

The complaint

Mr H complains that a used car supplied by Specialist Motor Finance Limited (SMFL) under a finance agreement was of unsatisfactory quality.

What happened

Mr H acquired this car in July 2020 under a hire purchase agreement (HPA). Not long after collection he noticed a light on the dashboard that suggested a bulb needed replacing. He changed the bulb but the problem persisted. He had the car checked and was told the base unit had to be replaced. He contacted the supplying dealer but it didn't help and Mr H contacted SMFL in November 2020. Mr H experienced further issues - windows wouldn't open or shut and USB ports didn't work – so he took the car to a main dealer for checks the following January. The dealer thought water found in the car boot was affecting the light by the number plate. It was unable to replicate the other issues but noted these were intermittent and considered they were probably due to water ingress as well.

Mr H thought the car was of unsatisfactory quality when he got it. He wanted to reject it so SMFL arranged for an independent expert to check the car a week or two later, in mid-January 2021. The expert confirmed there was standing water in the boot and some dampness inside the car. He found the number plate light unit had heavy water contamination which had caused the bulb to fail. He thought further investigation was needed to identify the exact cause but considered it was unlikely water was present when the car was supplied - or Mr H would have had problems sooner, within the first 500 -1,000 miles. SMFL didn't think it should have to do anything else in view of the expert's findings and Mr H referred the matter to our service.

One of our investigators looked at the evidence. She was satisfied that Mr H experienced electrical issues soon after he got the car and it's likely these were caused by water ingress. She thought the car was probably of unsatisfactory quality at the outset and, taking into account the delays and inconvenience Mr H experienced, he should be allowed to reject it. She recommended SMFL should take the car back and return the deposit of £1,200 (plus interest). She wasn't persuaded that any monthly payments should be refunded - as Mr H had fair use of the car. She was satisfied he experienced stress and inconvenience and considered it would be fair for SMFL to pay £200 compensation to reflect that - and remove any adverse information recorded on Mr H's credit file.

Mr H didn't agree. He feels he should have five monthly instalments refunded as he didn't get full use of the car. He says he used it for work, not social purposes, as SMFL told him use could make things worse. SMFL didn't agree with the investigator's recommendations either. It said (in summary):-

- water ingress can occur due to seals that are worn as a result of normal wear and tear;
- this issue wasn't picked up when Mr H had the bulb checked originally – which suggests the water wasn't present then or it would have been noticed;

- the fact that Mr H had further issues *as time went on* shows the water ingress wasn't a problem at the outset;
- the expert and the main dealer confirm there was water present in January 2021 but that's more than six months after Mr H got the car; and
- it's wrong to dismiss the expert's opinion that the water was unlikely to be present when the car was supplied.

The investigator remained satisfied, on balance, that it was more likely than not Mr H had electrical issues very soon after he got the car - and this was due to a fault that allowed water in. She told SMFL that her recommendations remained the same. SMFL didn't respond and the matter was referred to me for a decision. Having considered the available evidence, I was minded to uphold the complaint but my reasons weren't quite the same as the investigator's. I thought it was fair to give the parties the chance to see my provisional findings and respond (if they wanted to) before I made my final decision. I issued a provisional decision on 7 October 2021. I've summarised what I decided provisionally and why below – this forms part of my final decision.

My provisional decision

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

SMFL supplied this car to Mr H under a finance agreement and SMFL was required under the Consumer Rights Act 2015 (CRA) to ensure (amongst other things) that the car was of satisfactory quality at the point of supply. What amounts to "satisfactory" quality will vary depending on individual circumstances, but it is generally considered reasonable to take the age, cost and mileage at the point of supply into account in the case of a used car.

The car that Mr H got here was around five years old, cost nearly £14,000 and had about 57,000 miles on the clock. As such I think most people would accept it was likely to have some parts that were worn and would need replacing or repairing sooner or later – which is reflected in the lower price paid compared to the price of a brand new vehicle.

