

## **The complaint**

Mr B complains that he was mis-sold a vehicle partially financed by a hire purchase agreement with Creation Consumer Finance Ltd.

## **What happened**

On 29 July 2023 Mr B acquired a used electric car partially financed through a hire purchase agreement with Creation. He paid £18,000 in cash and £4,500 using finance. He said he asked the dealer to confirm that when the battery is charged to 100% the mileage range would be 214 miles. He said it wouldn't work for him if the mileage range was less than this. Mr B said the dealer confirmed the 214 miles and said if he paid more he would get a better car.

Mr B collected the car on 30 July. He said the battery wasn't charged so he took it to a charging station. At 100% charge Mr B said the mileage range was 183 in normal mode and 175 in sports mode and 193 in ECO mode. Mr B said he emailed the dealer on the same day saying he wasn't happy. He visited the dealer the next day to ask for his money back as he wasn't interested in the car. No faults were identified by the dealer. Mr B complained to Creation.

In its final response Creation said the range of the battery depends on several factors including driving style, road conditions, condition of the tyres and the age of vehicle amongst other factors. It said the dealer carried out an inspection and could not identify any faults. Mr B brought his complaint to this service. He said he wasn't complaining about the actual car but about the fact it had been mis-sold to him.

Our investigator concluded that Creation hadn't acted fairly, and that the car had been misrepresented to Mr B. Creation didn't agree so the complaint has come 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.

Having done so I agree with the investigator for the reasons I've outlined below:

Section 56 of the Consumer Credit Act 1974 (CCA) says that a finance provider can be held responsible for any 'antecedent negotiations' carried out by the credit broker. By this I mean what was said or done before the credit agreement was entered by the customer. It explains that finance providers are liable for what is said by a supplier before the agreement is signed – where there's a debtor-creditor-supplier agreement. I must take account of relevant law when deciding and in this case Section 56 does apply. In Mr B's case, the dealership acted as Creation's agent with the hire purchase agreement. So, I can consider Mr M's complaint against Creation.

No contemporaneous evidence of what was discussed when Mr B visited the dealership or

spoke on the phone, has been provided by either party; no notes or witness statements. I wasn't present when Mr B visited the dealer, and no call recordings are available, so I can't be certain of what was said. Where facts are in dispute or information is unclear or contradictory - as some of it is here - I reach my conclusions on the balance of probabilities. That is, what I think is most likely to have happened considering the available evidence and the wider surrounding circumstances.

Mr B has said the car was misrepresented to him. A misrepresentation is a false statement of fact which induces a customer to enter an agreement and to suffer loss because of that misrepresentation.

*Did the dealer make a false statement of fact?*

I'm unable to know the precise detail of discussions which took place between Mr B and the dealer in the run up to the finance agreement. But I've read Mr B's testimony and copies of emails he's sent to the dealer very soon after collection. And I've thought carefully about the circumstances and Mr B's business motivation for having the range of mileage he wanted.

The dealer provided a statement to this service. It says:

- On the initial visit Mr B declined to test drive, at this point there was no conversation about range.
- Mr B wanted to see how the charger worked.
- The settled on a car which needed to be delivered from a different branch. Mr B paid £100 deposit. The car arrived a few days later and Mr B came in to view the car and discuss options for payment.
- Mr B questioned at this point the kind of range he could expect to get out of the car but no definitive figure was given as with all elective vehicle customers the range is dependent on conditions, driving style etc.
- Mr B questioned about the charging time of the car. He said he planned to use service stations/supermarkets to charge.
- After handover Mr b said he wasn't happy with the charged vehicle
- The dealer concluded that at no point was Mr B given a figure of what the range he would get out of the car would be.

I'm not disputing the dealer's testimony. As I mentioned above when evidence or testimony is contradictory I must decide based on what is more likely to have occurred. It does appear that the bulk of the sales discussion was on charging the car and range. And given the nature of the vehicle itself, an electric car, I find it unlikely that Mr B wasn't given any idea of what range the vehicle could achieve when charged. I think it reasonable to say that electric car range would be an important feature for buyers seeking electric cars. I think it likely that the expected, if not guaranteed, range of the vehicle was discussed.

