

The complaint

Mr W is unhappy and complains that a car supplied to him under a hire purchase agreement with Creation Consumer Finance Limited (CCF) was of an unsatisfactory quality.

When I refer to what Mr W has said and what CCF have said, it should also be taken to include things said on their behalf.

What happened

In November 2022 Mr W was supplied with a used car, through a hire purchase agreement with CCF. The cash price was £8,650. He paid an advance payment of £850, and the agreement was for 60 months with 59 monthly payments of £188.39 and a final payment of £198.39 to include an Option to Purchase fee of £10. At the time of supply, the car was around four and a half years old and had done 50,669 miles.

Mr W has complained that in March 2023 the car started to lose power and misfire. He was informed that the spark plugs were excluded from the warranty and so he should arrange and pay for the cost of the repair himself (which was £133). Mr W says the car was then tested and the issue of loss of power and misfire was no longer present.

Mr W reports that in July 2023 when driving the car he heard a loud bang, the car immediately lost power and the engine management light came on. Mr W says he could not see any obvious problems but on trying to restart the engine the car was rattling and shaking with no power.

The car was taken to a garage which advised the car required a new engine and provided a quotation for just under £6,000. Mr W says this quote was sent to CCF who then instructed an independent inspection to be carried out. This inspection was carried out in September 2023 with the findings summarised in a report as follows (I shall call this the First Report):

‘The engineer would be of an opinion the damage seen today is not sudden and would have been over a period of time with possible overheating and or misfire been present...

This would suggest the damage to the cylinder bore would have been caused by driving the vehicle with a fault present’.

Mr W was subsequently told by CCF that they would not cover the cost of the repair.

Mr W wrote a letter of complaint to the dealership copying in CCF and a month later CCF advised him they were unable to provide a response due to internal delays and that he should obtain his own inspection report.

Mr W arranged for a further independent report, which was carried out in December 2023. I shall call this the Second Report.

This Second Report concluded:

‘...that the root cause of the fault is due to sticking piston rings, which is a deterioration related issue and would have been present on the engine for some time, progressively worsening due to the condition of the internal engine components seen. We do consider that the condition has been present or in development at the point of vehicle sale as the fault is long term and progressive. However, in this type of condition, the fault is not normally evident until the final failure phase and certainly not when the piston ring starts to stick. In the later stages of the failure the erosion to the piston crown can develop relatively rapidly and normally becomes evident as an engine misfire. We would accept although the condition was developing, it would not have been evident at the point of sale’.

Unhappy with the response he had received from CCF at this point Mr W referred his complaint to the Financial Ombudsman Service for investigation.

Our investigator considered all the information available on the case provided by both Mr W and CCF, including both independent reports. Based on this information our investigator gave the view that Mr W’s complaint should be upheld. They said CCF should pay for Mr W’s costs in respect of the inspection he had arranged, the repairs and the monthly repayments under the hire purchase agreement from the date of the breakdown until the car is returned working to Mr W with simple interest of 8% to be added from the date the payments were made until the date of settlement, plus £200 to Mr W for distress and inconvenience.

CCF didn’t agree with the investigator. They gave their reasons as follows:

- The First Report they commissioned states the issues have been caused by onwards driving
- Repairs had been undertaken prior at a third-party garage without their consent
- They should not be responsible for a third garage may have misdiagnosed or the level of workmanship carried out
- Reports conclude the issue to be around sudden nature and not present at point of sale
- The car had been pre-owned and at point of sale had the mileage of 50,699

In a subsequent response CCF added to this saying:

- The amount of miles the symptoms described (misfire) would have occurred much sooner in the length of time since purchase
- Mr W had been able to drive 4,479 miles since purchase
- Mr W would have noted misfiring sooner

Because CCF didn’t agree, this matter was passed to me to make a final decision.

After reviewing the case, I issued a provisional decision on 17 September 2024, where I explained my intention to uphold the complaint. In that decision I said:

“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 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 W 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.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr W entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Mr W 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 CCF to put this right.

The car was approximately four and a half years old at the point of purchase with mileage of 50,699. It is generally accepted that a used car will require more and earlier maintenance than a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage, price and any other relevant factors.