Both the main dealer and the independent expert confirmed that there was water inside the car in January 2021. I can't be certain what caused this water ingress – the dealer and the expert both say it would need to be investigated. But I'm satisfied the water shouldn't be there. As far as I can see, neither the dealer or the expert have suggested that the water may have entered due to seals that are worn through normal wear and tear. I'd expect them to have said so if they thought that was a possibility, in this situation and I'm not persuaded it's likely – in view of the car's age and mileage. On balance, I think the water ingress is probably due to a fault.

SMFL considers this water ingress is unlikely to have been present at the point of supply or Mr H would have had problems sooner – and it would have been picked up when the car was checked by third parties early on. I can see the expert also says it's unlikely because the problem would have been apparent within 500- 1000 miles. Mr H told us there was an electrical problem almost as soon as he got the car. I've also seen a text he sent the supplying dealer in early November 2020 that says an electrical management light (EML) had illuminated on the dash intermittently since he got the car (which indicated the rear numberplate light was inactive). Mr H said he had this EML checked when it came on

permanently and he was told the whole unit (not just the bulb) needed replacing. SMFL has also confirmed that Mr H complained in early November 2020 about the number plate bulb not working and inoperative USB ports - and he reported some windows weren't working on 25 November 2020.

Like the investigator, I find Mr H's evidence about the nature and timing of the various electrical issues to be credible and consistent with events. I think it's plausible that he didn't approach SMFL for a few months – after he tried to resolve these elsewhere. And it's understandable that Mr H didn't keep a record of these earlier efforts because he thought this was just a minor issue to do with a replacement bulb.

SMFL seems to accept that Mr H had the car checked some time *before* he complained in November 2020 – it says the fact the water ingress wasn't picked up then shows it wasn't present at that time. I accept no water ingress was identified by the mechanics that checked the car initially. But I think that's probably because less water was getting in during the drier summer months – which would also explain why Mr H didn't have more significant issues sooner and why the ingress of water had become more obvious by January 2021. I don't think it's a coincidence that the electrical problems started to get worse towards the end of the year – when more rainfall is likely. I can see from the job card supplied by the main dealer that the number plate lamp still wasn't working in January 2021. And it was noted then that the relevant unit had already been replaced once but *“water appears to be getting into boot lid”*. The dealer drained this water but the expert found standing water in the boot again - around the battery - just a week or so later (when he was unable to undertake a smoke test due to heavy rain).

I'm satisfied the main dealer concluded that the problems Mr H reported were due to water ingress, which can cause intermittent faults with the ECU that would affect windows and bulbs, amongst other things. The expert doesn't appear to take issue with this conclusion. I acknowledge he refers to the general possibility of electrical issues occurring suddenly as a result of deterioration over time - but this fails to address the fact that water was found here and the likely impact of this water ingress. I think the expert seems to have concluded that the water ingress was unlikely to have been present when the car was supplied on the fact problems weren't reported to SMFL until about four months later. The expert says he had *“no evidence to suggest the faults were present at an earlier instance”* in his instructions. For the reasons I've given, I'm satisfied that Mr H had issues before that. It looks as if the expert wasn't aware of the trouble Mr H had with the car early on and he may well have reached a different view if he'd known about that.

Under the CRA faults that appear within six months are taken to have been present at the point of supply - unless there's evidence to the contrary. From the evidence I've seen, I'm satisfied that Mr H had a series of electrical issues within six months of acquiring this car - the first of which occurred intermittently shortly after supply when a bulb stopped working. I am minded to find it more likely than not this was caused by the ingress of water. I don't think the intermittent malfunction of these various electrical parts is an insignificant issue. I'm satisfied a fair-minded person would consider this car has a fault. And I think this was probably present at the outset meaning the car was of unsatisfactory quality when it was supplied.

Putting things right

Working out what's fair in these circumstances isn't an exact science. For the reasons I've set out above, I'm satisfied this car was probably of unsatisfactory quality when Mr H got it. So I've thought about whether it's reasonable to allow him to reject the car - or SMFL should have the opportunity to repair.

