

The complaint

Miss T complains about the quality of a used car that was supplied through a hire purchase agreement with Specialist Motor Finance Limited (SMF).

What happened

The circumstances surrounding this complaint and my initial findings were set out in my provisional decision which said:

In September 2021, Miss T acquired a used car through a hire purchase agreement with SMF. The car was registered in April 2013, which means it was about eight years old and had travelled about 60,100 miles when it was supplied to Miss T. The cash price of the car was £5,589.

Miss T confirmed to our investigator that she didn't pay a deposit; this is also confirmed on the sales invoice which shows that no deposit was paid on the agreement.

Miss T says that despite some repairs, her car has been experiences issues since it was supplied to her. Miss T says SMF confirmed the car was faulty when it was supplied to her and that the dealer would arrange to have it repaired. However, Miss T says the dealer wouldn't repair the car.

Miss T complained to SMF. They didn't provide Miss T with a final response, however in March 2022 they arranged for an independent inspection of the car which identified different issues including the following.

- The air intake pipe and air filter box were loose
- The service light was on
- There was a loud metallic tapping-type noise present which increased when the speed was increased
- The engine was operated to full operating temperatures; however, the heater output was found to be poor.
- The hand brake lever was found to have minimal reserve travel
- The right-hand headlight was not working
- The automatic gearbox was found to have a significant delay in upshift of ratios, and when it did upshift, it jerked and vibrated.

Within the conclusion of the inspection report it advised: *'the issues with the transmission, in our opinion, should be classed as premature wear and the sales should therefore be responsible for the investigation and rectification of the transmission on the grounds that the transmission was not in a durable condition at point of purchase'*.

In April 2022, Miss T brought her complaint to our service for investigation. SMF made a further attempt at repair in July 2022 however Miss T said the car remained noisy, and problems persisted with the gearbox and air filters. Miss T says the whole situation has

caused her a lot of stress and depression which has required medical attention and so she wanted to reject the car.

SMF didn't provide their business file to us, but told our investigator they were happy for the case to be investigated with the information we had. Having considered all the information, our investigator recommended that the complaint should be upheld and recommended SMF do the following:

- End the agreement with nothing further to pay
- Collect the car at no further cost to Miss T.
- Refund payments from March 2022 until settlement and pay 8% simple interest from the date of payment until the date of settlement.
- Pay £500 for any distress or inconvenience that's been caused due to the faulty goods
- Remove any adverse information from the customer's credit file.

Miss T accepted our investigator's view. SMF responded to ask for evidence of the faults but didn't respond when Miss T provided them with a further diagnostic and inspection report confirming the car needed urgent repairs.

So as SMF hasn't accepted the investigator's view, the case has been referred to an ombudsman for 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 February 2023 I sent Miss T and SMF my provisional decision. I explained why I thought the complaint should be upheld. My provisional decision said:

SMF have not provided a final response to Miss T's complaint nor have they provided us with a case file, so the information we've received directly from them has been limited to some phone calls and emails. Miss T has supplied our service with most of the information and evidence used for our investigation. For example, Miss T has provided documentation from the point of sale, which gives details of the finance agreement taken out, the vehicle acquired, correspondence with SMF about the complaint and expert reports and diagnostics relating to the condition of the vehicle. So, whilst it's preferable to receive evidence and information from both parties; in the circumstances, I'm satisfied that I've been able to reach a fair outcome and decision based on the information we have.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The agreement in this case is a regulated hire purchase agreement. As such, this service is able to consider complaints relating to it. SMF is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory, fit for purpose and as described”. To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle’s history.

My starting point is that SMF supplied Miss T with a used car that had travelled around 60,100 miles. This is detailed on the sales invoice provided to us by Miss T. With this in mind, I think it’s fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage.

