

## **The complaint**

Mr B is unhappy with the outcome of his dispute with Creation Financial Services Limited trading as Creation, about a faulty car. He's also unhappy with the time Creation took to deal with both the dispute and his complaint about it.

## **What happened**

In July 2017, Mr B purchased a car from a retailer. As part of the transaction, Mr B paid £1,000 of the purchase price using his credit card provided by Creation. In January 2021, Mr B returned the car to the retailer as it had been recalled for repair. The repair took place but, around 1,000 miles later, Mr B says he started having issues with the car's rapid charge function. It was determined that there was an issue with the drive train (EME) which would cost around £7,500 to repair. And the retailer offered to pay 80% of the cost of the repair.

Mr B was unhappy with the offer made by the retailer and, after an unsuccessful period of negotiation, he took his complaint to the Motor Ombudsman (MO), saying that the car wasn't of a satisfactory quality. And he wanted the retailer to pay 100% of the repair costs.

On 7 January 2022, the MO issued their initial opinion. While they said the car wasn't sufficiently durable, they also took into consideration the fact that the car had suffered age and mileage related wear and tear while it was in Mr B's possession. So, they thought the retailers offer of covering 80% of the costs was reasonable. Mr B didn't agree and asked the MO to issue a final decision.

On 13 February 2022, Mr B made a claim against Creation under Section 75 of the Consumer Credit Act 1974 (CCA). And he said that he was looking for the car to be repaired at no cost to him, with his diagnostic costs also being refunded. On 23 February 2022, Creation told Mr B that they couldn't investigate his claim until the MO had made their final decision. But they asked him to provide them with a copy of the diagnostic report and any other evidence he had to support his claim. In reply, a few days later, Mr B provided Creation with a copy of the MO's initial view (which he'd already rejected).

Creation maintained their view that they needed the diagnostic report and the MO's final decision before they could deal with his claim. So, on 22 April 2022, Mr B complained to Creation about their stance, and about how long they were taking to review his claim.

The MO issued their final response on 23 May 2022, explaining why they considered the 80% offer made by the retailer to be fair. Mr B provided Creation with a copy of this the same day. And, on 8 June 2022, Creation responded to his claim, saying there was no evidence that proves beyond doubt that the retailer is liable for the faults with the car. But they'd seen some evidence that the repairs carried out did have some impact on the post-recall problems. As such, Creation thought the 80% offer made by the retailer was fair.

Mr B wasn't happy with Creation's outcome, or how they had dealt with matters. And he brought his complaint to us for investigation.

While our investigation was ongoing, Mr B said that he no longer wished to pursue the issue of the outcome reached for the section 75 claim with ourselves, as he was now pursuing this through the courts. And he confirmed that he wanted to complain about the time Creation took to reach this outcome.

Our investigator said there were no set time limits for dealing with a section 75 claim, and more complex claims can take longer to resolve. She said that, as almost five years had passed between Mr B being supplied with the car and him making the claim to Creation, then it was his responsibility to show that the car wasn't of a satisfactory quality. So, she thought Creation were right to ask for this evidence. And, she didn't think that Creation had unduly delayed their decision once this evidence had been provided.

The investigator thought that Creation had misadvised Mr B by telling him they couldn't consider his claim until the MO had completed their investigation. And she didn't think this was the case. But she also didn't think that this had any impact on how long it took Creation to reach their decision. As such, she didn't think Creation needed to do anything more.

Our investigator also said that we were only able to consider complaints about regulated activities. And, as complaint handling wasn't a regulated activity, we were unable to look at how Creation dealt with the complaint Mr B had made.

Mr B didn't agree with the investigator. He said that Creation never asked him for an independent report, and he feels they could've made the assessment themselves because *"the law seeks to find what a reasonable person would consider unsatisfactory – not an expert opinion."* Mr B also thought that the information they gave him about the MO was inconsistent, and that they could've asked him for an independent report, which would've been quicker than waiting for the MO to complete their investigation.

Mr B has also said that he provided Creation with the MO's initial findings on 26 February 2022, so he thinks Creation taking until 8 June 2022 was *"excessive for a relatively simple case."*

The investigator considered Mr B's comments, and she said that, under the CCA, actions taken by other parties such as the MO will be considered. And that a customer cannot benefit twice from a proven fault. So, she thought it was reasonable for Creation to await the outcome of Creation's investigation before reaching their own conclusion.