I can see the main dealer advised a complete strip down was required to establish the source of the water ingress - and that would cost nearly £800. The expert seems to agree further investigation is required and I note, from SMFL's investigations, that only a main dealer would be able to undertake the necessary investigations and repairs – which seems to fit with what Mr H says he was told when he made enquiries. Taken together with the various efforts Mr H made to have things sorted out over the first six months, I'm not satisfied that this issue is likely to be resolved easily. I find it understandable that Mr H is concerned about the effect of the water ingress so far and the durability of parts going forward. From the information I've got, I can't safely conclude there won't be a long term impact. And, bearing in mind the time that's passed since Mr H first complained and the inconvenience he's experienced, I don't think it's fair to expect him to wait any longer to see if the car can be fixed. I am minded to find it is fair and reasonable to allow Mr H to reject the car and have his deposit refunded (plus interest).

It looks as if Mr H provided with a courtesy car while this car was off the road in January 2021. And SMFL seems to have considered funding the cost of hiring an alternative vehicle in February 2021 - but Mr H said this wasn't needed. Mr H told us he was advised the car wouldn't pass an MOT earlier this year - due to the fault with the light. But it looks as if the car passed an MOT in July 2021 when I checked the MOT history - the car failed initially due to the inoperative registration plate lamp *and* tyre tread depth. I think this suggests Mr H paid for the repairs required but I haven't seen any evidence of that. And I haven't seen any documentary evidence to show that Mr H was advised not to drive the car.

I don't have enough evidence, at the moment, to reasonably conclude that Mr H was unable to use this car for a significant period as a result of the fault referred to above. The car had about 57,000 miles on the clock when Mr H got it in July 2020. I note the expert recorded just over 62,000 miles on the odometer in January 2021 and a mileage of nearly 66,000 was recorded at the MOT in July the same year. I think this suggests Mr H was able to cover about 9,000 miles over the 12 months he had the car - which is about average. I find it fair Mr H should pay for the use he had of the vehicle. And I'm not *presently* persuaded that I can reasonably require SMFL to waive or refund any monthly payments. It's open to Mr H to supply more evidence about this however I will consider that before I make my final decision.

The credit broker appears to have paid for the expert's report and Mr H hasn't supplied evidence of any further costs (for diagnostics or repairs or similar) that he incurred. I accept Mr H experienced frustration, upset and inconvenience – having to take the car for various checks and investigations. And I am minded to find it is reasonable for SMFL to pay £200 compensation for that.

I've seen some suggestion that Mr H stopped making the monthly payments due under the finance agreement earlier this year. For the reasons I've explained, I am not minded (on the current evidence) to find he should have any payments waived or refunded. But I don't think it's fair for Mr H's credit record to be impacted adversely in this situation. I'm inclined therefore to find SMFL should remove any adverse information it has recorded on Mr H's credit file - provided he's able to bring his payments up to date. If Mr H is likely to struggle to do so in one go, I'd expect SMFL to agree an appropriate payment plan.

I invited both parties to consider my provisional findings and let me have any further comments by 21 October 2021 explaining that I'd look at all the evidence available after that and make my final decision.

The responses received from the parties

SMFL accepted my provisional findings in principle. It said Mr H hadn't made a finance payment since October 2020 so the arrears are currently over £3,000. SMFL thought it was

unreasonable to remove any adverse reporting while there is still an outstanding balance. And it wanted to deduct the deposit refund (and possibly the £200 compensation) from the arrears to reduce the amount owed.

