover and I'm not persuaded that I can reasonably require Creation to provide a further refund in this respect.

In terms of the premium guarantee, Miss H says she's been told that it's not possible to obtain a pro-rata refund as this is non-refundable. I can see that's set out in the relevant paperwork - which seems to have been provided to Miss H at the outset. So, it looks as if this was made fairly clear to her when she agreed to accept the car and take out the finance. We asked Miss H to provide some more information about that and allowed her some additional time to do so. Miss H responded to say she feels misled about this payment and several other premiums taken out in her name.

I can't see that Miss H has raised any issue about these premiums previously with Creation. I think it's likely to take Creation some time to investigate and I'm not persuaded it's reasonable, at this stage, to delay the final decision in this complaint any further, in all the circumstances. If Miss H considers she was misled at the outset it's open to her to raise this with Creation (and/or any credit broker) and, if she's unhappy with the response, she may be able to bring another complaint to the Financial Ombudsman Service.

Subject to my comments above, I see no reasonable grounds to depart from my provisional findings. I remain of the view this car was likely of unsatisfactory quality when it was supplied and I think it is fair and reasonable for Creation to take the steps set out below to put things right.

My final decision

For the reasons I've given, my decision is I uphold this complaint and require Creation Consumer Finance Limited to do the following to put things right:-

1. end the HPA, mark the agreement as settled and arrange for the car to be collected at no additional cost to Miss H;
2. refund the deposit paid of £4,000;
3. refund 10% of each monthly payment made from the start of the HPA to the date the car is collected for impaired use;
4. refund £90 inspection fee (if this hasn't been refunded already) on proof of payment;
5. pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement;
6. pay Miss H an additional £200 compensation for her associated distress and inconvenience; and
7. remove any adverse information reported about the HPA from Miss H's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 2 September 2024.

Claire Jackson
Ombudsman