

## The complaint

Miss S complains about the quality of a car supplied to her under a hire purchase agreement with Specialist Motor Finance Limited ("SMF").

## What happened

In July 2022, Miss S took out a hire purchase agreement with SMF for a used car. This car had a cash price of £8,494. It was around 10 years old and had travelled approximately 112,414 miles. Miss S agreed to pay a £134 deposit, 60 monthly instalments of £244.63, plus an 'option to purchase' fee if she decided to keep the car when the finance agreement ended.

Miss S says she picked the car up and drove it home on 10 August 2022. She's told us that a warning message appeared on the dashboard saying "*anti-theft mode activated*" - and that she later had to stop the car because smoke started coming out from the engine. She says the supplying dealer arranged for it to be transported to a garage for repair the following day.

Miss S told us that, after it had been at the garage for nearly two weeks, she complained to her credit broker that she wanted to reject the car. She says the broker told her she wouldn't be able to do that until she'd given the dealer a chance to fix the fault. She says she also complained to SMF on 23 August 2022, saying she wanted to reject the car because it was taking too long to fix.

Miss S has told us that she collected the car for a weekend in August 2022 on the understanding that she'd return it straight back to the garage for the repair work to continue. But she says she was unable to go away on the family outing she'd planned because the car still had the same issues with smoke and dashboard warnings.

Miss S says the garage contacted her on 9 September 2022 to say the car was ready for collection. She's told us that there was still smoke coming from the engine as she drove the car home that day, and the "anti-theft" dashboard warning came back on the following day.

Miss S says she contacted SMF, who said she'd need to get a garage to confirm the car was faulty. She arranged for a mechanic to carry out diagnostics, costing her £79. She was given a diagnostic report and a health check, dated 1 and 3 October 2022 respectively.

The diagnostic report listed a number of active and stored codes found in the car's systems. The health check listed various repairs and maintenance, categorised either as "*requires urgent attention*" or "*advisory*". Miss S sent copies of these documents to SMF, who arranged for the car to be collected and returned to the supplying dealer on 1 November 2022.

On 6 December 2022 the car was inspected by an independent engineer. SMF issued their final response to Miss S the following month. They said they wouldn't uphold her complaint or accept her request to reject the car because no fault had been found with it. But they said they'd award her £300 for the length of time it had taken to resolve her complaint.

Unhappy with this response, Miss S brought her complaint to us. She said she believed the faults had been repaired since the car was returned to the supplying dealer, whereas she should've been allowed to reject the car.

Miss S told us she had no idea where the car's been since it was collected from her on 1 November 2022. She said the independent engineer's report suggested it had travelled around 500 miles during that period. She told us she'd received a fine for the car having been driven through a clean air zone on 12 December 2022. She said she'd reported it to the police because the car shouldn't be on the road without her permission. She said she'd raised her concerns to SMF, but they'd advised her any questions about this needed to come through our service.

After looking into what had happened, our investigator said he didn't think the car had been of satisfactory quality when it was supplied to Miss S - and that she should be allowed to reject it. He said SMF should collect the car, return Miss S's deposit, end the agreement with nothing further for her to pay, and remove any adverse information about it from her credit file.

The investigator thought Miss S should only have to pay for the short period of use she'd had of the car between 9 September 2022 and 1 November 2022. He thought SMF should return all other monthly payments she'd made.

The investigator wasn't satisfied that SMF's offer of £300 was adequate for the considerable amount of distress and inconvenience Miss S had been caused. He thought this should be increased to a total of £450, and that SMF should also reimburse the £79 she'd paid for the diagnostic and health check.

Miss S accepted our investigator's view of how her complaint should be resolved. SMF expressed concern that the investigator had accepted Miss S's testimony without supporting evidence. I'll summarise the main points they made:

- The credit broker had confirmed that the car was returned to the supplying dealer on 11 August 2022, and Miss S collected it on 19 August 2022 following a reset at a manufacturer's garage. They didn't consider one week to be an unreasonable timeframe to diagnose and repair the faults.
- Miss S provided no evidence of a fault until 3 October 2022, when she obtained a vehicle health check. This is just a visual inspection. The check sheet made no reference to smoke coming from the car. Anything highlighted in amber would be advisory, which wouldn't be unusual for a car that's covered almost 113,000 miles.
- The health check noted the fuel leak to be due to a broken plastic clip, which wouldn't mean the car wasn't fit for purpose.
- There was no evidence to suggest Miss S was unable to use features such as the car's radio and satnav. The health check showed the centre display control unit as a "pass".
- The car had passed an MOT on 2 August 2022. Although the brake pads were worn there was no obligation on the dealer to change them. This doesn't make the car unfit for purpose.
- The car was almost 10 years old and had over 112,000 miles on the clock when it was supplied to Miss S. The dealer and independent engineer had both confirmed there was no fault with the car. The independent report was carried out by a qualified engineer who'd carried out a full inspection and road test.
- There was no evidence to support Miss S's claim that the dealer had repaired the car

so that she'd be unable to reject it. If recent repairs had been carried out, the independent engineer would've picked that up.

