

The complaint

Miss S complains that a car acquired under a hire purchase agreement with Specialist Motor Finance Limited (SMF) wasn't of satisfactory quality.

What happened

In February 2022, Miss S acquired a used car from SMF under a hire purchase agreement. The car was sourced by a credit broker, who I'll refer to as C, and supplied to Miss S by a dealership. The car was approximately seven years old and had covered 94,621 miles when the agreement started. The agreement was for 57 months, and the cash price of the car was £7,190.

Within a month of acquiring the car, Miss S got in contact with C to explain the car had an oil leak. She told C that a mobile mechanic had suggested the leak was from the gearbox, although she couldn't provide any evidence of that as it had been a telephone conversation only. C asked Miss S to provide a diagnostic report and the dealership have said they offered to repair the car, or that Miss S could have the car repaired under warranty.

In May 2022 Miss S told C that she wanted to reject the car. A week later she provided an invoice and vehicle check from an independent garage which confirmed the oil return pipe was leaking excessively and it was damaged. The report also mentioned that the side engine case on the driver's side was leaking. Miss S has said she was advised to stop driving the car at this time. The car had travelled 98,764 miles.

Miss S struggled to get any clear communication from C or the dealership, so raised a complaint with SMF in June 2022. They responded in late September 2022 and explained the dealership were now willing to repair the car. SMF agreed to refund Miss S two months repayments.

From this point Miss S didn't hear from SMF, C or the dealership for some time. She asked SMF for an update in October and November 2022. As she didn't get a response she brought her complaint to our service.

Whilst the complaint was being reviewed by our investigator, Miss S continued to tell SMF that she wanted to reject the car. However, the dealership collected the car and confirmed it was repaired in mid-March 2023. This hadn't been communicated to Miss S and she continued to reiterate that she wanted to reject it. Our investigator upheld the complaint. She said she felt it was more than likely the faults seen in March 2022 were present or developing at the point of supply, meaning the car wasn't of satisfactory quality when Miss S acquired it. She said that all parties accepted the dealership had offered to repair the car, but our investigator said that these repairs hadn't been carried out in a reasonable time and it was, therefore, Miss S's choice to reject it rather than accept the car back with the repairs carried out. Our investigator asked SMF to:

- End the agreement with nothing further for Miss S to pay.
- Refund Miss S's deposit/part exchange contribution of £2,750.

- Refund the repayments made by Miss S from May 2022 until the date of settlement.
- Refund Miss S £29.99 for the diagnostic report in May 2022.
- Refund Miss S £11.81 road tax payments she'd made from September 2022 until the date of settlement (Miss S's mother had paid for a couple of months prior to September 2022).
- Refund Miss S £113.81 insurance payments she'd made from June 2022 until the date of settlement.
- Pay 8% simple interest on all refunded amounts from the date of their payment until the date of settlement.
- Pay Miss S an additional £250 for the distress and inconvenience the faulty goods had caused.
- Remove any adverse information from Miss S's credit file in relation to the agreement.

Miss S accepted this. SMF were willing to accept the rejection of the car, but they were unhappy with the amount being charged. They felt more should be charged due to the mileage Miss S had travelled since acquiring the car. They also said the car showed a lot of damage to some panels, and they wanted to deduct some damage charges from the final settlement amounts.

Our investigator explained our service's approach when considering Miss S's ability to use the car. She also explained that any damage charges would need to be considered by SMF in the appropriate way, and Miss S should be given time to review and consider them. If, at that stage, Miss S felt the damage charges were excessive she would be able to make a new complaint – but the damage charges wouldn't be considered in this review.

As SMF remained unhappy, it's been passed to me to decide.

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.

As the hire purchase agreement entered by Miss S is a regulated consumer credit agreement this service is able to consider complaints relating to it. SMF are also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Miss S entered. Because SMF supplied the car under a hire purchase agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

But on the other hand, satisfactory quality also covers durability. For cars, this means the

components must last a reasonable amount of time. Of course, durability will depend on various factors. In Miss S's case, the car was used and had covered approximately 94,500 miles when she acquired it. So, I'd have different expectations of it compared to a brand-new car. Having said that, the car's condition should have met the standard a reasonable person would consider satisfactory, given its age, mileage and price.

In Miss S's case I'm satisfied the car wasn't of satisfactory quality when it was supplied to her. I'll explain why.

As Miss S brought her concerns to SMF's attention more than six months after she'd been supplied with the car, it was for her to prove the faults with the car were present or developing at the point of supply. Miss S has provided an independent report from May 2022 that confirms the oil return pipe was leaking excessively and was damaged, and that the side engine case on the driver's side was leaking. This report is consistent with what Miss S has said the mobile mechanic told her in March 2022, and what she first brought to C's attention at the time. C has also confirmed it was told about the oil leak in March 2022. I think the report is the most persuasive piece of evidence to support the car's quality – and I don't think it's satisfactory for a car to present itself with an oil leak in various parts of the engine so soon after being supplied. More importantly, it appears that SMF have now accepted the car wasn't of satisfactory quality at the point it was acquired by Miss S – the only outstanding issue seems to be how to remedy the current situation. Miss S would, ideally, like to reject the car. SMF are responsive to that but feel that more should be charged to take account of the mileage covered since the car was supplied, and the damage to the car upon collection by the dealership. I'll cover those aspects later in this decision.

