

The complaint

Mr M complains that misrepresentations were made when he acquired a used car from First Response Finance Ltd ("First Response") under a hire purchase agreement.

What happened

In August 2023, Mr M acquired a used car using a hire purchase agreement with First Response. The car acquired was under eight years old at the point of supply, the mileage recorded on the agreement was 73,925 and the car price was listed as £7,950. The car supplied was also described as a 'special edition' on the agreement. The credit intermediary was the supplying dealership.

In September 2023, Mr M was involved in a crash with the car. Mr M's insurance provider declared the car a total loss. Later, Mr M said his insurance provider voided his insurance policy, as they said he hadn't declared several modifications that were made to the car when he went ahead with the policy with them. Some of the modifications the insurance company said the car had were cosmetic changes such as a front windscreen tint, lower spoiler kit, and interior seats. Some other modifications were said to be to the exhaust system, engine air filter, airpipes and turbo – which can be considered to enhance the performance of the car.

Mr M said he wasn't aware the car had been modified and thought he was acquiring a standard model of the car. Mr M said that none of the modifications had been mentioned to him during the sale of the car or made apparent from online advertisements and so he hadn't informed his insurance provider of any modifications.

Mr M complained to First Response and in November 2023 they responded saying they didn't uphold Mr M's complaint. In summary, they said that they had seen a video online of the car being advertised by the supplying dealership and they believed it was obvious, even to a lay person, that the car was modified. And so, they thought it was Mr M's responsibility to understand what he was acquiring and First Response said that they can't be held responsible for what Mr M disclosed to his insurance provider.

Unhappy with First Response's final response, Mr M referred his complaint to our service.

Mr M sent us a screenshot of an email he had received from the supplying dealership. A date hasn't been provided of when Mr M received this email. Part of the email said:

"There is no evidence / documentation of any vehicle modifications nor has the customer who traded it in to us stated if there has been any engine modifications on the vehicle.

[Supplying dealership] or the customer would not be aware of any engine modifications (if any) on the vehicle due to the above."

Our investigator didn't uphold Mr M's complaint. In summary she said that she could see differences between the stock model of the car acquired when she searched for it online, compared to the one that was acquired. Based on what the investigator had seen, she

concluded the goods were sold as described and so, she didn't think Mr M had the right to reject it, due to its modifications.

Mr M disagreed with the investigator's findings and believed that as the supplying dealership hadn't identified any modifications, it would have been difficult for a lay person to know whether the car was modified.

Mr M supplied a copy of the advert for the car. Within the advert it said:

"The interior of the car comes with... [manufacturer model] [name of a third-party manufacturer] seats. The car comes with... [name of a third-party manufacturer] Body kit including Side skirts, Front lip and rear spoiler lip. The car also has privacy glass all around..."

The "*manufacturer model*" listed above was the name of a performance model of the car. The car Mr M acquired wasn't the same performance model as that printed on the seats and was a lower specification model.

Among other things, Mr M believed that the car had been misrepresented due to the engine modifications to the car. Mr M believed it was the engine modification that meant his insurance policy was voided. Mr M believed he was not given a 1.0 litre engine which he thought he was acquiring.

Our investigator reviewed the further information supplied and considered whether there had been a misrepresentation. She found that Mr M hadn't asked any questions about modifications to the engine during the sales process, so she couldn't see incorrect information was given. The investigator also explained that she didn't believe the engine had been changed, but rather the air intake and turbo. And so, she didn't think the car had been misrepresented to Mr M.

Mr M reiterated that the main reason he was unhappy was due to the engine modifications not being declared and that the supplying dealership themselves said they weren't aware of the modifications.

Mr M asked for the complaint to be referred to an ombudsman, and so it 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.

Having done so, I'm not upholding this complaint and I'll explain why below.

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 point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Mr M complains about a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr M's complaint about First Response.

When considering what's fair and reasonable, I take into account relevant law, regulations and guidance. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. This explains, in summary, that goods supplied must match the description given.

Section 56 of the Consumer Credit Act 1974 ("S56") is also relevant to this complaint. S56 explains that, under certain circumstances, a finance provider is liable for what was said by a credit broker or supplier before a credit agreement is entered into. I'm satisfied S56 applies here. So, I can consider what Mr M says he was told about the car and finance by the dealer before he entered into the contract.

What I need to consider here is whether the car didn't meet a description or was misrepresented to Mr M. A misrepresentation would have taken place if Mr M was told a '*false statement of fact*' about the car, and this induced him into entering into the contract to acquire it when he otherwise would not have.

