

The complaint

Mrs B complains about the quality of the car she acquired under a hire purchase agreement with Creation Consumer Finance Ltd (Creation.)

What happened

On 31 January 2022 Mrs B entered into a regulated hire purchase agreement with Creation for a used car. The car was around 14 years old and had been driven for 41,297 miles. The cash price was £12,419.

In March 2022 Mrs B noticed that faults were appearing with the car. And in September 2022, she took it to the dealership who, after investigating the issues, replaced the engine at no cost to Mrs B.

Mrs B received the car back in January 2023. In March 2023 she noticed problems with the heating, demisters and that there was also a part failure of the gearbox. Mrs B thought these problems were related to the engine replacement.

Creation investigated and asked for an independent inspection to be carried out. The report said that the heater fan motor was inoperative, and the offside inner constant-velocity joint boot was detached from the constant-velocity joint. They said as a result there was grease spray on the gearbox casing. They recommended a replacement heater fan resistor and offside inner constant-velocity joint boot.

Creation concluded that the current faults were not related to the engine replacement and were due to normal wear and tear. They noted the car had been driven 19,298 miles since it was acquired and so they thought the problems were what they would expect for a car with similar mileage.

Mrs B disagreed with the findings of the independent inspector and took the car to a different mechanic. The mechanic said they thought the velocity-boot may have been damaged during the engine replacement. They said no fault was found with either the blower motor or the resistor as the independent inspector's report suggested. They instead found a wiring problem and a burnt-out plug. They removed the burnt-out plug which they replaced with a permanent wire connection. Mrs B said she feels this report shows the independent inspector was incorrect, and Creation should pay for the repairs needed to her car.

On 4 January 2024 Creation issued their final response letter. They explained that because the independent inspector said the more recent faults were not present at the point of sale, they didn't think they had an obligation to repair them.

Unhappy with Creation's response, Mrs B brought her complaint to us. Our investigator looked at things and considered the mechanical evidence supplied by both sides. She also took into consideration the online research Mrs B provided about cars with similar faults.

After doing this, the investigator didn't feel there was enough evidence to show that the current faults with Mrs B's vehicle were present at the point of sale. As part of this, she

considered the age and mileage of the car and she thought a reasonable person would say it was of satisfactory quality. So, she didn't think Creation needed to pay for the repairs.

Mrs B was unhappy with the investigator's findings, and so the case was passed to me to review.

I sent Mrs B and Creation my provisional decision on this case, on 3 December 2024. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

Rejection of the vehicle

Mrs B acquired her car using a hire purchase agreement and so The Consumer Rights Act 2015 (CRA) is the relevant legislation for this complaint. The Act sets out expectations and requirements around the quality of goods supplied. In summary, goods should be of satisfactory quality. Satisfactory quality is based upon what a reasonable person would consider to be satisfactory. In instances like this when considering the quality of a car, the age, mileage and price are some of the things that I think would be considered to be reasonable to take into account.

The mechanic's report supplied by Mrs B was carried out by an independent repair shop. I can't see anything to suggest that it is a manufacturer accredited garage or that it specialises in the make of car Mrs B has. The report doesn't specifically say that the issues were present at the point of supply. It also only says the damage to the velocity-boot may have been caused by the engine repair but provides no further comment on this.

I know that Mrs B feels the independent inspector's report misdiagnosed an issue with the heater fan motor. I've considered that her mechanic solved the issue by replacing the plug rather than the whole unit. While the method of fixing the issues were different, I don't think it means I can ignore the independent inspector's opinion on whether the issues with the car were related to the engine replacement or present at the point of supply.

Overall, based on what I've seen I'm more persuaded by the findings of the independent inspector's report. This is because it provides more detailed reasoning and specifically addresses whether the new issues with the car were present at the time of supply or were related to the engine replacement.

Mrs B also provided online research of cars with similar issues, but I'm not able to say this disproves the validity of the independent inspector's report. This is because I can't ignore a report which was specifically carried out on her car, which considered its age, condition and mileage.

I've thought about whether the issues Mrs B experienced mean a reasonable person would say the car wasn't of satisfactory quality. And while I think the engine problems the car initially had meant the car wasn't of satisfactory quality, Creation met their obligations under the CRA by repairing it.

In regards to the more recent issues, I've considered that the car has been driven 19,298 miles since Mrs B acquired it. I'm also more persuaded by the findings of the independent inspector's report for the reasons I've already explained. And so, I think it's most likely the more recent issues were because of wear and tear rather than because the car wasn't of satisfactory quality.

Customer service issues

I know that Mrs B was frustrated with the communication from Creation while trying to arrange the independent inspector's report. I've looked at what happened when it was being arranged and I can see that Mrs B sent a garage report confirming the issues she was having but was then asked to list the faults again. I also think Creation were not clear in their communications about who would pay for the independent inspector's report and Mrs B had to ask for clarification several times. I can understand why this was frustrating.

Mrs B has said that she had no alternative method of transport while her car was in for repairs when the engine was replaced initially. I asked Creation for some more information about this and haven't received anything back. Mrs B sent us receipts of the alternative methods of transport and the dealership has confirmed that Mrs B's car was in the garage for this period. And so, without any further evidence, I think Mrs B has had periods when she was making repayments on the agreement but didn't have use of a car.

Mrs B has said she didn't have use of the car between September 2023 and January 2024. So, because of this, I think Creation should refund her any payments made during this time. They should also add 8% simple interest to each repayment, from the date the repayment was made, to the date of settlement of this complaint. I say this because Mrs B didn't have use of the funds that were paid to Creation.

Both Creation and Mrs B accepted my provisional 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.

As Mrs B and Creation accepted my findings, I see no reason to depart from the conclusions I reached in my provisional decision.

Putting things right

My final decision is that I uphold this complaint and ask Creation Consumer Finance Ltd to:

1. Refund Mrs B the monthly payments she paid under the hire purchase agreement between September 2023 and January 2024; and
2. Add 8% simple interest to part one of this settlement from the date each payment was made to the date of settlement of this complaint.

Creation must pay these amounts within 28 days of the date on which we tell them Mrs B accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Creation deducts tax from any interest they pay to Mrs B, they should provide Mrs B with a tax deduction certificate if she asks for one, so she can reclaim the tax from the tax authorities if appropriate.

My final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 9 January 2025.

Ami Bains
Ombudsman