

The complaint

Mr D is unhappy that a car supplied to him under a hire purchase agreement with Creation Consumer Finance Limited was of an unsatisfactory quality.

What happened

In June 2023, Mr D was supplied with a used car through a hire purchase agreement with Creation. He paid an advance payment of £4,301 and the agreement was for £35,694 over 49 months; with 48 monthly payments of £544.16 and a final payment of £21,286.54. At the time of supply, the car was almost five years old, and had done 35,169 miles (according to the MOT record for 26 June 2023).

The car broke down in November 2023 and was recovered to a garage. An inspection showed that the turbo on the car had failed, causing a reduction in the oil being supplied to the engine and subsequent damage to the crankshaft. Mr D was told the engine would need to be rebuilt, and that this would cost over £9,000. At the time of the breakdown the car had done around 39,000 miles.

Mr D complained to Creation, but they didn't respond to this within the timescales allowed. So, he brought it to the Financial Ombudsman Service for investigation.

Our investigator said the engine had failed within six months of the car being supplied to Mr D. And, with less than 40,000 miles on the clock, such a failure couldn't be reasonably expected. As such, the investigator said it was for Creation to show the engine didn't fail due to something that was present or developing when the car was supplied to Mr D.

Creation provided a report from a garage that said the turbo had failed, which had led to additional damage to the crankshaft and conrod. However, this report didn't speculate on whether the car was of a satisfactory quality when it was supplied to Mr D. As Creation weren't able to show this, and as the car hadn't been repaired, the investigator said that Mr D should be able to reject it, receive a refund of the deposit he paid, receive a refund of the payments he'd made since the car broke down in November 2023, and receive an additional £250 compensation for the distress and inconvenience he'd been caused.

Creation didn't agree with the investigator's opinion. They said they were in the process of arranging for another independent inspection on the car, but that they would look to repair the car instead. Given the delays, the investigator explained why they didn't think a repair was reasonable, and that rejection was the most appropriate resolution.

Creation still didn't agree and said that Mr D hadn't raised the complaint with them until he'd been in possession of the car for seven months. They also said that, as they'd offered repair some five months after the complaint was made to them, this was within a reasonable timeframe, so they should be allowed to repair the car.

Because Creation didn't agree with the investigator's opinion, this matter has been passed to me to decide.

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. Mr D was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Creation are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Creation can show otherwise. So, if I thought the car was faulty when Mr 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.

Before I explain why I've reached my decision, I think it's important for me to explain how I've applied the CRA. The CRA is clear that, if a fault *occurs* within the first six months of supply, it's for Creation to show the fault wasn't present or developing at the point of supply - the test set out by the CRA is not if the fault is *reported* within the first six months. As such, while Mr D initially complained to the supplying dealership, and didn't complaint to Creation until February 2024 – more than six months after the date of supply – it doesn't mean that Creation doesn't have to prove the car was of a satisfactory quality.

In this instance, it's not disputed there was a problem with the car. What's more, Creation haven't provided anything to show that the car was satisfactory at the point of supply, and they are also now arguing for the right to repair. As such, I'm satisfied I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think Creation should do to put things right.

Putting things right

In their comments on the investigator's opinion, Creation are saying they should have the right of repair. Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Creation – the first attempted repair is the single chance at repair.

Neither the dealership nor Creation have attempted any repair on the car. As such, I'm in agreement with Creation that the single chance of repair hasn't happened, and section 24(5) of the CRA affords this right to them. However, Section 23(2) of the CRA states:

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

It's not disputed that the car broke down in November 2023, nor that the dealership was aware of this breakdown at the time. Despite this, they didn't make any offer to repair the car. Creation was made aware of the issue in February 2024, and at that time they were also made aware the car had broken down in November 2023. Despite this, they waited until July 2023, and after our investigator had issued their opinion before they offered repair. As such, this offer was made around five months after Creation received Mr D's complaint, and around nine months after they were aware the car had broken down.

I'm not satisfied that Creation made this offer within a reasonable time scale, and their arguments that Mr D delayed in raising the complaint with them doesn't change this. As such, Creation failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mr D should be able to reject the car.

The car has been off the road and undrivable since late November 2023 and, since then, Mr D wasn't supplied with a courtesy car. As such, he was paying for goods he was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Creation failed to keep Mr D mobile; I'm satisfied they should refund the payments he made during this period.

I also think Mr D should be compensated for the distress and inconvenience He has been caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended Creation pay Mr D an additional £250, to recognise the distress and inconvenience he's been caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Mr D would've felt by having to arrange for alternative transport while his car was off the road. And I think it also fairly reflects Mr D's frustration with the poor communication he's received. So, this is a payment I'm directing Creation to make.

Therefore, if they haven't already, Creation should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr D;
- remove any adverse entries relating to this agreement from Mr D's credit file;
- refund the deposit Mr D paid (if any part of this deposit is made up of funds paid through a dealer contribution, Creation is entitled to retain that proportion of the deposit);
- refund the payments Mr D has made from 27 November 2023 to the date on which the agreement is ended;

- apply 8% simple yearly interest on the refunds, calculated from the date Mr D made the payments to the date of the refund[†]; and
- pay Mr D an additional £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (Creation must pay this compensation within 28 days of the date on which we tell them Mr D accepts my final decision. If they pay later than this date, Creation must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires Creation to take off tax from this interest, Creation must give Mr D a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr D's complaint about Creation Consumer Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 March 2025.

Andrew Burford
Ombudsman