

The complaint

Mr H has complained about the quality of a car provided on finance by Creation Consumer Finance Ltd.

What happened

Both parties are familiar with the circumstances of this complaint, so I've summarised the events here.

Creation supplied Mr H with a used car on a hire purchase agreement in December 2022. He used a credit broker to source the finance, and the car was supplied by a dealership.

The cash price of the car was around £15,100 and it had covered around 75,000 miles since first registration in March 2016. The hire purchase agreement required payments of around £320 for 59 months and a final payment of around £330. Mr H paid a deposit of around £1,000. The total amount payable was around £20,300.

Mr H said when he acquired the car there were a number of problems such as the wheel arch bumper coming away, inconsistent paintwork, a window needed repairing and looked as though the car had been in an accident, so it had been mis-sold to him. He said that there was also a grinding noise from the rear of the car. He said another garage had estimated the cost of repairs at around £3,400, and the dealer already had an opportunity to repair.

Mr H complained to Creation in July 2023. Creation didn't uphold the complaint and sent a final response in May 2024. It said it understood that Mr H claimed the car had been mis-sold as he had discovered the car had been in an accident and there were mechanical and electrical issues. It said that the independent report didn't confirm that issues were present or developing at the point of supply. It noted that the broker had indicated a repair was made to an intermittent fault with the electric windows.

An independent report by a third party I'll call Expert A was commissioned by Mr H in August 2023. It said that historic repairs had been completed which were of a poor standard but could not confirm when the repairs were completed, although it did suggest that the repairs were pre-existing. It confirmed a knocking noise which it said was potentially from the 4-wheel drive system and said that it would need further investigations under workshop conditions. It noted that Mr H had covered around 5,800 since taking possession of the car.

Mr H referred his complaint to our service. An investigator here looked at the complaint, he said that the car wasn't of satisfactory quality because the report had indicated that there were poor repairs which were present when the car was supplied. He set out that Mr H should be allowed to reject the car, with the agreement ended and a refund of the deposit plus 8% simple interest. He said that Creation could retain a deduction for use based on 45 pence per mile.

Creation agreed with the investigator and didn't offer any further comments. But Mr H said the deduction for use was unfair and would leave him in a worse position overall. He said there was no consideration for the time, effort and stress in dealing with the breach of

contract. In addition, he'd paid for repairs and had to continue using the car as he lived in a rural area and had no choice. He said that the car had been misrepresented to him, it was defective and might have caused a risk to his family's wellbeing. He said there were also electrical issues which were intermittent, and a window had been fixed and paid for himself.

The complaint was passed to me to make a decision. I issued a provisional decision which said:

I've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes

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 light of the available evidence and the wider circumstances.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Creation is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

Negotiations

I think section 56 of the Consumer Credit Act 1974 is relevant here. This provision has the effect of deeming the broker to be the agent of Creation in any antecedent negotiations. So, Creation is responsible for the antecedent negotiations the broker carried out direct with Mr H.

Mr H said that the dealer did not tell him that the car had been in an accident. But the difficulty here is that the broker here isn't the dealer, it is a different entity. I don't think Creation are responsible for what Mr H was or wasn't told during the negotiations for the car, as their agent (the broker) wasn't involved in these discussions. Creation isn't responsible for the negotiations he had with the selling dealer in this instance, a lot of what Mr H said could be down to misdescription from a business that Creation isn't liable for.

The main focus of this complaint however has been on whether there was a different breach of contract.

Satisfactory quality

The Consumer Rights Act 2015 (CRA) is of particular relevance 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".

The CRA says the quality of goods are satisfactory if they 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. In a case involving a car, the other relevant circumstances might include things like the age and mileage at the time of supply and the car's history.

The CRA says the 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, and safety.

When Mr H acquired the car in December 2022 the mileage was around 75,000 and the

cash price was around £15,100. The car was first registered in March 2016, so by this stage it was around six years old. It wouldn't be unreasonable to expect the car to be showing some signs of wear and tear, and that might include the underlying components. There would be very different expectations of it than if it was a brand-new car. The car cost around £15,100 which is significantly less than if it was new. The price paid usually reflects the age and condition of the car. But it still needed to be of satisfactory quality when it was supplied. As a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the car of unsatisfactory quality.

Considering the description of the faults, and the age and mileage of the car, I think it was reasonable for Creation to ask Mr H to supply some independent evidence about the car's condition. When something goes wrong with a car it isn't automatically something that the finance provider is responsible for. Sometimes the underlying components of a car suffer wear and tear which might mean that they come to the end of their serviceable lifespan during the course of a finance agreement.

