

## **The complaint**

Mr M complains about the quality of a car he has been financing through an agreement with Specialist Motor Finance Limited (who I'll call "SMF").

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my 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.

I know it will disappoint SMF, but I don't think repairs have been successful here and I think Mr M should have been allowed to reject the car. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

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.

Mr M acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then SMF, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr M. The car here was about six years old and had already completed about 79,040 miles. So, I think a reasonable person would expect it to be experiencing some wear and tear, but I don't think they'd expect to experience the issues Mr M did, so early in the car's life.

I'm persuaded there was a fault with this car that had been developing from the point it was supplied because:

- Mr M had issues with the coolant level within a couple of months of taking receipt of the car.
- The coolant needed topping up more often than could be considered reasonable.

- There was a need for the dealership to replace the head gasket and that issue was identified quite soon after Mr M had taken receipt of the car.

The relevant legislation allows a business one opportunity to repair a fault that is present, or developing, when the car was supplied.

I think SMF had that opportunity when they attempted a repair in May 2022. But I think that repair was inadequate. I say that because:

- Mr M has provided a video that shows the coolant pouring out of the bottom of the car when he tries to top it up.
- The garage Mr M subsequently took the car to (who I'll call "R") noted that the pressure regulator had been snapped off the coolant tank and there was a hole in it. Silicone sealant used in an inadequate repair had blown out. They provided a photograph of that issue.
- I can't see that the subsequent inspections the business commissioned were tasked with clarifying whether the previous repairs had been adequate. The independent inspector had only been asked to consider if the car was overheating and the garage invoice explains that under test the car wouldn't overheat.
- I'm persuaded it's likely the dealership completed further repairs after Mr M asked to reject the car. I say that because, in the subsequent inspections the business commissioned, there's no mention of the hole in the coolant tank that R had provided evidence of. I think that would have been noticeable had it not been repaired.
- The inspection by a mechanic I'll call ("C") that Mr M commissioned in July 2022 noted blue and black smoke coming from the exhaust and didn't think repairs had been adequate.

So I'm persuaded that the repairs completed in May 2022 weren't satisfactory and in those circumstances the relevant legislation allows a consumer to reject the car.

### **Putting things right**

SMF should take the car back and end the finance agreement.

They'll need to refund the finance instalments Mr M has paid but the relevant legislation allows them to retain some of those to reflect the usage Mr M has had from the car. Mr M was able to use the car until 16 February 2022 when R identified the fault. But he was without the car for much of the time from February 2022 until the car was returned in late June 2022. The current mileage is 82,696 which means the car has covered 3,656 miles since Mr M took receipt of it in September 2021. Given the concerns Mr M has highlighted and that were confirmed in July 2022 by C, I don't think Mr M has been unreasonable not to have used the car since the MOT expired in August 2022. Taking all of that information into account I think the business should refund any finance instalments paid (or waive them if they were due and haven't been paid) from 16 February 2022, but with the exception of July 2022 when Mr M appears to have had some use of the car. They'll need to add interest to the refund as Mr M has been deprived of that money.

Mr M has also experienced distress and inconvenience as a result of this issue. He's had to make arrangements for the car to be repaired and problems diagnosed. He's also had to refer his complaint to this service when I think it could have been resolved earlier. In those circumstances I think SMF should pay him £250 compensation.

It wouldn't be fair for Mr M to have to pay for the diagnostics he's had to commission, but he's confirmed that R provided their opinions free of charge, and that the cost of the report

from C has been refunded to him. So I don't think it's necessary to consider that refund any further.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell Specialist Motor Finance Limited to:

- End the agreement and collect the car at no further cost to Mr M.
- Refund all monthly payments for the period from 16 February 2022 to the date of settlement, with the exception of the monthly payment for July 2022 which SMF can keep for fair usage.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay a further amount of £250 to compensate Mr M for the distress and inconvenience that's been caused.
- Remove any adverse information they may have reported to Mr M's credit file in relation to this agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 April 2023.

Phillip McMahon  
**Ombudsman**