

The complaint

Mrs K complains about the quality of a car she acquired through a hire purchase agreement financed by Creation Consumer Finance Limited (CCF).

What happened

In October 2022 Mrs K acquired a used car through a hire purchase agreement financed by CCF.

Mrs K said that in February 2023 a warning light appeared on the dashboard, and the car went into limp mode. Breakdown assistance was called, and the car was reset, but the warning light reappeared the following day and the car was taken to Mrs K's nearest manufacturer garage.

Mrs K continued to experience the warning light and the car going into limp mode and made several attempts to contact the dealership that had supplied the car, with no response. So, Mrs K complained to the manufacturer about the problem, and they arranged for repairs to be completed at Mrs K's local manufacturer garage.

In June 2023 the local garage confirmed that the repairs and an MOT had been completed and the car was ready for Mrs K to collect. They said there was a fault with exhaust gases escaping due to a cracked DPF assembly. This was replaced along with the EGR gauze filter.

Mrs K collected the car, but said the fault returned the next day, and so she contacted CCF to complain about the quality of the car in July 2023.

CCF told Mrs K in September 2023 that they weren't ready to conclude her complaint, and so she brought it to this service.

CCF sent Mrs K their final response to her complaint in November 2023. They said as Mrs K had taken the car to a local garage and not to the dealership that supplied the car, the supplying dealership hadn't had their one opportunity to repair the car. They said the failed repairs were the result of a third party and so the supplying dealership weren't accepting rejection or responsibility for the repairs. They didn't uphold Mrs K's complaint.

Our investigator gave his view that there was a fault with Mrs K's car that made it of unsatisfactory quality at the time it was supplied. He said Mrs K had made reasonable attempts to contact the supplying dealership, and it was reasonable for the car to have been repaired at a manufacturer garage. So, he thought CCF had an opportunity to repair the car, and this had failed, so Mrs K should be entitled to her final right to reject it. He said CCF should collect the car and end the agreement, and refund Mrs K's deposit, plus interest. He said that CCF should refund Mrs K 10% of her monthly payments for February 2023 and March 2023 because her use of the car had been impaired, and refund all of the payments Mrs K had made since 14 July 2023 as she reasonably stopped using the car at that point, plus interest.

Mrs K had asked for a refund of her insurance costs and for a new car she'd had to acquire. Our investigator didn't ask CCF to refund these as Mrs K had use of the car insurance, and it was reasonable for her to pay for the new car to keep her mobile if CCF were refunding the payments for this car.

Our investigator also asked CCF to pay Mrs K £450 compensation for the distress and inconvenience caused.

Mrs K accepted our investigators recommendations.

CCF didn't agree. They said the vehicle was supplied as a used car, and so there had been unknown wear on it before it was supplied to Mrs K. They said the parts were subject to wear and tear, had lasted around 3,000 miles before Mrs K experienced a problem with them, and had failed due to a sudden event rather than before or immediately after sale. They said repairs had been completed by a third party, and it was those repairs that'd failed, so the liability was with the garage that completed them.

As an agreement can't be reached, the case has been passed to me for a 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.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. CCF as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant 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"

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £60,000. It was around four years old and had travelled approximately 29,000 miles at the time of supply. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be higher than a cheaper, higher mileage, vehicle.

I've seen evidence that Mrs K first used her breakdown cover in early February 2023 following the warning lights on the dashboard. At this time, she'd had the car for around three months, and it'd travelled around 3,000 miles. The fault was eventually diagnosed as a cracked DPF assembly.

CCF say that Mrs K's car was used at the time of supply, she'd driven it a significant distance, and the fact that it'd failed suddenly showed that the fault wasn't there when the car was supplied.

The quality of the goods also includes their durability, and I don't think a reasonable person would expect such severe damage to the DPF system on a car of this price, age and mileage to happen so soon. I haven't seen any evidence that Mrs K's car was poorly maintained before sale, or that driving style contributed in any way to the fault.

On the balance of probabilities, I'm persuaded that the car was not reasonably durable, and therefore was not of satisfactory quality at the time of supply.