Mr H already had a diagnostic/estimate from a main dealer in April 2023. It indicated that repairs costing around £3,400 were needed, including parts and labour. These included:

- NSR window fault (intermittent)
- Juddering caused by worn Mass Flywheel
- Fault to left parktronic sensor
- Brake discs and pads
- Noise from rear of car – rear prop shaft coupling split
- New front left tyre

I can appreciate that Mr H didn't complain to Creation until later. But I think he had sufficient evidence in this diagnostic, to demonstrate that there were several faults with the car.

Mr H got more evidence. The report from Expert A was carried out in August 2023 and the mileage was around 81,800. The report didn't reach a conclusion on the knocking noise which it said needed further investigation under workshop conditions, or some of the other items which were detailed in the earlier estimate. I've noted the earlier diagnostic does indicate that the noise might be due to the rear prop shaft coupling split. Mr H might have already paid for some repairs before Expert A saw the car, but I've not seen sufficient evidence of those repairs, which I'll come onto later. It also didn't confirm that the car had been written off or shouldn't be on the road. But the report did confirm that the historic repairs were to a poor standard and summarised that they would have been present at the point of supply:

"As such, it would suggest that the repairs were pre-existing at the point of sale but have taken some time for the customer to become aware of the defects. The repairs are not considered to be of a satisfactory standard".

Based on what I've seen, I'm satisfied that all the parties now agree that the car had faults and it wasn't of satisfactory quality. Creation didn't object to our investigator's opinion on that. But for the avoidance of doubt, I'll say that I agree.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer, must be taken not to have conformed to it on that day. Unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

The diagnostic/estimate from April 2023 confirmed there were numerous faults with the car.

Creation haven't provided any compelling evidence to show that the faults weren't present when the car was supplied, and considering those faults were diagnosed when Mr H had only had the car for four months, I think it needed to do more here. Expert A confirmed that there were poor historic repairs. So, I'm satisfied that the car was not of satisfactory quality at the point of supply because a reasonable person wouldn't expect such significant defects. Mr H has supplied evidence, in the form of text messages, that the dealer said it undertook some repairs in May 2023. I don't have any evidence of what was repaired, if anything, but I've seen enough to persuade me that there was an opportunity to repair.

The CRA sets out that (outside of the short term right to reject period) if the goods don't conform to the contract the consumer has the right to ask for a repair. And if the goods aren't brought back to conformity after the repair the consumer has the right to reject the goods. The CRA also says where the consumer requires the trader to repair or replace the goods, this must be done within a reasonable time and without significant inconvenience.

Considering the circumstances I think the chance to repair has now passed. A repair hasn't been made in a reasonable amount of time and without significant inconvenience, as required by the CRA, so Mr H should now be able to exercise his final right to reject the car. All parties seemed to be in agreement with this when our investigator issued his opinion, but the car has remained in Mr H's possession, and he's told me that he continued to drive it, due to the continued dispute about his losses.

What's left for me to decide is what other steps Creation needs to take to put things right.

Deduction for use

The CRA says a deduction can be made from the refund to take account of the use the consumer has had of the goods in the period since they were delivered. It doesn't set out how to calculate fair usage and there's no exact formula for me to use. There's not an industry standard mileage figure despite what our investigator said.

But as a starting point, in the particular circumstances of this case, I think the monthly repayment towards the hire purchase agreement is a reasonable figure to start thinking about his use of the car. Mr H also let me know he's stopped making payments in June 2024, and I can see that the MOT ran out in November 2024. He's said the car has been off the road since then due to concerns about the car not passing the MOT and/or the costs of repairs. But Mr H has still been able to cover around 27,000 miles in the time he's had the car, and I have to take account that it appears he's continued to drive it until the MOT ran out despite not making payments for the previous several months. I understand he's said he's had little choice as he's needed to keep mobile, and he thinks he is due all of his payments back. But it's only fair that he pays for the use he has had. Based on what he's told me about when he stopped making payments, he'll have paid around £6,800 overall including the deposit. No doubt he would have had to pay for other means to keep mobile if he didn't have the car, and I can't put him in a better position overall. So, I think Creation can retain the monthly payments and deposit Mr H he's made in recognition of the use he's had of the car. This reflects the nature of the Financial Ombudsman Service's scheme as one which is intended to be fair, quick, and an informal alternative to court. I think this means Mr H will have paid a reasonable amount for his actual use of the car, taking into account all the individual circumstances, which I think is the spirit of the legislation.

