

The complaint

Miss T believes Specialist Motor Finance Limited ('SMF') acted irresponsibly by approving a hire purchase agreement she'd applied for. She's also unhappy that the car they supplied to her was of an unsatisfactory quality.

What happened

On 26 September 2019, Miss T was supplied with a used car through a hire purchase agreement with SMF. The agreement was for £7,000 over 60 months, with 59 monthly payments of £211.35, and a final payment of £221.35.

Miss T says she had several problems with the car, which resulted in her having to pay for repairs – the clutch needed replacing in August 2020 and the coolant reservoir was cracked and leaking. And, because of this, she believes the car wasn't of a satisfactory quality when it was supplied to her.

Miss T complained to SMF about the quality of the car, and that she didn't think they'd acted responsibly when approving the loan. She said she wasn't employed at the time, and her income was entirely made up of benefits.

SMF didn't think there was sufficient evidence to show the car was of an unsatisfactory quality when supplied. But they said they hadn't acted reasonably when they approved the finance Miss T had applied for. And they said she could terminate the agreement, and hand back the car, with nothing further to pay. Miss T wasn't happy with this, and she brought her complaint to us for investigation.

Our investigator thought that SMF didn't carry out reasonable and proportionate checks to ensure that Miss T could sustainably make the payments. And, if they had carried out these checks, then they would've seen that Miss T was unable to afford the payments. However, the investigator didn't think that the issues Miss T had had with the car made it of an unsatisfactory quality when it was supplied.

Because the investigator didn't think that SMF should've approved the finance, she didn't think it was fair for them to charge any interest or charges. But Miss T had had use of the car for 28 months and around 25,000 miles, so the investigator thought she should pay for fair usage of the car. Given this, the investigator thought Miss T's liability should be limited to £130 a month, and SMF should refund her what she'd paid over this amount, plus interest.

SMF didn't agree with the investigator's recommendations. And they said they would normally consider £0.25 a mile to be reasonable for fair usage, and not the amount that had been suggested. They also didn't think the car wasn't "*fit for purpose*" as Miss T had done 25,000 miles, and they pointed out that Miss T continues to have usage of the car, even though they offered to take it back (with nothing further to pay) in December 2020.

Because SMF didn't agree with the investigator, this matter has been passed to me to make a final decision.

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.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss T was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

Having reviewed the evidence in this case, I've seen it's not disputed that SMF didn't carry out reasonable and proportionate checks when they approved the finance. In their letter dated 22 December 2020, SMF confirmed *"we believe further questions should've been asked due to the increasing default balance on your credit file and overall fairly limited credit facilities."* In this letter they also confirmed that, when Miss T contacted them on 27 September 2019, to *"inform us you were unemployed and, having listened to this call, we do not feel that a sufficient undertaking of your circumstances were completed at this time."*

As a result of this, SMF offered Miss T the option to voluntarily surrender the agreement, and hand the car back with nothing further to pay. However, they also said they would register a default on Miss T's credit file, which would remain there for six years.

With regards to whether the car was of a satisfactory quality when supplied, I've also seen that neither Miss T nor SMF disagreed with the investigator's conclusions that it was.

Given the above, I won't address the facts of this case. Instead, my decision will focus on what SMF should do to put things right.

Putting things right

As it's not disputed that the finance should've been approved, I've thought about how to put Miss T back in the position she would've been in if this hadn't happened. So, I think that SMF should cancel the agreement and take back the car (at no cost to Miss T). They should also refund the payments she'd made, less an amount for her fair usage of the car.

There's no set formula for working out what fair usage should be. So, I've considered the amount of interest charged on the agreement overall, Miss T's usage of the car, and what it would've cost her to stay mobile in a similar car had she not entered into this agreement. Having done so, I agree with the investigator that £130 for each month Miss T had the car is fair and reasonable in the circumstances.

SMF have challenged this, saying that they consider £0.25 a mile to be a more reasonable calculation of fair usage. But, when deciding what fair usage should be, I don't think mileage is the fairest way to calculate it. I say this because I've seen nothing in the agreement that limits Miss T to a particular mileage, and given the average mileage she's doing (approx. 890 miles a month), SMF's view on what would be a fair usage payment is more than the payment Miss T was contractually obliged to pay under the agreement – an amount SMF had acknowledged she has always been unable to sustainably pay.

And, as detailed above, I think there are other considerations which impact what the fair usage payment should be. So, after taking account all the circumstances of this case, I'm satisfied that £130 a month is fair.

SMF have also said that they offered Miss T the chance to voluntarily surrender the car in December 2020, and have a default registered against her credit file for six years, and she refused this offer. And they believe this makes the investigator's recommendation unfair. But I disagree. Miss T was not under any obligation to accept this offer and had the right to ask us to investigate her complaint, which she did. And I don't think Miss T exercising this right should mean she should be forced to accept an offer which, for the reasons explained in the investigator's view, we think isn't fair and reasonable in all the circumstances.

The investigator recommended that Miss T pay SMF £130 a month for her fair usage of the car, which at the time of their view totalled £3,640. But, as SMF have pointed out, Miss T has continued to have use of the car. As such, while I still agree that Miss T should pay £130 a month, the total amount that she needs to pay should be adjusted to take account of the total time Miss T had use of the car.

Given this, I'm satisfied that SMF should:

- cancel the agreement with nothing further to pay;
- arrange to collect the car at no cost to Miss T, without any undue delay;
- refund everything Miss T has paid, minus a deduction of £130 for every month she was in possession of the car to account for her fair usage of it, plus 8% simple yearly interest on any overpayments Miss T has made, from the date of the overpayment to the date of the refund †; and
- remove all adverse information relating to the finance agreement from Miss T's credit file.

†HM Revenue & Customs requires SMF to take off tax from this interest. SMF must give Miss T a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained above I uphold Miss T's complaint. And Specialist Motor Finance Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 20 October 2022.

Andrew Burford
Ombudsman