

The complaint

Mr O complains about a used car he acquired through a motor finance agreement with Creation Consumer Finance Ltd. Mr O is unhappy as work that was to be completed on the car before he acquired it was not done, he was misled about the car having a full service history and he believes the car has been in an accident, which he was not informed about.

What happened

In July 2022 Mr O acquired a used car. After paying an initial deposit of £7,000 he used £12,800 of finance from Creation to fund the remainder of the cost. Mr O says that when acquiring the car it was agreed with the dealer that certain work would be completed to the car. Some work has now been completed but some bodywork repairs to the valence paintwork and two alloy wheel refurbishments remain outstanding.

Mr O also says that before acquiring the car he was told the car had a full service history but he later found out the car had only been serviced twice. Mr O has now had a service completed but has had to pay for that himself. While the car was with a garage it was also suggested that the car had been in an accident as there was believed to have been some work undertaken to the car's bodywork. Mr O says that he was not told about the car having been in an accident.

After some engagement between Mr O and the supplying dealer Mr O contacted Creation to complain about the car. Creation responded to Mr O's complaint and explained that it had contacted the dealer and noted that some repairs had been completed. Those remaining issues were, in Creation's view, cosmetic issues and Creation offered no further remedy to Mr O.

Unhappy with Creation's response, Mr O referred his complaint to our service where it was considered by one of our investigators. Ultimately, they found that Mr O's complaint should be upheld and Creation should provide compensation to Mr O. The investigator recommended Creation organise and pay for some repairs to be carried out, refund the cost of the service, with interest, that Mr O arranged and paid for himself and pay £150 for the distress and inconvenience Mr O had been caused.

Creation responded to the investigator's view and said that it agrees to the compensation payments and will more than likely agree to the repairs. It did ask that an indication of the repair costs were provided and that Mr O provide quotes for the work from different repairers.

Mr O did not accept the investigators conclusions or redress recommendations. Mr O believes that he was misled about the vehicle and would like Creation to take back the car and end his agreement.

As Mr O's complaint could not be resolved informally it has been referred to me as the final stage in our process.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. 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 the light of the available evidence and the wider circumstances.

Mr O acquired the used car through a motor finance agreement with Creation and in this instance Creation was the supplier of the goods to Mr O. As supplier of the car, Creation is responsible for the quality of the car and can be responsible if the car was found to not have been of satisfactory quality. Creation would also be responsible if Mr O has not been supplied with something that he was promised or if he was misled.

I understand that Mr O agreed to acquire the car and when doing so it was on the basis that certain issues with the car would be repaired. One of Mr O's concerns is that the car was supplied and not all of the issues have been resolved. Some of the issues have now been remedied, such as the driver's seat, cup holder and rattling sun roof. But the bodywork issue identified with the valence and the two wheel refurbishments have still not been remedied.

I'm satisfied that Mr O agreed to acquire the car on the understanding that these issues will be repaired and having viewed the submissions from the parties there appears to be little dispute that this was agreed. As the issue remains with the car's valence and two wheel refurbishments it is reasonable for Creation to meet the costs associated with repairing these areas of the car. Creation has highlighted that it has no repair facilities itself so has asked that Mr O obtain quotes for the work, if he has not already done so. I appreciate this will cause some further inconvenience to Mr O but it will enable the repairs to be completed now, assuming they have not already been done.

Once the cost has been agreed and the repairs completed, Creation should reimburse Mr O for the cost of those repairs with 14 days of Mr O submitting a copy of the invoice and proof of payment.

Mr O has also complained about being misled about the service history of the car. He has said that he was told before acquiring the car it had a full service history but has since realised this was not the case. The call recording between Mr O and the dealership appears to refer to Mr O being informed that the car had been serviced on three occasions. This may be slightly different to a 'full service history' looking at the age of the car, but I am satisfied Mr O was told the car had been serviced three times.

There is no evidence that the car had in fact been serviced three times, at that time of the conversation or when the car was supplied. And it does appear that the car was in fact only serviced twice. On this basis, I am satisfied that Mr O was misled about the service history before acquiring the car. Where a consumer has been misled consideration needs to be given to whether a misrepresentation took place. A misrepresentation is essentially where a

false or misleading statement has been made and that acted as an inducement for the consumer to enter into the contract. As I have already set out here, I am satisfied that there was a misleading statement about the service history. I have therefore considered whether this acted as an inducement to Mr O to acquire the vehicle.