Having considered everything that's been provided, my decision is that rejection of the car is the most appropriate and fairest way to resolve the complaint. The CRA explains that Miss S can ask SMF to reject the car after the initial 30 days of the agreement if any repairs haven't been completed in a reasonable time and without significant inconvenience to her. I'm not satisfied this requirement has been complied with, in this case. SMF have confirmed that the dealership had agreed to undertake the repairs in September 2022 but, because of a breakdown in communication between C and the dealership, the car wasn't collected from Miss S until March 2023. I accept the dealership's responses or lack of action isn't the responsibility of SMF, but I do think they have had plenty of time in this case to step in and try to help Miss S find a reasonable solution. She has shown that she asked them for updates in October and November 2022, which she didn't receive a response to. SMF failing to step in to help has caused Miss S significant inconvenience.

It's taken six months from the suggestion of repair to the repairs taking place. As SMF are the supplier of the car under this agreement, I'm satisfied they must take responsibility and accept that Miss S was waiting an unacceptable length of time to have any repairs completed. Because I'm satisfied Miss S was waiting an unacceptable length of time for any repairs to happen, it follows that I'm satisfied that she now has the right to reject the car, rather than accept it back with the repairs completed.

Miss S has confirmed that she's continued to make the monthly repayments for the car, in addition to continuing to pay for the road tax and insurance for it. Because of her need for a car to enable her to continue to work – Miss S was a carer and needed to be mobile to continue to deal with issues caused by the Covid-19 pandemic – Miss S needed to source another car and plan to pay for that too. SMF's handling of this matter has caused Miss S some distress, and I will be asking them to make a payment for that.

I appreciate SMF feel they should be able to deduct a charge per mile to indicate the use Miss S has had of the car. I'll explain why I don't agree.

The CRA sets out that where the final right to reject is exercised, any refund can be reduced by a deduction for use, taking account of the use the consumer has had of the goods (in this case, the car). I've thought about what reflects a fair deduction for the use Miss S had of the car.

I've looked at the agreement between SMF and Miss S. When it was entered, SMF and Miss S came to an agreement for the amount she would pay to use the car, which was £116.81 a month. The agreement doesn't contain a mileage allowance or any provision which allows SMF to charge Miss S for mileage or excess mileage.

Miss S had driven the car around 4,000 miles in the four months that she had use of it, which is around what I'd expect to see for a car of this type over this period. So, she's driven it an average number of miles.

As Miss S has neither excessively underused nor excessively overused the car in the period, I'm satisfied that the monthly payment originally agreed represents a fair charge for the use Miss S had of the car.

So, I find it reasonable for SMF to retain all the monthly repayments made by Miss S up to May 2022, to reflect the use she's had of the car. But I don't think it's fair for them to make a reduction of 25 pence per mile as suggested.

To put things right, SMF should end the agreement with nothing more for Miss S to pay. They also need to reimburse Miss S all the monthly repayments she's made towards the agreement since May 2022, excluding the two monthly repayments they refunded when originally dealing with Miss S's complaint in September 2022. I'm satisfied that she stopped using the car in May 2022, and the mileage when it was collected in March 2023 confirms that. Additional interest of 8% simple should be added to each payment refund, from the date it was paid until the date of settlement.

Due to the lack of information about what was going to happen to the car, Miss S continued to pay the road tax and insurance for it. I'm satisfied she should be reimbursed for that too. She has paid £11.81 a month for the road tax since September 2022 – her mother helped her out with the first couple of payments – and £113.81 a month from June 2022 for her car insurance for this car. SMF will need to reimburse her those amounts, including 8% simple interest from the date they were paid until the date they settle.

In addition, Miss S made a deposit contribution by way of part exchange towards the agreement. This should be returned to her. In addition to this, SMF should reimburse Miss S the cost of the diagnostic report she had completed in May 2022. SMF should also remove any adverse information recorded on Miss S's credit file in relation to this agreement.

Finally, it's clear this situation has caused Miss S some distress. SMF have taken longer than necessary to deal with this matter. It's also caused Miss S some financial worries too as she needed to source and pay for another car to enable her to keep working. Our investigator has recommended an award of £250 to reflect this inconvenience. I see no reason to depart from that.

SMF have asked to deduct an amount from the settlement to reflect the damage the car has sustained while in Miss S's possession. Miss S doesn't deny the car might have some damage, as it was stationary on the road outside her house for several months awaiting collection. However, SMF need to follow the correct procedure and guidelines to invoice Miss S for the damages they believe she has caused and allow Miss S the opportunity to pay for them or dispute them. Depending on the outcome to that, a new complaint might be able to be brought to our service. But the damage charges haven't been considered by me in

the context of this complaint as Miss S hasn't been given the appropriate opportunity to see SMF's reasons for any deductions and provide any reasoning of her own.

My final decision

For the reasons above, I uphold this complaint. Specialist Motor Finance Limited must:

- End the agreement with nothing further for Miss S to pay.
- Refund Miss S's deposit/part exchange contribution of £2,750.
- Refund the repayments made by Miss S from May 2022 until the date of settlement (excluding the two payments already returned in September 2022).
- Refund Miss S £29.99 for the diagnostic report in May 2022.
- Refund Miss S £11.81 road tax payments she'd made from September 2022 until the date of settlement.
- Refund Miss S £113.81 insurance payments she'd made from June 2022 until the date of settlement.
- Pay 8% simple interest on all refunded amounts from the date of their payment until the date of settlement.*
- Pay Miss S an additional £250 for the distress and inconvenience the faulty car has caused.
- Remove any adverse information from Miss S's credit file in relation to this agreement.

*If Specialist Motor Finance Limited consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss S how much they've taken off. They should also give Miss S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 14 September 2023.

Kevin Parmenter
Ombudsman