

The complaint

Miss S complains about the quality of a car she was supplied with under a hire purchase agreement (“agreement”) with Specialist Motor Finance Limited (“SMFL”).

What happened

In June 2021 Miss S was supplied with a used car from a dealership that I will call “B”.

Under the terms of her agreement with SMFL, Miss S (everything else being equal) undertook to make 47 monthly payments of £559.84 followed by a final monthly payment of £569.84 – a total repayable of £26,882.32 at an APR of 19.8%.

Miss S says that shortly after taking possession of the car she noticed a number of issues with it, which she brought to B’s attention in August 2021. These issues were:

- window wiper sensors not working
- boot sensor not working
- tyre pressure indicator not working
- the steering wheel controls not working

On 1 November 2021 Miss S had the car inspected by one of the manufacturer’s garages due to the problem she was experiencing with the steering wheel controls. This garage concluded that the car was fitted with an incorrect ECU and the cost of supplying and fitting a new and correct ECU would be approximately £4,600.

On 23 December 2021 and having been unsuccessful in getting B to address her concerns, Miss S complained to SMFL.

On 3 February 2022 SMFL sent Miss S a final response letter (“FRL”). Under cover of this FRL SMFL said at the current point in time it wasn’t upholding Miss S’ complaint.

On 6 February 2022, and unhappy with SMFL’s FRL, Miss S referred matters to our service.

Miss S’ complaint was considered by one of our investigators who came to the view that it should be upheld and that SMFL should arrange for a new and correct ECU to be supplied and fitted to the car at no cost to Miss S and within a reasonable timeframe. He also said that whilst the car is undergoing repair SMFL should ensure Miss S is given a courtesy car or £18.50 a day (the approximate daily equivalent of a monthly agreement payment of £559.84). Finally, he said that SMFL should pay Miss S £100 for the distress and inconvenience this whole matter had caused her.

SMFL didn’t respond to the investigators view so the matter was passed to me for review and decision.

Miss S then confirmed to our service, at my request, the following:

- the window wiper sensors had been repaired at no cost to her
- the boot sensor had been repaired under warranty, but with her having to pay a £100 excess
- the tyre pressure indicator still wasn't working
- her agreement payments were up to date

In February 2023 I issued my provisional decision on this case. In summary I said:

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

Miss S' agreement is a regulated consumer credit agreement and because of that our service is able to consider complaints about it. As the provider of the agreement SMFL is also the supplier of the car to Miss S. As the supplier of the car SMFL is responsible for the quality of the car and the Consumer Rights Act 2015 ("CRA") implies terms into the agreement requiring the car to be of satisfactory quality.

Exactly what is satisfactory quality will depend on the specific circumstances of any given case. In this instance, where the complaint relates to a car, I think it reasonable that when considering whether the car is of satisfactory quality the car's age and mileage at the time it was supplied are all key considerations. The requirement on SMFL is to ensure the car was of satisfactory quality at the time it was supplied. So SMFL wouldn't be responsible for any wear and tear items that develop over time and might reasonably be expected on a used car with this age and mileage.

The car that Miss S was supplied with cost around £19,000, was around seven years old and had travelled approximately 63,000 miles. When considering a car of this age and mileage it would in my view not be unreasonable to expect it to be showing signs of wear and tear and not be in the same 'as new' condition that it would have been in when first manufactured. This will be in relation to the mechanical components and its cosmetic appearance. The price Miss S paid for the car was considerably cheaper than the cost of the car new, and this is to take into account the general condition, mileage and wear and tear the car had experienced since first being manufactured.

Although I would expect a car of this age and mileage to show signs of wear and tear and require some general maintenance and upkeep, it wouldn't however be reasonable to supply the car to Miss S with existing defects that go beyond fair wear and tear, unless these were clearly pointed out before agreeing to acquire the car.

The key considerations in my view here are around whether there is sufficient evidence to demonstrate the car is defective and if so, whether it was defective at the time it was supplied to Miss S. And then, if the car was defective, does that defect result in the car being not of satisfactory quality when considering the broader circumstances and condition of the car, and the CRA.

In cases when it's not clear what happened or where the evidence is incomplete or inconclusive, I base 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.

Miss S has raised a number of concerns about the car but in particular that it was supplied to her with an incorrect ECU. And in support of this issue Miss S has supplied our service with a health check report and video from one of the manufacturer's garages.

Having considered the submissions from all parties I'm satisfied that there is sufficient evidence to demonstrate that the car was and still is faulty, in particular in relation to the ECU. Having found that the car is faulty I must next consider whether the car was faulty at the time it was supplied to Miss S.

Given how quickly Miss S tried to raise her concerns about the car with B and the nature of the issue identified by one of the manufacturer's garages and when, I'm satisfied that this issue was present at the time the car was supplied to Miss S.