SMF asked for the case to be reviewed by an ombudsman. After reviewing the evidence, I wrote to both parties setting out my initial thoughts on the case. I invited them to send in any further information or comments they'd like me to consider before I made my final decision. I didn't receive any response.

### **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.

The agreement Miss S entered into was a hire purchase agreement, which means I can consider a complaint about it. Under this type of agreement, SMF is also the supplier of the car and is therefore responsible for a complaint about its quality.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there's an implied term that the quality of the goods is satisfactory.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances. In a case involving a car, it seems likely that a court would take into account things like its age, mileage, and history.

In this case, I bear in mind that the car was almost 10 years old and had covered more than 112,000 miles when it was supplied to Miss S. And the price was a lot less than it would've been when it was new. I don't think a reasonable person would have the same standards for this car as they would for a newer one with less mileage.

But I think a buyer who'd spent around £8,500 on a car would expect to be able to drive it for a reasonable amount of time without major issues. And although I don't think they'd expect everything to be functioning as well as it did when it was new, I think they'd expect all the main features to be in working order.

#### Was the car of satisfactory quality when it was supplied to Miss S?

Miss S has provided a photo of the dashboard display, showing a warning saying "*Anti-theft protection activated.*" I've seen a copy of the vehicle health check dated 3 October 2022, which records a "*theft protection fault*". I've also seen a copy of the vehicle diagnostic report created two days earlier, which records an active and stored fault code for "*The PIN for theft protection is wrong or not present*".

So, I'm satisfied that there was at least one fault with the car. I don't consider it relevant that this fault is recorded as advisory, rather than requiring urgent attention. As I've explained, I think Miss S was entitled to expect the car's main features to be working. Miss S says whenever the anti-theft protection message appeared the car's central display screen became locked, which meant she couldn't use features like satnav or radio.

Having carried out internet research into this, I've seen confirmation that activation of the anti-theft protection on this car will disable certain functions, including the satnav and sound system. So, I think it most likely that these features did stop working whenever the anti-theft protection warning came on.

I note that the diagnostic report and health check record the car to have covered 112,870 miles. Given that Miss S had less than two months' and 500 miles' use of the car by this time, I consider it most likely that the fault was already present or developing when the car was supplied to her.

SMF say the supplying dealer and independent engineer found no evidence of any fault with the car. I've seen no supporting evidence of any diagnostic testing carried out by the dealer. I've reviewed the independent engineer's report of the inspection on 6 December 2022, at which time the car was recorded to have covered 113,386 miles. This says:

*"We had performed a diagnostic test, which revealed no fault codes."*

*"We performed a road test.... with no warning lights being produced and no abnormalities being noted."*

*"We can only conclude, based on the available evidence presented to us at the time of the inspection, that we were unable to identify any faults with the vehicle."*

I've given careful thought to possible reasons why the independent engineer didn't see any evidence of the faults identified in the diagnostic report and health check.

I've seen evidence showing the car was collected from Miss S on 1 November 2022. The independent engineer's inspection was carried out on 6 December 2022, at which time it was recorded to have covered 113,386 miles. SMF's records provide no explanation as to where the car was, or the reason for the delay in getting it inspected.

I think it's most likely that the fault codes found in the car's system in October 2022 were cleared at some time before the independent engineer saw the car, two months later. As fault codes are stored and cleared electronically, I'm not persuaded that this is something the independent engineer would've been able to see.

The independent engineer's report shows the car was only road tested for seven miles. So, I also think it's very likely that the fault simply didn't become apparent in that time. I've seen evidence that, after the manufacturer's garage carried out a reset and returned the car to Miss S on 9 September 2022, the anti-theft warning didn't come back on until the following day.

Miss S says there were also other issues with the car. SMF dispute this – they feel any other issues were commensurate with its age and mileage. I don't consider it necessary for me to decide these points. Regardless of whether there were also other faults with the car, I think the problem with the anti-theft device meant it wasn't of satisfactory quality when it was supplied to Miss S.

#### Did SMF do enough to put things right?

The CRA sets out remedies for consumers whose right to receive goods of satisfactory quality hasn't been met. The evidence I've seen suggests Miss S initially agreed to a repair. The CRA makes it clear that the repair must be carried out within a reasonable time and without significant inconvenience to Miss S, or she'd have the right to reject the car.

SMF say the car went back to the dealership on 11 August 2022 and Miss S collected it on 19 August 2022, after a manufacturer's garage had carried out a reset. They feel a week to diagnose the faults & do any repairs was fairly quick.

