

The complaint

Mr O complains about the quality of a car he acquired under a Hire Purchase Agreement with Creation Consumer Finance Ltd (Creation).

When I refer to what Mr O has said and what Creation have said, it should also be taken to include things said on their behalf.

What happened

On 28 February 2023, Mr O entered into a Hire Purchase Agreement with Creation to acquire a used car. The car was first registered/manufactured in March 2016. At the time of acquisition the car had travelled approximately 94,200 miles as per the finance agreement. Less than two weeks before Mr O acquired the car, it had an MOT done and the mileage at that time was listed as 94,428. The total cash price of the car was approximately £13,450 when Mr O acquired it. The total amount payable under the finance agreement was approximately £18,130. Mr O made an advance payment of £500. The duration of the agreement was 59 months. The first monthly payment of around £299 was due one month after the start of the agreement, followed by 57 consecutive monthly payments of around £299. The final payment of around £309 was to be collected 59 months after the start date of the agreement. And the Option to Purchase Fee of £10 was also to be collected at the same time as the Final Payment.

On 6 April 2023, about 5 weeks after Mr O acquired the car, he wrote to the supplying dealership and said that about four weeks after acquiring the car he noticed that there was a lot of noise and issues with:

“Gear box oil leak
Suspension arms
Motor is moving
Inside is a plastic that moves constantly.”

The supplying dealership told him to contact the warranty company.

On 15 April 2023, Mr O bought two engine mounts for the car for a total cost of £198.44. On 10 May 2023, he bought a water pump and timing belt kit which had a total cost of £252.96. And on 11 May 2023, he bought suspension parts for a total cost of £651.73. Mr O did not install these parts as he was waiting for a resolution on his complaint, so the three above prices do not include the total labour cost to install these.

Mr O said on 19 May 2023, the car’s manufacturers dealership was having issues installing a recall software update package on his car. They later told him that this was due to the car’s AdBlue software previously being deleted.

Mr O wrote to the supply dealership on 5 June 2023. In this correspondence he said that following a diagnostic check, done the same day, he found out the AdBlue tank has a fault as the system has been deleted from the car and the ECU has been flushed/tampered with to remove the AdBlue system warnings. He also said there were other mechanical faults with

the car to do with suspension arms, water pump, engine mounts, and a transmission leak. He forwarded to the dealership a diagnostic which cost £90. This diagnostic listed some of these issues and, at the time the diagnostic was carried out, the car had travelled approximately 98,900 miles.

Mr O said that the AdBlue pump parts and labour would be around £3,840, and the repair of the transmission would cost about £2,000 to £3,000. Mr O also thinks that Creation should pay him £3,000 compensation for the distress and inconvenience caused.

Mr O said that he raised these issues with Creation in May 2023, but he never received a response. On 1 August 2023, Creation wrote to Mr O and they said they are unable to provide a response due to internal delays, so they said he has an option to refer his complaint to the Financial Ombudsman Service (Service).

Mr O was unhappy with Creation, so he referred his complaint to our Service.

On 21 August 2023, an independent inspection was completed on the car. At the time the car had travelled approximately 101,581 miles. The inspection report concluded that the transmission leak was present *“for some considerable time and mileage and in our opinion in the development stage at the point of sale”*. The report said that this was based on there being *“engine grime in the fluid remnants”*. It also said *“The faulty ad blue system has triggered multiple fault codes that are active suggesting a permanent fault, a specialist investigation may provide evidence as to whether this is a system fault or the system has been tampered with ... In conclusion we do believe that the vehicle had an underlying condition with the transmission and its associated components at the point of sale and therefore the sales agent should be responsible for investigation costs the grounds of durability.”*

All the remaining issues would be classed as general wear and tear and not considered as premature wear and therefore not the responsibility of the sales agent.”

An investigator issued an opinion on this complaint. She thought that the car was not of satisfactory quality when supplied and that Mr O should be entitled to reject the car. She thought that it is not fair and reasonable to insist Creation carries out the repairs because the repairs would cost a significant amount of money and are not guaranteed to sort the problems out.

The investigator commented that while the car had travelled a significant number of miles, the independent report makes it clear that the fault with the leaking transmission would have been developing at the time of sale. So, she did not think that a reasonable person would expect this, especially considering that this could cause damage to various parts of the car and result in costly repairs being required.

And whilst she said that she cannot be sure of exactly what the issue with the AdBlue tank is, based on what Mr O has said, this was present at the time of sale, and it appears that this part of the car was tampered with. She said that the repairs required to this part alone are costly. She did not think a reasonable person would expect such costly repairs so soon after getting the car and nor for such essential parts of the car to have been tampered with.