Having found the car was faulty at the time it was supplied to Miss S the next consideration is whether this demonstrates the car wasn't of satisfactory quality at the time it was supplied to Miss S. As already referred to above, Miss S' car was around seven years old and had travelled approximately 63,000 miles. So, it again wouldn't be unreasonable to expect it to show signs of wear and tear and not be in the same condition it was when first supplied from the production line. However, the evidence in this case demonstrates the car was supplied with the wrong ECU and one that was fitted badly. It's not reasonable in my view to supply the car with this type of defect and this isn't a serviceable item that Miss S might have expected to replace because of the car's age and mileage.

Having found the car wasn't of satisfactory quality I now need to consider what, if anything, needs to be done to put things right.

I think it's only fair that that SMFL has one attempt to repair the car. But equally, given how long this matter has been going on for, I think that SMFL should ensure the appropriate repair is completed within 90 days of Miss S accepting any final decision issued by me, assuming of course she decides to do so. I also agree with the investigator that whilst any repair is being undertaken Miss S should be provided with a courtesy car, or if this isn't possible, SMFL should paid her £18.50 for each day she is without a car.

Miss S has also said that the car was supplied with four other issues, these being:

- window wiper sensors not working*
- boot sensor not working*
- tyre pressure indicator not working*
- the steering wheel controls not working*

Now if it wasn't for the fact that one of the manufacturers garages concluded what it did about the ECU, I might say the above four issues didn't necessarily make the car faulty at the time it was supplied to Miss S. But given the identified issue with the ECU I'm satisfied that it's only fair and reasonable that Miss S also be fairly and reasonably compensated for these four issues as well.

As the window wiper sensors have been fixed at no cost to Miss S, I find that to fairly and reasonably compensate Miss S in this respect SMFL need do nothing further.

As the boot sensor has been fixed under warranty, with Miss S paying a £100 excess, I find that to fairly and reasonably compensate Miss S in this respect SMFL should refund Miss S this excess together with interest. Miss S has provided our service with evidence that she paid the £100 warranty excess on 4 November 2021.

As the tyre pressure indicator still hasn't been fixed, I find that to fairly and reasonably compensate Miss S in this respect SMFL should arrange for this to be fixed at no cost to Miss S by the same garage appointed by it to supply and fit a new and correct ECU.

If the supply and fit of a new and correct ECU doesn't fix the steering wheel controls issue, then SMFL should arrange for this to be fixed at no cost to Miss S by the same garage appointed by it to supply and fit a new and correct ECU.

All repairs should be undertaken by the garage appointed by SMFL in a single 'visit'.

Finally, like the investigator, I find that being supplied with a car that wasn't of satisfactory quality has caused Miss S both distress and inconvenience. But unlike the investigator it's my view, given how long this complaint has gone unresolved, that £300 represents a more appropriate sum for SMFL to have to pay in this respect

SMFL responded to my provisional decision to say it didn't accept it. It said that the car passed an MOT test on 31 May 2022 and no reference to the issues raised by Miss S (including the ECU) were noted by the tester.

Miss S responded to my provisional decision to she accepted it.

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.

Miss S confirmed to our service in January 2023 that:

- the window wiper sensors were repaired at no cost to her
- the boot sensor was repaired under warranty at a cost to her of £100
- the tyre pressure indicator is still not working
- the steering wheel controls are still not working
- the ECU has not been replaced

Now in my view none of the above would result in an MOT test fail. But an MOT test pass doesn't, in itself, mean the car is of satisfactory quality or was of satisfactory quality when supplied. And I remain of the view, for the reasons given in my provisional decision, that Miss S was supplied with a car that wasn't of satisfactory quality and SMFL must appropriately compensate Miss S for this 'fact'.

For the avoidance of doubt, I would also add that having considered SMFL's response to my provisional decision I see no good reason to change what I concluded SMFL should have to do to fairly and reasonably compensate Miss S for supplying her with a car that was of unsatisfactory quality.

So, in summary, I can confirm that I see no good reason to depart from my provisional findings and I now confirm them as final.

My final decision

My final decision is that Specialist Motor Finance Limited must:

- arrange for a new and correct ECU to be supplied and fitted to the car at no cost to Miss S

- arrange for the tyre pressure indicator to be fixed at no cost to Miss S by the same garage appointed by it to supply and fit a new and correct ECU
- arrange for the steering wheel controls to be fixed (if the supply and fit of a new ECU doesn't fix this issue) at no cost to Miss S by the same garage appointed by it to supply and fit a new and correct ECU
- ensure all repairs undertaken by the appointed garage are undertaken in a single 'visit'
- ensure all repairs are completed within 90 days of any final decision issued by me being accepted by Miss S
- try and arrange for Miss S to be provided with a courtesy car whilst her car is undergoing repair
- pay Miss S £18.50 a day (for each day she is without a car) if it can't arrange the provision of a courtesy car
- refund to Miss S the warranty excess she paid of £100 in respect of the boot sensor repair together with interest at 8% simple a year from 4 November 2021 to the date of settlement*
- pay Miss S £300 for the distress and inconvenience this whole matter has caused her

** HM Revenue & Customs requires Specialist Motor Finance Limited to take off tax from this interest. Specialist Motor Finance Limited must give Miss S a certificate showing how much tax they've taken off if she asks for one*

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 24 March 2023.

Peter Cook
Ombudsman