It's worth stating up front, that a misrepresentation would not have occurred if Mr M *wasn't* explicitly told about the modifications. A false statement of fact would need to be made – so I'll consider if Mr M was told that the car did not have modifications or was 'standard'. The same applies when considering if the car matched a description – the car would need to be described as *not* being modified or incorrect details given about the modifications, rather than a description not being given, for this to be the case.

In reaching my findings, I have considered carefully the advert from the supplying dealership, as well as the online video which provides a walk around of the car.

It's also important to note that the car Mr M acquired was a special edition version of the standard make and model of car. So, I have also referred to online articles which have detailed the changes and upgrades to this special edition car, above the normal specifications of the basic model. In summary, factory fitted, the car comes supplied with some augmentations to its exterior, as well as an uprated suspension set up.

Having seen the advert for the car Mr M acquired, it says:

"The interior of the car comes with... [manufacturer model] [name of a third-party manufacturer] seats. The car comes with... [name of a third-party manufacturer] Body kit including Side skirts, Front lip and rear spoiler lip. The car also has privacy glass all around..."

The online walk around video of the car shows several aspects of it. Some of what is shown in the video is different in appearance to that of stock images of the car that can be seen online. For example, the front windscreen was tinted and is commonly referred to as "chameleon tinted". Other windows to the car were privacy tinted. The lower front lip, side skirts, rear spoiler lip, interior seats and exhaust system were also different in appearance to those that can be seen in stock images.

I'm satisfied the car had several non-standard modifications to it, using third-party components. I can also see that some of these were explicitly stated in the advert, and others were highlighted and shown in the video.

Mr M strongly believes the modifications made to the engine were misrepresented and it wasn't set out in the advert. I want to focus my decision on this aspect a little more, to reassure Mr M I have carefully considered the points he has made.

In the advert for the car, the engine is only referred to on two occasions. Initially, at the top of the advert in its description where "...1.0..." is stated, referring to its engine size. Further on,

in a table, the engine size, “1L” is listed, along with other specifications of the car. The video also showed the bonnet open with a view of the engine bay.

Mr M's insurance provider identified modifications to the engine air filter (airbox), airpipes (intake hoses) and to the turbo. But from what I've seen, no reference was made by the insurance provider to a modification to the engine itself. Or any suggestion the engine wasn't a one litre as described.

I'm mindful I'm not an expert mechanic. And there is an absence of detailed information about the modifications themselves and the effect they have on the car. Or whether parts supplying the engine were replaced or the entire system, including the engine and turbo were replaced. But, I can clearly see from the online video, it shows the engine filter and airpipes have been replaced by third-party branded, non-standard components.

A copy of an email Mr M has supplied our service from the supplying dealership says there was no evidence or documentation of vehicle modifications to the car. A date hasn't been provided of when Mr M received this email but I have inferred it was likely after he contacted the supplying dealership after being informed by his insurance provider about the modifications to the car. I'm not persuaded by the supplying dealership's comments here. I say this because, I'm satisfied the supplying dealership's own advert and online video show modifications. And, I need to only consider what Mr M was told *before* he entered into the contract.

Considering everything above, I don't think a false statement of fact was made regarding modifications to the car. Mr M hasn't said that he was explicitly told during the sales process that the car *didn't* have any modifications to it and told our service “*there was no mention of any modifications on the car*”.

I also haven't seen that the car was being advertised as not having any modifications or being sold as a car with only factory fitted components. The walk around video of the car was a fair overview of what Mr M was acquiring, and it had also showed the engine bay area. And the advert lists off several of the modifications in question.

As I'm satisfied Mr M was not told a false statement of fact about the modifications to the car before entering into the agreement, it follows that I don't think the car was misrepresented to Mr M. And the same logic above can be applied as to why I'm satisfied the car supplied to Mr M was as described. So, I don't think First Response did anything wrong, or can be held liable for what Mr M told his insurer.

It's also worth noting that Mr M's insurance provider thought the car had modified rear lamps, bonnet vents and a rear spoiler. I haven't made a finding on these specific components, as I can't be certain from the advert or video on whether they were aftermarket modifications or whether they were factory fitted to this special edition car at the point of supply. And I'm satisfied I don't need to make a finding on them to reach a fair and reasonable outcome.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 December 2024.

Ronesh Amin

Ombudsman