But I've seen no supporting evidence to confirm this was what happened. And I don't consider this account to be consistent with the records SMF have shown us. Their records

show Miss S contacted them numerous times about ongoing problems with the car. For example:

- On 30 August 2022 she told them she'd collected the car on 19 August 2022, but it had to go back a few days later because she was still experiencing the same problems. SMF noted these problems to be limp mode, anti-theft device, EML illuminated, and a seat belt issue.
- On 8 September 2022 Miss S told SMF the car was still at the garage. She said the broker had advised her that she had to allow the dealer to repair the car in the first instance. SMF told her that wasn't correct, but to be able to reject the car the onus was on her to provide evidence of a fault at the point of sale.
- Miss S called again on the same day, saying the manufacturer's garage had told her the seatbelt and radio hadn't been fixed. She said they'd told her the radio had been swapped with one that didn't work, which was why the anti-theft warning kept coming on.

The notes of the conversations about these issues continue, but I don't consider it necessary for me to list any more of them. I'm satisfied that Miss S made SMF aware the car had been at the garage for several weeks and the problems hadn't been fixed. At that point, I think SMF should've done more to resolve this for her.

I appreciate SMF would generally expect the customer to provide a diagnostic report or some other evidence showing there was a fault with the car. But in this case the car had been taken away from Miss S by the supplying dealer and delivered to a manufacturer's garage of their choice. Given those circumstances, I think it would have been a relatively simple matter for SMF to ask that garage to confirm whether they still had the car - and what was wrong with it.

Instead of doing that, SMF's records show they required Miss S to obtain written evidence from the manufacturer's garage to support her request to reject the car. Miss S contacted SMF again on 20 September 2020 saying she was having difficulty getting evidence from the manufacturer's garage - and that this was probably because the dealer was their customer. Again, instead of simply requesting this evidence themselves, SMF advised Miss S to get a report from another VAT-registered garage.

I think all of this caused a lot of unnecessary stress and inconvenience for Miss S - as well as delaying getting this matter resolved.

### **Putting things right**

I don't think it's entirely clear whether Miss S initially wanted a repair, or simply believed that's what she had to accept. But in any event, I'm satisfied that the fault wasn't repaired within a reasonable time and without significant inconvenience to her - despite Miss S allowing ample opportunity for this to happen.

I've seen evidence showing Miss S told SMF that she wanted to reject the car, and I find she had the right to do that. So to put things right, SMF should end the agreement and return her £134 deposit. And they should arrange for the car to be collected from wherever it's currently being stored without charge to Miss S.

Miss S told us that the dealer has had the car for a significant proportion of the time since she got it. I don't think it's fair for her to make monthly payments to SMF for periods when she wasn't provided with a car to use. So I think they should refund all her monthly payments, retaining an amount for the use she's had.

Miss S told us she was able to use the car between 9 September 2022 and 1 November 2022. Although I think it's fair that she should pay for the use she's had of the car, I'm not persuaded that it was functioning as it should have done. So, I think SMF should only be entitled to retain 90% of the amount they'd normally have charged.

I've seen a receipt confirming Miss S paid £79 on 7 October 2022 for the diagnostic report and health check, because SMF told her she needed to provide evidence to support her request to reject the car. So, I think they should reimburse her for that.

Miss S told us that her main reasons for getting this car were to get to work, take her young child to nursery, but most importantly to take him on family holidays. She says she's had to get the bus to work - and that not having a car with such a young child has been a nightmare. She says she feels devastated at having missed out on family holiday time because of the issues with the car.

Miss S says she's spent many hours on the phone to SMF trying to get things sorted. She says knowing someone is using this car without her permission has caused her to worry about what might happen if it's caught doing something illegal, or if it's involved in a fatal accident. She says she's worried the police may knock on her door because the car's still registered in her name. She's told us she hasn't had a good night's sleep for many months due to the stress this situation has caused her.

I think Miss S has been put to a significant amount of inconvenience over many months due to the car not being of satisfactory quality. I'm satisfied that she spent a lot of time trying to obtain evidence for SMF after the car had been collected by the supplying dealer.

I've seen evidence that Miss S had to repeatedly chase for updates on where the car was and what was happening with it. She's provided evidence showing she successfully appealed against the fine for the car being driven through a clean air zone.

Having thought about the impact of this on Miss S, and the number of months it's been going on for, I consider £450 to fairly reflect the distress and inconvenience she's been caused.

### **My final decision**

For the reasons I've explained, I uphold this complaint and direct Specialist Motor Finance Limited to:

- End the agreement and collect the car with nothing further for Miss S to pay,
- Refund her £134 deposit,
- Reimburse the £79 she paid on 7 October 2022 for the diagnostic report and health check,
- Refund all monthly payments Miss S has made, retaining an amount for the period of use she's had of the car between 9 September 2022 and 1 November 2022.

The retained amount should be no more than 90% of the amount that would otherwise have been payable under the terms of this agreement for that period.

- Pay interest on each of the refunded payments, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Pay Miss S £450 compensation for the distress and inconvenience she's been caused,
- Remove any adverse information that's been recorded on Miss S's credit file about

this agreement.

If SMF consider tax should be deducted from the interest element of the award, they should tell Miss S how much they've taken off. They should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax if she's eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 15 September 2023.

Corinne Brown  
**Ombudsman**