From the information provided it’s clear to me that there was a fault with the car. This is apparent from the independent inspection report which concluded the car had significant issues at the time of inspection and that the transmission was not in a durable condition at the point of purchase. Miss T also provided diagnostics detailing various repairs carried out a month after supply and a further diagnostic report in September 2022 detailing significant faults with the heating system.

Both parties are in agreement that the car is faulty and wasn’t of satisfactory quality when it was supplied to Miss T. SMF confirms this in an internal email dated 25 May 2022. And given the independent inspection report which advises the car was not in a durable condition when supplied, I’m satisfied that the car wasn’t of satisfactory quality when it was supplied to Miss T.

I acknowledge the car has been in for repairs since the inspection was carried out, but a recent diagnostic report arranged by Miss T confirms significant issues with the heating system. This is despite Miss T having previously complained about the heating in February 2022, and having only travelled around 3,000 miles up to that point. So, in the circumstances, I’ve focussed my decision on whether SMF have offered or provided Miss T with a suitable resolution to her complaint.

Following our investigator’s view, SMF requested that Miss T provide evidence of the current faults with the car. Miss T arranged a further diagnostic from a third-party garage which confirmed a number of issues with the car including a heating issue which they advised could ‘destroy’ the engine. I note that Miss T complained about the heating issues prior to SMF’s repair attempt in July 2022. Miss T confirmed to our investigator that in the circumstances she preferred to reject the car.

Under the CRA if goods are not of satisfactory quality they do not conform to the contract. Section 19 of the CRA sets out certain remedies available to the consumer for goods that do not conform. The remedies include the right to repair, or a final right to reject the car if after one repair the goods do not conform to the contract.

However, the CRA also says:

If the consumer requires the trader to repair or replace the goods, the trader must—

(a) do so within a reasonable time and without significant inconvenience to the consumer.

Given the time taken by SMF to address the issues and with the lack of information being provided by them, for example by not providing a final response following Miss T's complaint or our investigator's view, or no response to further diagnostics provided by Miss T in September 2022; and in consideration of the impact this situation continues to have on Miss T and her family, I'm satisfied that this amounts to significant inconvenience. So, I'm satisfied that a rejection of the car in the circumstances is the fairest resolution to Miss T's complaint.

Our investigator made some recommendations for SMF to resolve Miss T's complaint, which I've set out above. In addition to those I'll be instructing SMF to refund to Miss T £80 for the cost of the diagnostics carried out in September 2022 as requested by SMF, which shows that some faults are still present. I'll also be instructing SMF to refund all monthly repayments made by Miss T from February 2022, which is when she raised the issue with the heating system which is still present on the car.

I invited both parties to make any further comments.

Miss T responded to say she agreed with my provisional decision. SMF responded to say that they've tried to contact Miss T to carry out the instructions in my provisional decision.

Now both sides have had an opportunity to comment, I can go ahead with my final decision.

FINDINGS

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As neither party has disagreed with my provisional decision, or given me any reason to change it, I see no reason to depart from it.

I still consider my provisional decision to be fair and reasonable in the circumstances. Neither party has added anything which gives me cause to change these. Therefore, for the reasons as set out above and in my provisional decision, I'm satisfied that the car wasn't of satisfactory quality when it was supplied to Miss T. So, my final decision is the same.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances, I uphold this complaint and instruct Specialist Motor Finance Limited to:

- End the agreement with nothing further to pay and remove it from Miss T's credit file
- Collect the car at no further cost to Miss T
- Refund to Miss T the monthly repayments made from February 2022 until settlement and pay 8% simple interest calculated from the date of payment to the date of settlement
- Reimburse £80 to Miss T for the cost of the diagnostic and vehicle inspection carried out in September 2022 and pay 8% yearly simple interest calculated from the date of payment to the date of settlement
- Pay £500 for any distress or inconvenience that's been caused due to the faulty goods

If Specialist Motor Finance Limited considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss T how much it's

taken off. It should also give Miss T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 21 March 2023.

Benjamin John
Ombudsman