Consequential losses

Mr H says that he's paid for some repairs to the car. I'd need to see something which indicated these repairs came about because the car wasn't of satisfactory quality, rather than consumables that are necessary for continued use. Mr H has provided an estimate for

repairs to a window, the mass flywheel and a parking sensor. And he says these are the repairs that have been completed. But I've not seen enough to show that repairs have actually been carried out, or that they have been paid for by him. The estimate includes other items and includes parts, labour and VAT. It isn't completely clear how much he would have paid although by a rough calculation it seems to be around £2,000. Some of the information Mr H provided indicated there might have been repairs carried out under a warranty. I don't have any information about that. So, I'd need to see an invoice detailing both the diagnostic for each item and evidence of payment. If he has paid for some repairs and the car is rejected, then he won't get the benefit of those repairs. So, I may make an award for consequential losses in the final decision, subject to suitable evidence of the loss being provided in response to this provisional decision, if I'm satisfied these have been incurred as a result of the breach of contract.

Compensation

Finally, I've considered compensation. Creation didn't get to grips with the complaint in the time required. I've noted that it registered the complaint in July 2023 but didn't issue a final response until May 2024. Based on the information that I've seen I'm persuaded that Creation could have reached a different outcome much earlier.

It's clear that Mr H has experienced a lot of stress and inconvenience due to being supplied a car that wasn't of satisfactory quality. He's said he's paid for some of his own repairs, an independent inspection and there has been a lot of back and forth. He's also described the worry at the risk to his family if something were to go wrong because of the faults with the car. But I have to balance this by thinking about the overall inconvenience considering he's still driven the car despite stopping payments. And he's managed to cover around 27,000 miles, despite having concerns about continuing to drive the car.

No amount of money can change what's happened. But I think the compensation I'm recommending is in line with what's awarded where the impact of the breach of contract and Creation's handling of the complaint has caused considerable distress, upset and worry – and/or significant inconvenience that needs a lot of extra effort to sort out. So, I think £400 compensation is suitable in the circumstances because it's had that sort of impact on Mr H.

Considering all the circumstances, and the other refunds set out, plus out of pocket interest, I think the steps I've set out below are a fair and reasonable way to resolve the complaint.

Mr H doesn't need to accept my decision if he thinks he can get a better outcome. He'll then be free to pursue the complaint by other means, such as through the court, after obtaining legal advice as necessary.

Creation agreed with the provisional decision. Mr H disagreed, in summary he said:

- He didn't think it was a fair and reasonable outcome for Creation to retain the monthly payments, given the condition and history of the car.
- He had no practical alternative but to continue using it due to financial constraints
- He had no choice but to reject the decision and pursue all the parties through the court
- He asked for an extension to respond in more detail

Mr H didn't provide anything further, so I'll now go on to make 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've summarised above the submissions I've received from Mr H as I want him to know that I've carefully considered all the points he made. However, he's repeated and reiterated a number of points that he made previously, specifically about the deduction for use which I addressed in my provisional decision. So, I don't intend to address the same points again in as much detail.

I can understand that Mr H is disappointed with my decision, and he's indicated that he's not likely to accept. If he doesn't accept my decision, then he'll be free to take the matter to court. However, he hasn't agreed to withdraw his complaint, and I need to draw a line under things, so I'm making a final decision to bring the complaint to a close.

I do understand that Mr H might not have had a practical or financial alternative to using the car. But I can't ignore the legislation allows for a deduction for use, he's been able to cover significant mileage despite the issues, and he would have had to pay something to keep mobile if he didn't have this car. It wouldn't be fair to put him in a better position overall, so I still think it's fair that Creation retains the monthly payments and deposit.

In my provisional decision I explained that I didn't have sufficient evidence that Mr H suffered a financial loss as a consequence of the breach of contract. I had estimated he might have paid around £2,000 for some repairs, but asked for further evidence and said that I might make an award subject to that being provided in response to the provisional decision. As I've not been provided with anything further, I can't reasonably say that a consequential loss has been incurred, so it isn't included in the award.

Considering the individual circumstances of this case and the evidence I've been provided, I think the steps I've set out below are a fair and reasonable way to resolve this complaint.

My final decision

My final decision is that I uphold the complaint and direct Creation Consumer Finance Ltd to:

- end the finance agreement ensuring Mr H is not liable for further monthly rentals
- take the car back (if that has not been done already) without charging for collection
- Refund the cost of the inspection £264
- Pay 8% simple annual interest on the refund above from the date of payment to the date of settlement*
- Pay £400 compensation for the inconvenience caused
- Remove any adverse information reported to the credit reference agencies

* If Creation Consumer Finance Ltd considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 September 2025.

Caroline Kirby
Ombudsman