

The complaint

Mr H complains that a car acquired under a personal contract purchase (PCP) agreement with Toyota Financial Services (UK) PLC trading as Lexus Financial Services (Lexus FS) wasn't of satisfactory quality when it was supplied to him. Mr H also complains that information was withheld during the sales process.

What happened

In March 2023, Mr H acquired a used car from a Lexus dealership (C). He paid a deposit for the car, with the balance of the purchase price being provided by Lexus FS under a PCP agreement. The car was seven years old and had covered approximately 68,000 miles when the agreement started. The agreement was for 47 months, and the cash price of the car was £24,133.

During the sales process with C, Mr H noticed a few scratches on the bodywork and was unhappy that the footwells in the car hadn't been cleaned. C reduced the price slightly because of this. Mr H also asked for a copy of the car's MOT certificate. C didn't provide it to Mr H at the time and confirmed it would be sent to him by email at a later date, and Mr H continued with the agreement to take the car.

A couple of months later Mr H took the car for a service. During the service he was informed that the car needed new suspension arms and bushes, and that these items had been marked as 'advisory' on the MOT completed on the car in March 2023.

Mr H raised his concern with C at this point and explained that he had never received the MOT certificate. C didn't help Mr H, so he complained to Lexus FS as the finance provider. Mr H didn't think he could wait eight weeks for Lexus FS to respond to his complaint, so he had the suspension arms and bushes replaced. He asked Lexus FS to reimburse him for the repairs as he didn't think the car was of satisfactory quality when it was supplied to him. He also felt C had deliberately withheld the MOT certificate. Lexus FS didn't uphold the complaint. They told Mr H that they wouldn't be paying for the repairs or accepting the car back. They said they were satisfied the pre-delivery checks confirmed the car was of satisfactory quality when it was supplied. They didn't comment on whether the MOT certificate had been provided pre-sale or not.

Mr H brought his complaint to our service. Our investigator initially upheld it and asked Lexus FS to pay for the repairs and compensate Mr H £75 for the inconvenience he'd experienced. Lexus FS paid Mr H £75 but disputed the investigator's opinion, saying the information they'd provided confirmed the car was of satisfactory quality when it was supplied to Mr H. Having re-considered the evidence, our investigator changed her opinion on the case and told Mr H she couldn't uphold it or ask for the repair costs to be reimbursed to him.

Mr H disagreed with this and maintained the car wasn't of satisfactory quality when it was supplied to him. He continued to say C had deliberately held back the MOT certificate and, had he seen the MOT or known about the advisory notes, he would have been able to negotiate a new price for the car, a price for the repairs, or he would have had the option to walk away from the deal entirely.

As Mr H didn't agree, it was passed to me to decide. I issued my provisional decision on 28 June 2024. It said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice.

The fact the car was supplied to Mr H by Lexus FS under a PCP agreement means that the credit provider has responsibility for things that were said or done by C prior to Mr H's entry into the agreement.

I've read Mr H's comments about C's failure to provide him with the MOT certificate when he enquired about it in the showroom prior to entering the agreement. He makes his argument passionately in all his correspondence with our investigator. With that in mind, I've reviewed relevant guidance issued by the Chartered Trading Standards Institute (CTSI)¹. That information sets out to the motor trade steps to take in terms of compliance with relevant law², such as avoiding misleading actions or omissions, and poor or unfair business practices.

The guidance says that making a misleading omission could be unfair. An example given is that of MOT advisory issues not being explained to a customer.

Having looked through the pre-sale information given to Mr H I'm satisfied that the MOT certificate from March 2023 wasn't provided to him. So, I can see how that could be perceived as a misleading omission, considering the guidance and the advisory notes the MOT certificate contained.

However, I'm not persuaded that C's failure to provide Mr H with the MOT certificate or advise him of the advisory notes contained within it influenced Mr H's decision to continue to enter the agreement and take the car.

I accept that Mr H shouldn't be expected to undertake a physical inspection of the mechanics or components of the car, such as the suspension arms and bushes in this case, as he may not be qualified to do so. However, and as I have said previously, Mr H has explained how important seeing a valid MOT certificate was to him. As the dealership had told Mr H the MOT certificate wasn't available, Mr H did have options available to him. He could have postponed the deal until an inspection could take place or the MOT certificate could be provided. Further, I'm satisfied there were other ways for Mr H to check the current MOT on the car – it can be checked online in a matter of minutes and isn't an onerous exercise – and I don't think it would have been unreasonable for Mr H to have done this, when I consider how important the MOT certificate seems to have been to him, and how material its existence appears to have been in his decision to acquire the car.