This was a used vehicle from a prestige brand, with a reasonable amount of mileage. I can therefore fully appreciate that the service history was something Mr O considered important and would demonstrate the car had been looked after through its previous ownership. Regular servicing is required to ensure the components, in particular the engine, continue to run smoothly and should reduce the risk of failure or the need for expensive repairs as the car ages.

It is therefore very likely that Mr O was reassured by understanding the car had been serviced on three previous occasions. While I accept it would have been one of many factors Mr O considered, this is in my view likely to have acted as an inducement into Mr O ultimately agreeing to acquire the car. But that does not however mean that Mr O should necessarily be allowed to reject the car and end his agreement with Creation.

Mr O did arrange for and pay for the service himself. If being misled about the service history was so significant to Mr O to have stopped him from agreeing to buy the car this would have been apparent in the discussions at the time with Creation. I haven't seen sufficient evidence that in my view demonstrates the servicing issues was such a significant factor in Mr O's decision to acquire the car that now warrants rejection. If it was so significant I think it unlikely Mr O would have gone to the time and cost of arranging the service himself. This suggests to me that getting the car serviced for a third time was sufficient to remedy the issue here. Otherwise, I consider it more likely Mr O would not have arranged and paid for his own service but persisted with a claim for rejection of the car.

That said, Mr O has however still incurred a cost that is likely he would not have anticipated or needed to pay. And it is for this reason that I'm satisfied Creation should refund the cost Mr O incurred in servicing the car. If he has not done so already, Mr O should provide Creation with an invoice showing the work completed and proof of payment so Creation can reimburse him. I should add for clarity that Creation would only be responsible for the general cost of the service and not any other more general wear and tear repairs that may have also been carried out at the same time.

Mr O says he has also now been told that the car was involved in an accident and this he believes is evidenced by some bodywork repairs and panelling misalignment. Mr O believes he was misled by the supplying dealership and says he would not have agreed to acquire the car had he known it had been involved in an accident.

I accept that it is entirely possible the car has been involved in an accident and has therefore had some repairs to the bodywork. There is no supporting evidence of when any accident or repairs took place or therefore to the severity of any potential prior damage. The car was aged and had travelled over 60,000 miles when Mr O acquired the car and it is not uncommon for a car of this age and mileage to have been involved in one or perhaps more accidents.

Mr O did not raise the issue of the car possibly being in an accident until some time after he had the car and it had been seen by a professional body repair firm. This suggests to me that the issues with the bodywork are not actually that significant or noticeable, unless closely scrutinised. Mr O presumably inspected the vehicle in some detail when he agreed to acquire the car. As already mentioned, issues were identified presumably when Mr O was inspecting the car and repairs agreed for those parts. The remaining repairs referred to above relate to cosmetic issues and again suggest to me that Mr O would have closely

inspected the bodywork before agreeing the purchase. The absence of these issues being identified at the time of inspection again supports my view that any other potential repairs to the bodywork were completed well and not actually noticeable to the average consumer.

I do not therefore consider that there are any grounds to require Creation to be responsible for any bodywork repairs or panel realignments, other than that mentioned above relating to the valence and wheels. I have not seen anything that indicates the potential prior repairs were not carried out to a reasonable standard or that the car is unsafe. And I haven't seen anything to indicate that Mr O was misled about any potential crash or damage that may have occurred before purchase, as I don't believe that any actual discussions took place about this. Having carefully considered all of these factors, I do not consider there to be grounds to require Creation to now take back the car or end the agreement with Mr O.

Finally, I also understand Mr O had an engine oil service completed on the car. This in my view would be considered a more general wear and tear requirement and something one would expect with a car of this age and mileage. It is not in my view something that Creation should be responsible for.

I do consider that Mr O has suffered some trouble and upset as a result of being supplied with the car which did not have the agreed repairs completed, or the service history he was told. Mr O has had to arrange and pay for the car's service and will incur further inconvenience as a result of arranging the final repairs. I appreciate Mr O will be unhappy with many other aspects of the car buying experience with the supplying dealer, but I can only make an award for the things that Creation is ultimately responsible for. Having considered the circumstances of this complaint Creation should make an additional payment of £200 to Mr O for the distress and inconvenience he has been caused.

I appreciate Mr O will likely remain unhappy with the decision I have reached here but this decision does represent the last stage in our process. Mr O is free to accept the decision, as set out here, and it will be legally binding on Creation. Should Mr O however wish to continue with his dispute against Creation, he will need to do so through other means.

My final decision

My final decision is that I uphold Mr O's complaint against Creation and require Creation to settle the complaint in accordance with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 12 October 2023.

Mark Hollands
Ombudsman