Having made that finding, I need to decide what, if anything, CCF should do to put things right.

Putting things right

The Consumer Rights Act sets out the remedies available where goods are considered not to be of satisfactory quality and one of the remedies is to allow an opportunity to repair the goods. That repair should be done in a reasonable time, and without significant inconvenience to the consumer.

CCF say the supplying dealer haven't had this opportunity to repair the goods, and they aren't responsible for the failed repair of a third party.

Mrs K tried to contact the supplying dealership when she first encountered problems with the car, but she received no response. So, I think it was reasonable for her to have taken the car elsewhere for inspection.

Mrs K took her car to a garage for the same manufacturer, rather than an actual third party. The garage was closer to her in location, and she could be sure they'd use manufacturer parts and were manufacturer approved. I think this was a reasonable course of action for Mrs K to take.

The car was inspected, and repairs were quoted by the garage. The manufacturer agreed to cover the cost of these repairs. I haven't seen any evidence that these repairs weren't reasonable or necessary at the time given the fault that presented, or that the parties thought they might not remedy the fault. I haven't seen anything to suggest that the action taken would've been any different if Mrs K had been able to take her car to the supplying dealership.

In the circumstances, I'm satisfied that CCF have had an opportunity to repair the goods and return them to a satisfactory condition, and that repair has now failed, or didn't resolve the underlying fault with Mrs K's car.

All things considered; I think Mrs K should be allowed her final right to reject the car. This means that the car is collected from Mrs K, the finance agreement is brought to an end, and Mrs K has her £4,686.78 deposit refunded (plus interest). Any adverse information should be removed from Mrs K's credit file.

Mrs K was able to use the car before the fault occurred, and so I think it's reasonable that she pays for the use of the car during that time. I think the normal monthly payments Mrs K paid to CCF up to the point the fault occurred fairly reflect her use of the car and so I'm not asking CCF to refund these.

After the fault occurred in February 2023 Mrs K was able to use the car, but it wasn't working properly or performing as it should've. Mrs K was concerned about the warning lights on the dashboard and the car continued to enter limp mode. I think CCF should refund Mrs K 10%

of her normal monthly payments for February and March 2023 to reflect this impaired use, at a total of £155.26.

Mrs K was provided with a hire car between March 2023 and June 2023 whilst repairs were completed. As she was kept mobile, I'm not asking CCF to refund her monthly payments during this time.

Mrs K stopped using the car in June 2023 when the fault reoccurred following the repairs, and she hasn't had use of the car or a hire car since then. I think it was reasonable for Mrs K to have stopped using the car at this time and so as she had to find other means to keep herself mobile, CCF should refund all payments made by Mrs K from 14 June 2023 onwards until the agreement is ended.

Mrs K has asked for her insurance costs to be refunded as she's paid for two policies. I haven't seen any evidence of a second insurance policy in Mrs K's name. And, as there's no other person named on the agreement with CCF, I can't ask them to refund losses incurred by a third party.

Mrs K has been put to distress and inconvenience in being supplied with a car that wasn't of satisfactory quality. She's had to spend time taking the vehicle to be diagnosed and repaired and has expressed how this has impacted her job and reputation at work. Our investigator recommended that CCF pay Mrs K £450 compensation to reflect this. All things considered, I think £450 fairly reflects the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint, and Creation Consumer Finance Limited must:

- End the agreement and collect the vehicle at no further cost to Mrs K
- Refund Mrs K's advance payment of £4,686.78, plus 8% simple interest calculated from the date of payment to the date of settlement
- Refund £155.26 to Mrs K to reflect the impaired use in February 2023 and March 2023, plus 8% simple interest calculated from the date of payment to the date of settlement
- Refund all payments made by Mrs K from 14 July 2023 until the agreement is ended, plus 8% simple interest calculated from the date of payment to the date of settlement
- Pay Mrs K £450 compensation to reflect the distress and inconvenience caused
- Remove any adverse information from Mrs K's credit file

If CCF considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mrs K how much it's taken off. It should also give Mrs K a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 26 July 2024.

Zoe Merriman
Ombudsman