Mr H has said that, had he been told of the advisory items on the MOT certificate, he would have been able to potentially negotiate the price of the car or withdraw from the deal completely. I appreciate his comments here, but I don't find them consistent with his actions at the time of acquiring the car. Mr H knew the MOT certificate wasn't going to be provided

¹ Car traders and consumer law: Guidance for dealerships – can be found at <https://www.businesscompanion.info/focus/car-traders-and-consumer-law>

² Among other things, the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Rights Act 2015, and the Consumer Contract Regulations 2013

to him when the agreement was entered, and he continued with the deal. Also, Mr H has said he only became aware of the advisory notes on the MOT when he took the car for a service two months later and the service technician explained them to him. He hasn't suggested that he continued to ask C to send him the MOT having taken delivery of the car in March 2023 or provided any evidence to confirm this to be the case. This is something I might have expected Mr H to have done when I consider how important this was to him during the sales process. This has to be a relevant consideration of mine. So, while I can see why C's failure to provide the MOT certificate or notify Mr H of the advisory notes contained within it might amount to a misleading omission, I'm not persuaded that it has disadvantaged Mr H – he had opportunities prior to going ahead with the agreement to have the car inspected or to check the current MOT status of the car – and I'm not planning to make any award in this respect.

I will now consider whether the car was of satisfactory quality at the point of supply.

As the PCP agreement entered by Mr H is a regulated consumer credit agreement this service is able to consider complaints relating to it. Lexus FS are also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr H entered. Because Lexus FS supplied the car under a PCP agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

But on the other hand, satisfactory quality also covers durability. For cars, this means the components must last a reasonable amount of time. Of course, durability will depend on various factors. In Mr H's case, the car was seven years old and had covered approximately 68,000 miles when he acquired it. So, I'd have different expectations of it compared to a brand-new car.

Our investigator has explained that she's satisfied the car was of satisfactory quality when it was supplied to Mr H. I agree in this case. There is no doubt the car has needed some repair to the components mentioned in the advisory section of the MOT certificate, a couple of months after Mr H took delivery of it – he has shown the repair invoice to confirm this. But I'm not persuaded, from what I've seen, that I can conclude the car was faulty when it was supplied to Mr H. I'll explain why.

As mentioned previously, the car Mr H acquired was seven years old and had covered approximately 68,000 miles when it was supplied to him. It's fair to say the car was far from new. This means that the standard a reasonable person might expect from it would be lower than for a car that had covered fewer miles. Acquiring a used car carries some inherent risks, not least of which is that sooner or later items, or components of the car, will need repair or replacement.

I'm more satisfied than not that Mr H knew these risks. Presumably, that is why he was so keen to see the valid MOT certificate at the time the deal was going through. But I'm not persuaded that the advisory notes about the suspension arms and bushes and their subsequent need to be replaced after two months are enough to say the car wasn't of satisfactory quality when Mr H acquired it. The car had passed the MOT. It was roadworthy. And while that in itself isn't enough to determine satisfactory quality or not, the components

that have needed replacing are considered wear and tear components. Research has shown that the suspension arms and bushes don't have a 'lifespan' on a car – their durability is dictated by a number of things, including (but not limited to) driving style and the road conditions.

Mr H had the car for two months and had covered approximately 2,700 miles when the suspension arms and bushes needed replacing. As previously stated, I'm satisfied that a reasonable person would expect to have to repair or replace some wear and tear components on a used car sooner than they would on a newer one. In Mr H's case it seems the requirement to replace the suspension arms and bushes had come sooner than he was expecting, but I'm not persuaded that means the car wasn't of satisfactory quality when it was supplied to him. I'm more persuaded than not that the replacement of the suspension arms and bushes has needed doing as a result of wear and tear.

I'm aware that Lexus FS have previously paid Mr H £75 in respect of this complaint. However, and I know this will come as a disappointment to Mr H, I'm not planning to ask Lexus FS to do anything more here.'

Lexus FS haven't responded to my provisional decision. Mr H has and he disagrees with it. He believes the facts confirm the car wasn't of satisfactory quality at the time he acquired it.

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 see no reason to depart from the findings of my provisional decision. I appreciate Mr H doesn't agree with it, but he hasn't provided any additional evidence in response to the provisional decision for me to consider, and I'm satisfied the provisional decision explains Mr H's complaint accurately.

As such, I won't be asking Lexus FS to do anything more here.

My final decision

For the reasons given in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 August 2024.

Kevin Parmenter
Ombudsman