In addition to this neither party has provided any evidence that the dealership explained the variations in range that can happen under different driving and external conditions prior to sale. I think it reasonable to expect such a discussion to have taken place. I find Mr B's testimony credible and find it more likely than not that a figure in the region Mr B wanted was discussed leading to an expectation of that range.

*Was the statement false?*

Mr B said when he collected the car it wasn't charged which surprised him. I'm persuaded by evidence, including transactions on his bank statements, that he tried several times on 1 August, immediately after collection, to charge the car to get the desired mileage range at

idle, at 100% charge. And he wasn't able to. Nor has the dealership been able to replicate the 214 mile range. So on the basis I think it likely a figure in the region Mr B wanted was given, I'm persuaded it was false.

*Was Mr B induced into the contract?*

I'm persuaded that Mr B required an electric vehicle which would have a particular range when at idle at 100% charge. He told this service he made it clear that he didn't want a car that had a range of no less than 214 miles without starting. He said the dealership first showed him a car which did not meet his criteria at a cost of £19,000. He said he was offered a more expensive car which did meet his conditions, but he wasn't able to test drive it because it wasn't on site. He said he was therefore unable to immediately see the real condition of the car the dealership was promising. So I am persuaded he was induced into the contract.

Mr B has been consistent that he was after a vehicle with mileage range of 214 at 100% charge. He has said he understands the explanations given from the dealer about the differing range in different driving conditions, but he told this service:

*"The only thing I wanted was a car that, when stopped, had a range of 214 miles per 100% charged battery. They sold a car with the range of 183 miles at 100% loaded, as if it were a car with 214 miles per 100%."*

So I'm satisfied Mr B was expecting the car to have a range of 214 miles at 100% charge and wanted this car. And I'm persuaded this was his primary requirement because of his business intentions.

I've also seen copies of emails between Mr B and the dealer. On 1 August at 12.23 Mr B said he checked the car before he accepted that it was 214 range. He said he tried different charging places and at 100% charge could only reach 183 miles. He said he wasn't happy with this condition and wanted to return the car. At 12.36 he followed up by asking the dealer if he remembered he wanted 214 miles and if it was less he didn't agree to the deal. He said he attached a photo. At 1.19pm he said he was going to visit the dealership and wanted it to show the mileage of 214 on the screen. If he saw it he would accept.

On 2 August he said:

*"Today I checked the car again with same problem I told you before I not accept if electric car came with less than 214 miles range. ... Today 01 August 3 hours in (dealer) without any solution. Now I am going again waste all day. Finally tomorrow my friend hand over the car your office. Please 3 August return my money to my (bank) account by transfer."*

I can see that Mr B immediately went back to the dealer after charging the car to request to return the car. And I'm persuaded by his strength of feeling in this matter that he was induced into buying because of the mileage range he was likely told.

### **Putting things right**

To put things right Creation Consumer Finance Ltd must allow Mr B to reject the car and put him back in the position he would've been in had the car not been sold to him.

Creation must:

- Unwind the credit agreement and release Mr B of any further liability.
- Remove any trace of the credit agreement from Mr B's credit file.

- Refund Mr B's deposit paid of £17,517.
- Refund all finance payments paid from inception to present (Mr B has made it clear he hasn't used the car and he's provided evidence it has been stored and kept safe in storage).
- Pay 8% simple yearly interest on these refunded amounts from the date of payment until the date of settlement.\*
- Pay Mr B £200 in compensation for the distress and inconvenience caused by the misrepresentation.

\*If Creation Consumer Finance Ltd thinks it's required by HM Revenue & Customs to deduct income tax from the simple interest outlined above, it should tell Mr B how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

### **My final decision**

My final decision is I uphold this complaint and Creation Consumer Finance Ltd must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 August 2024.

Maxine Sutton  
**Ombudsman**