Mr H doesn't think that's fair. He says (in summary):-

- he was told to not to use the car for a number of months then he was told it was fine to use it by someone else - and he had to pay for the MOT because he needed the car for work;
- he stopped making finance payments partly because SMFL was so unhelpful but also because he experienced financial difficulties as work hours were reduced due to the pandemic;
- compensation should be increased due to the lack of cooperation from SMFL – he was sent to various different garages, for example, losing a number of days annual leave, just to be told that SMFL didn't accept any of the recommendations;
- he wouldn't be in this situation if he hadn't been supplied with a faulty car and it's unfair for the refund and compensation to be deducted from arrears as he would have used this money to help source a replacement; and
- it will take months to correct his credit file which will make it difficult to get alternative transportation to and from work - further impacting on his income adversely.

Mr H would like SMFL to pay the compensation and refund his deposit upfront - so he can get a new vehicle - or swap the car and provide another finance deal.

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.

I considered the responses received from the parties. I'd seen nothing to show that Mr H was told (by SMFL or a relevant professional) that this car shouldn't be driven - or that Mr H had incurred further losses (such as lost earnings) as a result of faults present. We asked Mr H if he could supply any further evidence and gave him some additional time to do so – but he hasn't sent us anything else.

I understand Mr H has concerns about how's he's going to afford a replacement car when this one is returned. But I'm afraid I can't require SMFL to provide new finance on a different car –that would involve an entirely separate lending decision.

I'm satisfied that it was Mr H's responsibility to make the monthly payments due under the terms of this finance agreement. As I explained in my provisional decision, I think Mr H had reasonable use of the car (or a courtesy vehicle) throughout. I'm not persuaded that I can reasonably require SMFL to refund or waive any monthly payments.

I think it's reasonable that Mr H should pay for the use of the car - so any missed payments should be brought up to date. I realise this will probably feel unfair to Mr H but I'm not persuaded it's unreasonable for SMFL to use the deposit refund to reduce the arrears, in these particular circumstances. I'm satisfied that applying the refund in this way will reduce the debt - so he gets the benefit of the money. And, if Mr H needs more time to repay any outstanding balance, I'd expect SMFL to set up an appropriate repayment plan.

SMFL told us the current arrears are over £3,000. Mr H says this built up partly because of financial problems he had during the pandemic. I'm very sorry to hear about Mr H's financial issues. I understand he's been in touch with SMFL about those already - and he received a number of payment deferrals. If Mr H is unhappy about how SMFL treated him when he experienced money problems then he would need to raise this with SMFL. And, if he's not satisfied with the response, he may be able to bring another complaint to our service. But that's not something I'm able to look into at this stage in this decision.

For the reasons I've given already, I remain of the view that the amount of compensation for distress and inconvenience set out in my provisional decision is fair. I have taken on board what Mr H says about having to visit several garages and provide additional information that SMFL didn't accept. I have no doubt this was frustrating and inconvenient for him but I consider £200 is sufficient compensation, in all of the circumstances. SMFL seems to have no objection to paying the compensation direct to Mr H (rather than deducting it from the arrears) after the car is booked in for collection. I understand Mr H would prefer to have the compensation paid direct as well and I think that sounds reasonable.

I consider it's fair that any adverse information that SMFL has recorded on Mr H's credit file should be removed - once the payments due have been brought up to date. For the avoidance of any doubt however, I'd expect any existing arrangements in relation to payments deferred due to Covid to remain in place - in line with the relevant guidance.

I realise this decision may come as a disappointment to Mr H because (whilst I am upholding his complaint) it's not the outcome he wanted overall. Mr H is not obliged to accept my decision, in which case it remains open to him to pursue the matter by any other means available.

My final decision

For the reasons I've explained, my decision is I uphold this complaint and I require Specialist Motor Finance Limited to:-

1. end the finance agreement and arrange to take the car back at no additional cost to Mr H;
2. refund the deposit paid of £1,200 plus interest (at 8% simple a year from the date of payment to the date of settlement) - which may be used to reduce outstanding arrears;
3. pay Mr H £200 compensation direct, for distress and inconvenience; and
4. remove any adverse information recorded on Mr H's credit file after the arrears have been repaid.

If SMFL considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr H how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 March 2022.

Claire Jackson
Ombudsman