The investigator also thought Creation should pay Mr O £200 for the distress and inconvenience caused plus reimburse him for extra expenses; £90 for diagnostic, £150 for car mats and a total of £1,103.13 for the other parts mentioned above. She thought Creation should also refund Mr O his deposit contribution of £500. The investigator was of the opinion that, whilst some of the costs came about as a result of wear and tear issues, there is no

guarantee Mr O would have had to pay these amounts if he was supplied with a car that was of satisfactory quality, and as such Creation should reimburse the costs in full.

Mr O accepted the investigator's view, but later came back and said that he has other expenses for tyres, cooling system needed refilling, geometry/alignment, oil filters and brakes. But the investigator replied that she will not be asking Creation to reimburse these costs because these items appear to be related to the maintenance of the car required to keep it on the road, rather than parts/work needed because the car was of unsatisfactory quality.

Creation did not accept the investigator's view.

So, the complaint has been passed to me to decide.

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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I am very aware I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. But I have focussed on those that are central to me reaching what I think is the right outcome. This reflects the informal nature of our Service as a free alternative to the courts.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr O acquired the car under a Hire Purchase Agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Creation is the supplier of the goods under this type of agreement and is responsible for dealing with complaints about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr O entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mr O's case the car was used, with a total cash price of approximately £13,450. It had covered around 94,000 miles and was around seven years old when he acquired it. So, the car had travelled a reasonable distance and it is reasonable to expect there to be some wear to it because of this use. I would have different expectations of it compared to a brand-new car. As with any car, there is an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time, and it is reasonable to expect these to be replaced. And with second-hand cars, it is more likely parts will need to

be replaced sooner or be worn faster than with a brand-new car. So, Creation would not be responsible for anything that was due to normal wear and tear whilst in Mr O's possession.

First, I considered if there was a fault with the car. I've considered Mr O's testimony, and from the evidence provided by both sides, I can see that it is not in dispute there are issues with the car. The independent inspection, form 21 August 2023, states the AdBlue system has triggered multiple fault codes that are active suggesting a permanent fault. And that there was an underlying condition with the transmission and its associated components. It also said there were other issues that would be classed as general wear and tear. So, I think there are faults that are present on the car in question. But, just because there are or there were faults found with the car, does not automatically mean that the car was not of satisfactory quality at the point of supply. So, I've gone on to consider if the car was of satisfactory quality when it was supplied to Mr O.

Transmission Leak and issues with the AdBlue System

The independent inspection report concluded that the transmission leak was present "*for some considerable time and mileage and in our opinion in the development stage at the point of sale*". The report said that this was based on there being "*engine grime in the fluid remnants*". The report also concluded that the car "*had an underlying condition with the transmission and its associated components at the point of sale and therefore the sales agent should be responsible for investigation costs the grounds of durability.*" So, I have taken this into consideration.

I have also taken into consideration what the report said about the AdBlue system. It said the AdBlue system "*has triggered multiple fault codes that are active suggesting a permanent fault*". So I think it is evident that there is an issue with the AdBlue system too. Creation has not provided much evidence or representations in this case. All Creation has said is that this issue will require further investigation, so I have taken that into consideration. I have also taken into consideration that the independent report was not conclusive on how long this issue has been present or what specifically needs to be replaced as the report did say "*a specialist investigation may provide evidence as to whether this is a system fault or the system has been tampered with*". But I think most likely the AdBlue system was tampered with before Mr O took possession of the car. I say this because Mr O raised this issue very early on after acquiring the car. And I have found Mr O's testimony persuasive and consistent throughout. So I believe him regarding how and when he found out about the AdBlue System issues. I also believe him when he says this repair will cost about £3,840 and that the repair of the transmission would cost about £2,000 to £3,000. So overall I think most likely these are a reasonable estimates of the costs involved. And I do not think a reasonable person would expect such costly repairs so soon after acquiring the car. I also do not think a reasonable person would expect that essential functionality parts, such as the AdBlue system, would have been tampered with.

Considering the car was about seven years old and had travelled a reasonable number of miles, probably and most likely the transmission issue alone would not make the car of unsatisfactory quality. But considering the price paid, the age and mileage of the car when supplied combined with when the faults first became apparent, I think that both of the above faults (transmission plus Ad Blue system) together definitely make the car of unsatisfactory quality. So, I have carefully thought about what the appropriate remedy in this case should be.

