

The complaint

Mr F complains that a car he acquired with credit from Specialist Motor Finance Limited (SMF) wasn't of satisfactory quality.

What happened

Mr F entered into a credit agreement with SMF via an intermediary in January 2020 to acquire a used car. The credit to buy the car was granted by SMF under a hire purchase agreement meaning Mr F would own the car when the credit had been repaid. SMF was the owner until that point and Mr F was, in essence, paying for the use of it. As the owner of the car bought from the dealership, SMF was responsible for the quality of the car.

The cash price of the car was £5,250 and the total payable under the agreement was £10,700. This was to be repaid in 59 monthly instalments of £178 with a final payment of £188 (all figures rounded). I understand that the car was almost seven years old at the time and had travelled 72,853 miles.

Mr F told SMF in January 2021 that the car wasn't of satisfactory quality. He complained to SMF in June 2021 and explained that he'd had to pay for repairs including replacement of coil springs and the clutch. SMF didn't uphold Mr F's complaint but offered him £300 towards the cost of the repairs as a good will gesture which Mr F accepted on 18 June 2021 by phone. It sent Mr F a final response to his complaint, following which Mr F raised another complaint. Mr F told SMF that he'd also replaced the tyres and that there was now an issue with the one of the car doors. SMF didn't uphold this complaint either. It sent Mr F a final response letter in July 2021.

In May 2022, Mr F complained again to SMF about issues with the clutch. Mr F said he'd been in touch with the selling dealership and the clutch had been fixed again as it had been within warranty, but there was now a whining noise when in higher gears. He'd been told by the dealership that the gear box needed to be fixed. SMF told Mr F that he would need to have an independent inspection carried out to prove that the fault had been there when he'd acquired the car in order for it to take responsibility. SMF sent Mr F a final response on 7 June 2022. It said it didn't uphold his complaint as it hadn't received any evidence of the fault.

Mr F wasn't happy with this response and he referred his complaint to us in August. He said that the issue with the gearbox was likely to have been there from the start given the problems he's had with the car. As a resolution, Mr F would like SMF to carry out an independent inspection of the car and then either take the car back and provide him with a full refund of his payments, or exchange the car for another one. He's more recently said that he's happy for SMF to call it quits and take the car back. It hasn't been moved since October 2022 due to the clutch failing for third time and the gear box issue.

Having considered the evidence available, one of our investigators concluded that we could not investigate Mr F's complaints about events in 2021 but could look into the events in 2022. They concluded that the problem with the car relating to the gearbox was as a result of wear and tear and not that the car was of unsatisfactory quality when supplied to him.

Mr F didn't agree with this recommendation as he didn't consider the problems he's had with the car to be normal wear and tear. He said that these included replacing two coil springs, the clutch twice and finally the gearbox. Mr F said that the amount of work now required to repair the car doesn't make sense financially. He asked for his complaint to come to an ombudsman to decide and it's come to me. I've investigated Mr F's complaint about events in 2022.

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 have taken into account the law and relevant regulatory rules including, for example, the Consumer Rights Act (CRA) 2015 which implies a term into any contract to supply goods that those goods will be of satisfactory quality. Satisfactory means what a reasonable person would expect, taking into account the particular circumstances of the goods. The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. In this complaint, the relevant particulars would include for example the age and mileage of the car and the nature of the fault.

The CRA sets out a person's rights if the goods they've acquired turn out to be of unsatisfactory quality. For example, they can reject the goods within the first 30 days of acquiring them. They can also reject goods later on, but only if the supplier fails to repair them.

With this in mind, my considerations begin with whether there was a fault with the car that had been there when the credit agreement began? If so, was it something a reasonable person would expect given the age and mileage of the car?

Mr F has provided invoices for the repairs carried out to the car when it was in his possession: January 2021 – rear coil spring fitted; February 2021 – second rear coil spring fitted and EGR valve replaced; June 2021 – clutch replacement and tyre fitting and rebalancing.

Mr F told us that he had problems with the clutch again in May 2022. He took the car back to the dealer to repair as the clutch which had been fitted the previous year was still under warranty. The dealer provided an advisory notice dated the 20 June 2022 which stated that there was a problem with the gearbox: *"When working on vehicle after test drive gearbox bearings appear to be noisy and gearbox oil is metallic showing prolonged gearbox failure that would have happened over time."*

When Mr F complained to SMF about the problems with the clutch and gearbox, SMF told him in its final response of 7 June 2022 that he would need to provide evidence in order for it to progress his complaint. The evidence needed to be from a VAT registered garage and include the make, model, registration number and mileage of the vehicle.

Mr F then sent the aforementioned invoice to SMF who replied in an email on 5 July to say: *"The evidence you have provided does not include the current odometer reading. In addition to this it does not confirm that the issue would have been present or developing at the point of purchase. Furthermore given the time elapsed since you purchased your vehicle and that this current issue has not previously been raised would indicate that the issue was not present or developing at the point of sale and in view of this we are unable to assist you."*

Although the car's mileage hasn't been recorded on the notice, Mr F told us that the car's mileage was 88,932 miles in October 2022. The MOT records show the car's recorded mileage as 82,833 miles in January 2022, and 77,493 in January 2021.

I'm satisfied that there was an issue with the gearbox in 2022, from what Mr F has told us and SMF and the notice he's provided. However, as an independent inspection wasn't carried out on the car to investigate this issue, it is difficult to now determine whether or not that the fault was present when Mr F acquired the car. When Mr F complained to SMF in July 2022, he said that "The car at the time of purchasing as far as I could tell was ok it all starting going wrong from when the 12 months warranty finished." Even if I were to conclude that the car was faulty from the onset of the agreement, it doesn't automatically follow that the car was therefore of unsatisfactory quality or unfit for purpose. The fault could have been as a result of normal wear and tear and not unexpected for the car in question.

The car was seven years old and had travelled almost 73,000 miles when Mr F acquired it. I think it's fair to say that this car might have needed repair or maintenance work sooner than a newer or less used model. From what Mr F told us he had driven the car almost 10,000 miles from when he acquired the car to January 2022 and a further 6,000 miles by October 2022. The dealer's description of the problem was something which would have occurred over time. Altogether, I've concluded that the gearbox issue was most likely due to wear and tear. And, given the age and mileage of the car, I can't say it's a fault which is wholly unexpected and outside the likely range of issues such a car might have.

Mr F has told us that he would like to return the car to SMF for a refund or an exchange. He feels that repairing the car would cost more than its worth. Mr F told us that he's already spent £3,000 keeping the car maintained which has impacted on his finances. He's also shared that he feels unsafe when driving the car and it is having a huge impact on his mental health.

I am sorry that this matter has had such an impact on Mr F and also that I can't provide the outcome he was hoping for. As I've explained above, I haven't found that the car was of unsatisfactory quality when supplied to him. This means that Mr F doesn't have recourse to the options available to him under the CRA such as having the car repaired by SMF at no cost to him or rejecting the car if that repair doesn't solve the problem.

I would remind SMF about its obligation to treat Mr F fairly and with forbearance and due consideration if he is experiencing financial difficulty at this time.

My final decision

For the reasons I've explained above I am not upholding Mr F's complaint against Specialist Motor Finance Limited and don't require it to take any action in this regard.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 April 2023.

Michelle Boundy
Ombudsman