First, I considered if there was a fault with the car. I've considered evidence provided by both sides and based on both of the independent reports it is not in dispute that there is a fault with the engine of the car. But just because there are or were faults found with the car, does not automatically mean that the car was not of satisfactory quality at the point of supply. So, I've gone on to consider if the car was of satisfactory quality when it was supplied to Mr W.

Both independent reports agree that the fault relates to damage to number 2 piston and that the damage would have built up over some time. And the Second Report specifically concluded that 'the condition has been present or in development at the point of vehicle sale as the fault is long term and progressive.' So, taking all the above into consideration, I think it is most likely this was a fault that was developing or present at the point of supply. And considering the price, age, and mileage of the car when it was supplied, I do not think the car was of satisfactory quality when supplied.

I know that CCF feels that the issues have been caused or exacerbated by Mr W onwards driving so I have considered the question whether Mr W would have known that the fault was present. In their letter of February 2024, CCF state that having reviewed the report they commissioned (the First Report) they found it stated, 'the issues would have been apparent whilst developing' and that 'continuing to drive the car has caused significant damage for which they cannot be held liable'. However, the report does not actually say this. The report states the issues would have been present but does not say they would have been apparent.

The First Report provides a great deal of detail on the damage done to the engine and an extensive list of possible reasons why that may have occurred but is very brief in its conclusion.

The Second Report provides a much more detailed explanation of how this type of fault develops, stating that although present 'the fault is not normally evident until the final failure phase' and that 'the failure the erosion to the piston crown can develop relatively rapidly'.

This matches the description Mr W has given of a sudden failure without prior warning. Mr W has also mentioned that there was no engine management light coming on, or temperature

gauge showing high temperature. So, considering everything, I am persuaded that although Mr W did drive while the fault was present, he most likely was not aware he was doing so and therefore I do not believe he was to blame.

As I appreciate CCF felt they should not be required to meet the costs described by our investigator and will be disappointed by my decision, I will provide a more detailed explanation in response to each of their points. CCFs specific points are numbered below followed by my response:

- 1. The (First) report states the issues have been caused by onwards driving.*

As I have said both reports confirm this fault would have been present for a considerable period, and the Second Report confirms their view that it was present at the point of sale. So, both agree Mr W drove with the fault present, but from the detailed explanation in the Second Report about how the fault develops I am persuaded that most likely he was not aware of it.

- 2. Repairs had been undertaken prior at a third-party garage without their consent.*

Mr W has stated he was told the repair in question (replacement spark plugs) was not covered by the warranty and that he would have to arrange and pay for this himself. I have seen no evidence to contradict this statement, and having paid for a warranty, I would not expect someone to then pay for work if they did not need to and so I am persuaded that most likely Mr W acted in accordance with what he was told to do.

- 3. They should not be responsible for a third garage may have misdiagnosed or the level of workmanship carried out.*

Mr W tried to have the car repaired under the warranty he had paid for but was refused. Mr W has said that when he contacted the warranty company they said that they would not cover this and when he told his finance company they said he had to pay for it, which he did as it is part of the contract and his duty to maintain the car.

Having been told this, I do not think it is unreasonable that he had the car repaired by a third-party garage. Also, there is no evidence to say that it is most likely the engine failed due to being misdiagnosed, or the level of workmanship carried out, by the third-party garage.

- 4. Reports conclude the issue to be around sudden nature and not present at point of sale.*

I have read both reports carefully, both state the final failure to be sudden but neither report concludes the issue was not present at the point of sale. Both conclude the fault would develop over time with the Second Report concluding it is their view that the fault was present or developing at the point of sale.

- 5. The car had been pre-owned and at point of sale had the mileage of 50,699.*

This is undisputed however I think a reasonable person would not expect to need to replace the engine in a car of this age and mileage.

- 6. The amount of miles the symptoms described (misfire) would have occurred much sooner in the length of time since purchase.*

Neither report suggests this would have been the case. The First Report states the 'damage is not sudden and would have been over a period of time with possible overheating and or misfire present'.

As this is not stated in the Second Report, and only described as a possibility in the First Report, combined with all the circumstances of this case I am not persuaded that it is most likely Mr W was aware of the symptoms sooner or that most likely they were present sooner. Also, I think had the car kept misfiring after the first repair, done by the third-party garage, Mr W most likely would have raised this as he did so previously.