I know Mr O's ideal option was for the car to be repaired. And normally I would have said that it would not be fair or reasonable for Mr O to be able to reject the car at this stage until an attempt at repair has taken place. But I think a repair, most likely, would be disproportionate because, from the evidence available, the repairs would impose costs on

Creation that most likely would be deemed unreasonable. Also, it is not clear what further damage the absence of the AdBlue system may have caused and if it is fully repairable. So, I think the most reasonable remedy, entitled under the CRA, would be for Mr O to be allowed to reject the car and in these circumstances it is also a fair outcome.

As such, the Hire Purchase Agreement should be cancelled with nothing further to pay and Creation should collect the car at no further cost to Mr O. Creation should remove any adverse information from Mr O's credit file. The credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

Mr O has been able to use the car during this time, and I can see that he was always kept mobile, so I do not think it would be fair and reasonable for him to receive a refund of the monthly payments he has already made.

Diagnostic report (£90)

Creation should refund Mr O the £90 he paid for the diagnostic report, as I do not think he would have incurred this had they supplied him with a car of satisfactory quality.

Two Engine Mounts (£198.44), Water pump and timing belt kit (£252.96), Suspension Parts (£651.73), and Car Mats (£150)

Creation has said the independent report mentions that the dealership would be liable for the transmission issues however the rest of the issues are due to general wear and tear.

I have thought very carefully and long about whether Mr O should be refunded for the engine mounts, water pump, timing belt kit, and for the suspension parts. And I would have been inclined to say that he should not be, because all these items are subject to wear and tear, so there is potential that these needed changing due to normal cycle of use and not because there was an issue with them at the point of supply. As such, these parts may have needed fixing because of normal wear and tear and parts coming to the end of their life cycle, as the car had covered over 94,000 miles when supplied. As such, it is reasonable to expect there to be some wear to these because of the car's use. And when it comes to the floor mats, I have not seen what type of floor mats the car was advertised with, so I have not seen enough evidence to say that, most likely, the car was not as described when Mr O acquired it. But overall, I have come to the conclusion that, in this specific case, I do not think that it would be fair or reasonable for Mr O to be responsible for the cost of all of the above parts. So, I am departing from the norm here, because taking all of the circumstances of this case I do not think it would be fair or reasonable for Mr O to be responsible for these costs.

When coming to this conclusion, I have considered many aspects:

- As a starting point, while I considered that some of the above costs are a result of the wear and tear issues, potentially Mr O would not have had to pay these amounts if he was supplied with a car that was of satisfactory quality in the first place.
- I also thought about the fact that, had the supplying dealership or Creation been more proactive at the beginning when Mr O raised the quality issues with the car, potentially he would have been able to reject the car earlier so he would not have incurred these costs at all.
- The independent inspection mentions some of the issues related with the noises and vibrations experienced and it does say that a lot of them are wear and tear, but it does not provide a lot of detail on why they think so. It also does say that further investigation would be needed when it comes to some of the issues specified. As the report is not conclusive and Creation has not provided any other explanation to

suggest that these issues were not present or developing at the point of supply, I considered that some of them could have been something else besides wear and tear.

- Creation has not commented at all about the car mats, even after our investigator's view, they had not disputed that they should or should not be responsible for this cost, so it is possible that the car should have been provided with floor mats at the time of acquisition.
- Even though Mr O had purchased all of the above mentioned parts in May 2023, in October 2023 these were still not fitted, as he was waiting to find out what would happen with this complaint, so I have considered that he has had no utility of these parts at all from when he got the car up to at least when the car had travelled a total of around 103,000 miles or more.
- Also, as I mentioned above, Mr O has been able to use the car, so I said that it would not be fair and reasonable for him to receive a refund of monthly payments, but, driving the car with the above faults present is likely to have been somewhat stressful and annoying to him, so, this would have reduced the utility and enjoyment of the car for him. So normally I would say that Mr O should be entitled to receive back a percentage of the monthly payments to fairly reflect the impaired use caused by the car not being of satisfactory quality. But as I am not making such a finding, I think there is a further compelling argument that it is reasonable for Mr O to be refunded the money he spent on the above parts.

In conclusion, based on all of the above, I do not think it would be fair or reasonable for Mr O to be responsible for the above costs. Whether any of these parts have been fitted by now or not, Mr O should leave these parts inside the car when it gets collected by Creation. If he chooses to keep any of these, Creation will not be responsible for refunding him the cost of any part or parts that he chooses to keep.

