

## **complaint**

Mrs C, who is represented by her husband Mr J, complains that Creation Financial Services Limited rejected her claim under Section 75 Consumer Credit Act 1974 in respect of a second hand car.

## **background**

In September 2017 Mrs C bought a car from a dealer I will call K, for £2,185. This was funded by a trade-in and the balance was paid by credit card. The car was 11 years old and had done 113,000 miles. It was advertised with a full service history and that it drove very well. However, the invoice records that it was sold as seen.

A fault came to light within a couple of weeks and Mr C says a new front strut was fitted at a cost of £150. Mrs C complained to K after some six weeks as she had had to fill the car with oil twice since purchase. She took it to another garage and obtained a report which was paid for by Creation. This noted that the steering was stiff and there was a clonking noise. It also confirmed the car was burning oil so required either valve stem oil seals or piston rings. It stated there is a possibility a new engine is required at a cost of £4,000. And wiring checks needed to be carried out between PCM and ECU.

Creation rejected the claim and said as some work had been undertaken by another garage this could well undermine the claim that it wasn't fit for purpose at the point of sale. It also said the car had been sold as seen and hadn't been misrepresented.

The complaint was considered by one of our investigators who recommended it be upheld. She spoke with the inspecting garage and it said that if the car had been serviced properly then the faults were unlikely to be due to wear and tear. As there were no issues arising from the service history or MOT reports she thought it most likely the faults were present at the point of sale. She also noted that the inspecting garage had found metal filings in some components which indicated there was an underlying fault. This couldn't be properly diagnosed without taking the engine apart.

She concluded that the car wasn't fit for purpose at the point of sale and that Creation should allow her to reject it or cover the cost of repairs and provide a courtesy car. It didn't agree and said there was nothing in the service history or the recent MOT to indicate there had been a problem. It thought the report was confusing in that it suggested that if the car had been serviced properly there would be no wear and tear. It didn't believe a definite issue had been identified as being present at the point of sale.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where necessary and / or appropriate, I reach my decision on a balance of probabilities – that is, what I consider is most likely to have happened in the light of the available evidence and the wider surrounding circumstances.

I appreciate Creation's point of view that a specific fault hasn't been evidenced as being present at the point of sale. But that said I think the weight of evidence supports the investigator's conclusion.

The car was elderly and had done a sizable mileage so I wouldn't expect it to be perfect. Faults will occur due to wear and tear, but a car that is described as driving well should fit that bill. Yet within a couple of weeks Mrs C had to have it repaired and shortly after this it became apparent that there were major problems that would possibly require a new engine.

I am satisfied with the independent garage's comments that such a failure shouldn't occur if the car had been serviced properly. That doesn't mean it shouldn't suffer from wear and tear, but that the engine shouldn't be leaking significant quantities of oil even with the high mileage and its age. It seems more likely that not there was a problem over and above fair wear and tear present at the time of sale. All the records indicate the car had been serviced properly and so the current problem is unlikely to be a product of wear and tear.

I note the car was sold as seen, but it was also advertised as driving well which given it failed within two weeks seems more than a little overstating its condition. Even if it was sold as seen it should be fit for purpose. It was sold to be driven and after having done a further 2,000 miles it sits on Mrs C's driveway.

I consider Creation should:

- allow Mrs C to reject the car;
- collect the car at no further cost to Mrs C;
- rework Mrs C's account as if the transaction hadn't been made and pay 8% interest from the date of overpayment until the date of settlement;
- refund Mrs C's deposit (part exchange value) and pay 8% interest on this amount from the date of payment until the date of settlement; and
- deduct £250 from this amount for the 2,000 miles the car has covered since purchase.

### **my final decision**

My final decision is that I direct Creation Financial Services Limited to compensate Mrs C as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 14 October 2018.

Ivor Graham  
**ombudsman**