

## The complaint

Miss S complains that Specialist Motor Finance Limited (who I'll call "SMF") should have allowed her to reject a car she was financing through an agreement with them.

## What happened

I issued my provisional decision on this complaint last month. An extract from that provisional decision is set out below.

*I know it will disappoint SMF, but I think they should have allowed Miss S to reject the car when she asked to. My reasons are a little different than our investigator's and, as the car has been sold since he issued his view on this complaint, my redress is different too. I'm therefore providing a provisional decision. I will review any comments I get from SMF or Miss S when I reach my final decision on this complaint.*

*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.*

*Miss S acquired her 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 a customer has 30 days to reject a car that's of unsatisfactory quality, not fit for purpose or not as described.*

*The 30 days runs from the day after the date of delivery, not the date of the contract and if, as is the case here, the consumer agrees to or asks for a repair - a waiting period starts on the day of the request and ends on the day the consumer gets the car back.*

*The clock stops running during the period of any repair or replacement. On return of the car, the consumer has the remainder of the 30 day period or 7 days (whichever is the longer) to use the short-term right to reject if the car is still faulty.*

*Miss S took receipt of the car on 5 May 2022. On 16 May 2022, she contacted SMF to raise concerns about the car. This included a loud buzzing and rattling coming from inside the car. Miss S authorised repairs to the car but the earliest appointment they could offer was in June 2022. The car was collected after repair on 8 June 2022 and on 10 June 2022, Miss S emailed SMF asking to reject the car. She told them the car still rattled and that it was louder than before the repairs took place. She also said no service history had been supplied (I'll come back to that). As the clock had stopped running on the 30 day right to reject when Miss S's car was being repaired, I think she had asked to reject it in time if there was evidence it was of unsatisfactory quality, not fit for purpose or not as described.*

*I think it's likely the car was of unsatisfactory quality as I don't think it's likely it had been satisfactorily repaired. I say that because:*

- *Miss S quickly complained that it wasn't.*
- *Miss S attached a video of the problem to her complaint. I've not been able to watch that video as the link has expired. It seems unlikely Miss S would have attached a video if it didn't demonstrate the continuing problems.*
- *It seems likely the noise was present only when the car was in motion. So, I'm not persuaded by the inspection report completed as I think it unlikely the inspector drove the car; there's nothing in the report to suggest that was the case.*

*And, regardless of whether the car was of satisfactory quality, I also think SMF should have allowed Miss S to reject it because I don't think it was as described.*

*The advert provided by the business says the car had its last service on 15 October 2021 at 48,117 miles. Miss S has provided a copy of what she saw and that simply suggests there was a "service history". Miss S has provided photographs of the service book and it doesn't show any service stamps. She's also provided a printout of the electronic service log that suggests no services have been completed and stored electronically. The business have suggested Miss S signed to say she'd received all documentation, including the service records, but I'm not persuaded it's likely Miss S did receive any service documentation. I say that because I can see Miss S was chasing the dealership for proof of servicing; she emailed them asking for the service records on 26 May 2022 to explain she still hadn't received it. It was also Miss S's primary reason for wanting to reject the car.*

*Taking all the information into account I think Miss S made a valid claim to exercise her right to reject the car within the first 30 days and SMF should therefore put things right for her.*

### ***Putting things right***

*The car was returned and sold in October 2022 and SMF have explained that the proceeds were applied to Miss S's account.*

*SMF will need to end the agreement with nothing more to pay.*

*As Miss S should have been allowed to reject the car in June 2022 I think it's only fair for her to pay one monthly finance instalment towards the use she had from the vehicle. All other monthly instalments should be returned to her with interest, as she's been deprived of that money. If any of these instalments were due but were not paid, they should be waived. SMF should also refund any deposit Miss S has paid and they'll need to add interest to that refund too.*

*I think Miss S has experienced distress and inconvenience as a result of this issue. She funded an alternative vehicle when she correctly thought she made a valid request to reject the car. So, it must have been distressing to think she may still be liable for payments on this agreement and to worry about any adverse reports that may be made to her credit file. She's also had to escalate her complaint to this service when I think it could have been resolved earlier. In the circumstances I'm expecting to ask SMF to pay Miss S £300 in compensation.*

*Miss S also says she's incurred some costs as a consequence of the car being of unsatisfactory quality. I've seen receipts for a parcel shelf clip, tyres, and a compressor. Miss S has also explained that the windscreen needed replacing, although I think that was completed free of charge. I'm not persuaded it would be fair to ask SMF to refund any costs associated with these repairs, as I don't think it would be considered unusual for a car that was already about eight years old to have wear and tear such as this, and it was Miss S's*

decision to incur the expenses.

### **My provisional decision**

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

- End the finance agreement with nothing more to pay.
- Refund any deposit Miss S paid and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund any finance instalments Miss S has paid except the first one. Add 8% simple interest per year from the date of payment to the date of settlement. Waive any finance instalments, other than the first, if they were due but haven't been paid.
- Pay Miss S £300 to compensate her for the distress and inconvenience she's experienced.
- Remove any adverse reports they may have made to Miss S's credit file in relation to this agreement.

SMF didn't respond to my provisional decision but Miss S did. She said she agreed with the redress I'd set out except she didn't think I'd been fair to ask her to pay a whole monthly instalment for fair usage. She said:

*"I received the car ... in the late afternoon of 5th May 2022, my drive back home, discovering the noises the next day, the event of finding the massive leak, etc that I only totalled a usable 12 whole days out of that month. Therefore, I would only be willing to incur an instalment payment of £142.66p maximum..."*

She also explained that I'd made a mistake in the section of my provisional decision entitled "Putting things right". She provided a collection sheet showing that the car was collected in November 2022 and not at the end of October 2022, as I'd suggested.

Miss S was also upset to have received a notice of sums in arrears from SMF that was dated a few days after I'd sent my provisional 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'd like to thank Miss S for pointing out the error in the collection date. I don't think that changes the way I've suggested things should be put right, however.

I've reconsidered what usage Miss S had from the car in light of her recent submissions. It's not possible to reach a totally accurate figure for the days she had use of the car, but I think the mileage completed is a good guide. When Miss S returned the car the collection sheet explained it had covered a total of 50,982 miles. The invoice suggests the car had a mileage of 48,477 when it was supplied to Miss S. So, Miss S had covered 2,505 miles in the car. The average annual mileage in the UK is about 8,000 and that would therefore suggest that Miss S had more than a month's worth of use from the vehicle. But that usage was impaired by the faults she experienced whilst driving the car and, overall, I'm persuaded a charge of one monthly instalment for usage is fair. But I don't think Miss S should pay any less.

I can only assume that the notice of arrears letter was automatically generated by SMF, but as I've not been provided with any new information that would lead me to change my provisional decision, I think the order I'm making will set things right, and ensure any

adverse information that may have been reported to Miss S's credit file is removed.

### **Putting things right**

My provisional decision remains unchanged and becomes my final decision on this complaint.

### **My final decision**

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

- End the finance agreement with nothing more to pay.
- Refund any deposit Miss S paid and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund any finance instalments Miss S has paid except the first one. Add 8% simple interest per year from the date of payment to the date of settlement. Waive any finance instalments, other than the first, if they were due but haven't been paid.
- Pay Miss S £300 to compensate her for the distress and inconvenience she's experienced.
- Remove any adverse reports they may have made to Miss S's credit file in relation to this agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 25 May 2023.

Phillip McMahon  
**Ombudsman**