Tyres, Cooling System and its sensors, Geometry/Alignment, Oil, Filters and Brakes

Mr O, after the investigator's view, said that he had other expenses for tyres, cooling system refilling, geometry/alignment, oil, filters, and brakes. But most of these expenses are different to the parts I referred to above. These items, (especially the cooling system and its sensors, oil, and filters), appear to be related to the maintenance of the car required to keep it on the road, rather than parts/work needed because the car was of unsatisfactory quality. Also, Mr O did not raise these issues initially after the car was acquired and only mentioned these, and had the work carried out, more than seven months after supply.

Regarding the brakes, I could not say that most likely there was a fault present or developing at the point of supply, or that the car was unsafe due to issues with the brakes and their components. I say this because shortly before Mr O acquired the car, it had an MOT done and it passed this test. So, had there been any issues with the brakes, I think most likely this would have been flagged during the MOT. And Mr O had travelled at least 9,000 miles in the car before he mentioned that he needed to have work done to the breaks. Brakes are a wear and tear item, so I think, most likely, these needed changing due to normal wear and tear process and not because there was an issue with them at the point of supply. And, as such, I think it is most likely these needed to be fixed because of normal wear and tear and parts coming to the end of their life cycle as the car had covered around 94,000 miles when supplied, so it is reasonable to expect there to be some wear to it because of this use.

Regarding tyres and geometry/alignment, Mr O only flagged this more than seven months after supply, when he had travelled about 9,000 miles in the car. To say that Creation is responsible for the tyres and the misalignment issues, I would need to be persuaded on balance of probabilities, that the fault of the geometry/alignment was present or developing

at the point of supply. Also, separately I could conclude that Creation is responsible for the tyres only, if the car was supplied to Mr O with tyres that were unsafe at the time of supply.

I do not know what thread was remaining on tyres at the point of supply, but, as I said above, less than two weeks before Mr O acquired the car it had an MOT done and it passed with no advisories noted at all. So, I think, most likely, the tyres would be within the allowed safety standard at the time of supply. And as tyres are a wear and tear item, I do not think Creation would be responsible for replacement of tyres, unless the fault of the geometry/alignment was present or developing at the point of supply. Also, Mr O has not provided any evidence that stipulates to the nature of why the alignment was not within the manufacturer's specification, what has caused it, or when it may have started to occur. So overall, I have not seen enough evidence to say that, most likely, the geometry/alignment needed adjusting at the point of supply.

In addition, I understand that the geometry/alignment of the wheels on a car can be affected by many different reasons, among others, including driving over potholes, speed bumps, hitting a kerb and certain car repairs, so I also must take into consideration how many miles the car had travelled before the geometry/alignment of the wheels needed adjusting. And this was more than 9,000 miles since the point of supply. So overall, taking into consideration the number of miles the car had travelled, I cannot say that, most likely, this was a fault that was present or developing at the point of supply.

Overall, the above-mentioned parts are related to the maintenance of the car required to keep it on the road, rather than parts/work needed because the car was of unsatisfactory quality. And Mr O got a reasonable utility out of all of them, so I do not think Creation is responsible for reimbursing him for these costs.

Impact on Mr O

Mr O has also told us how all these issues have had an impact on him. He has explained that he has been inconvenienced and stressed. He also said he was worried as he was not getting any meaningful responses from Creation. So, I have considered that this matter has caused Mr O significant distress and inconvenience while trying to resolve it. Mr O had to take the car back to the dealership as well as make time for the independent inspection that was carried out on the car. I think, he would not have to do so, had Creation supplied him with a car that was of a satisfactory quality. Overall, I think Creation should pay him £200 in compensation to reflect the distress and inconvenience caused.

My final decision

For the reasons given above, I uphold this complaint and direct Creation Consumer Finance Ltd to:

1. End the Hire Purchase Agreement with nothing further to pay;
2. Collect the car at no cost to Mr O;
3. Refund to Mr O the advance payment of £500;
4. Refund £90 to Mr O for the diagnostic report;
5. Refund £198.44 to Mr O for the two engine mounts, unless Mr O chooses to keep these;
6. Refund £252.96 to Mr O for the water pump and timing belt kit, unless Mr O chooses to keep these;
7. Refund £651.73 to Mr O for the suspension parts, unless Mr O chooses to keep these;
8. Refund £150 to Mr O for the car mats, unless Mr O chooses to keep these;

9. Add 8% simple interest per year to all refunded amounts, from the date of each payment to the date of settlement;
10. Pay Mr O £200 for the distress and inconvenience caused;
11. Remove any adverse information recorded on Mr O's credit file in relation to this credit agreement, and the credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

If Creation Consumer Finance Ltd considers that tax should be deducted from the interest element of my award, they should provide Mr O with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr O to accept or reject my decision before 3 July 2024.

Mike Kozbial
Ombudsman