7. *Mr W had been able to drive 4,479 miles since purchase.*

This appears to fit with both reports which state that the damage would have occurred over time.

8. *Mr W would have noted misfiring sooner.*

As explained under point 6 above.

Putting things right

The car has been off the road and undrivable since July 2023. During this period, Mr W wasn't supplied with a courtesy car. As such, he was paying for goods he was unable to use. 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.

Mr W has provided evidence of the costs he has incurred in the first repair, has paid for the car to be inspected and has provided estimates of the cost to have the car repaired. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that CCF puts things right.

In his complaint to us Mr W indicated his preferred solution would be to reject the car and have his deposit refunded together with the instalments he has paid towards the finance. I also note that, given the catastrophic failure, the total cost of repairs is now likely to represent a very high proportion of the car's total value when fully repaired. So, I'm not persuaded that there is a sound economic rationale for a repair to take place.

I think the fair and reasonable resolution here would be for Mr W to now be allowed his final right to reject the car. This would mean the car is collected, the finance agreement is cancelled, and Mr W has his deposit refunded (plus interest).

As Mr W was able to drive the car until July 2023 it is fair and reasonable that he should have paid for the use of the car during that time, but all finance payments made since, including any proportional payment for the month of July in which the car broke down, should also be refunded with interest.

As Mr W purchased a warranty, he should first try to cancel this. CCF should refund him with interest for any proportion of the cost of the warranty that relates to the period after the point of breakdown in July 2023 that he is not refunded on cancelling, together with any cancellation fee.

Mr W should be refunded the cost of the inspection he had carried out and the costs of the earlier repairs with interest.

It is clear that Mr W has been inconvenienced by having to arrange for the car to be inspected and being without the car since the July 2023. So, I think CCF should pay him £200 in compensation to reflect the distress and inconvenience caused.

Therefore, CCF should:

- *cancel the hire purchase agreement with nothing further to pay*
- *collect the car at no cost to Mr W*
- *refund any payments made for the hire purchase arrangement from the date of breakdown in July 2023 until the contract is ended*
- *refund the £850 deposit paid by Mr W*
- *cover the cost of the inspection paid for by Mr W, on production of a valid receipt or invoice*
- *cover the £133 cost of the first repair paid for by Mr W*
- *pay any proportion of the cost of the warranty relating to any period after the breakdown in July 2023 that is not refunded to him, together with any cancellation fee, if applicable, on production of evidence of these costs*
- *remove the finance agreement from his credit file and any adverse credit references*
- *apply 8% simple yearly interest on the refunds, calculated from the date Mr W made the payment to the date of the refund[†] and*
- *pay Mr W an additional £200 to compensate him for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality*

[†]If CCF considers that tax should be deducted from the interest element of my award, they should provide Mr W with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so."

I asked both parties to provide me with any additional comments or information they would like me to consider by 1 October 2024.

Mr W accepted my provisional decision.

CCF did not send any further comments or information for me to consider.

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've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've also considered again my provisional findings.

In view of the response to my provisional decision, I've no reason to depart from the findings I've already reached in my provisional decision. So, my decision remains the same.

My final decision

For the reasons given above and in my provisional decision, I uphold Mr W's complaint and I direct Creation Consumer Finance Limited to:

- cancel the hire purchase agreement with nothing further to pay

- collect the car at no cost to Mr W
- refund any payments made for the hire purchase arrangement from the date of breakdown in July 2023 until the contract is ended
- refund the £850 deposit paid by Mr W
- cover the cost of the inspection paid for by Mr W, on production of a valid receipt or invoice
- cover the £133 cost of the first repair paid for by Mr W
- pay any proportion of the cost of the warranty relating to any period after the breakdown in July 2023 that is not refunded to him, together with any cancellation fee, if applicable, on production of evidence of these costs
- remove the finance agreement from his credit file and any adverse credit references
- apply 8% simple yearly interest on the refunds, calculated from the date Mr W made the payment to the date of the refund[†] and
- pay Mr W an additional £200 to compensate him for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality

[†]If CCF considers that tax should be deducted from the interest element of my award, they should provide Mr W with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 31 October 2024.

Jo McHenry
Ombudsman