The investigator also said that Creation had asked Mr B to provide a diagnostic report and the MO outcome before they could investigate. So, she thought Creation had made it clear what they needed early on in their process. Finally, the investigator said she didn't think that Creation had acted unreasonably by asking for expert advice before concluding their claim.

Given this, the investigator didn't change her opinion that Creation had acted reasonably and didn't need to do anything more. Mr B still didn't agree, and he's asked for an ombudsman to make a 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

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 what I consider was good industry practice at the time. Mr B paid for the car, in part, through a credit card provided by Creation. And, in doing so, he was entitled to make a claim with them under Section 75 of the CCA.

For there to be a valid claim, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. I've seen that the receipt for the deposit from the retailer was in Mr B's name. Creation have shown that the credit card transaction for this deposit was in Mr B's name to the retailer. As such, I'm satisfied a valid DCS agreement exists here.

I've then considered the financial limits that apply to a valid section 75 claim. Mr B needed to have purchased a single item with a cash price of over £100 but no more than £30,000. I can see from the credit card statement that the total amount of the deposit paid on the credit card was £1,000. So, I'm also satisfied the financial limits have been met for a valid claim.

Given this, I'm satisfied Mr B had a valid claim under section 75.

Finally, I've also thought about whether it would've been correct for Creation to also consider this issue under the chargeback scheme. But, either way, given everything I've said above and the complexity of the issue, I'm not persuaded this would've had a reasonable chance of success.

Mr B has explained that he no longer wants us to consider his complaint about the outcome of his section 75 claim, as this is now being pursued through the courts. And he's aware, and not disputed, that how Creation dealt with his complaint isn't something we're able to look at. As such, my decision will focus on the remaining area in dispute – how long Creation took to deal with his claim and arrive at their outcome.

In his comments, Mr B had said that Creation didn't need the MO's decision, and that they could've asked him for an independent report. Which would've been quicker. While I agree that the final decision from the MO wasn't absolutely necessary, Creation required some evidence to support Mr B's claim. And, in their email of 23 February 2022, as well as asking for the MO's outcome, Creation also asked Mr B for *"a copy of your diagnostic report and any other information which you believe will prove the retailers 'breach of contract' of the vehicle they sold you."*

Given this, I'm satisfied that Mr B was asked for an independent report on the faults with the car. And this request was made within two weeks of Creation receiving Mr B's claim, which I don't think was unreasonable.

On 26 February 2022, Mr B provided Creation with the MO's initial findings (dated 7 January 2022). Which said that the failure of the EME was either due to it being inherently flawed, insufficiently durable for its use, or that it was a result of the recall repairs. However, this concluded that the EME would also suffer wear through usage and need replacement at some point during the lifespan of the car. So, the MO thought the retailer's offer of 80% contribution to the costs is reasonable.

It's not disputed that Mr B didn't agree with the MO's findings and had asked for a final decision to be made. While it was just the proposed remedy that Mr B disagreed with, it always remained a possibility that the MO's final decision wouldn't agree with the initial outcome in respect of the faults with the car, and determine that the car was sufficiently durable. As such, I'm satisfied it was reasonable for Creation not to accept the MO's initial findings; and await either their final report or the diagnostic report and other supporting evidence they'd requested on 23 February 2022 instead.

I haven't seen anything to show me that Mr B provided Creation with the diagnostic report and other evidence. However, he did provide Creation with a copy of the MO's final decision on 23 May 2022. This decision confirmed the MO's initial findings. And Creation provided Mr B with their outcome to his claim on 8 June 2022.

As the investigator has already said, there's no set timescale for dealing with a Section 75 claim. And the time taken is dependent on the complexity of the issues involved in a claim. While Mr B considers this to have been a "*relatively simple case*", there can be more complexities involved in a matter like this compared to some other Section 75 claims.

Creation received Mr B's claim on 14 February 2022 and asked for further evidence on 23 February – a period of 10 calendar days (8 working days). They received sufficient evidence from Mr B to be able to consider his claim on 23 May 2022 and issued their claim outcome on 8 June 2022 – a period of 17 calendar days (11 working days, as this period included two UK Bank Holidays).

While I appreciate that this will come as a disappointment to Mr B, given the inherent complexities involved in a Section 75 claim of this nature, I don't consider a period of 19 working days to request and review evidence, and to issue an outcome, is so long as to be unreasonable. As such, I don't think that Creation have delayed in dealing with Mr B's claim.

### **My final decision**

For the reasons explained, I don't uphold Mr B's complaint about Creation Financial Services Limited trading as Creation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 May 2023.

Andrew Burford  
**Ombudsman**