

The complaint

Mr S complains that the car he acquired financed through an agreement with Specialist Motor Finance Limited (SMF) wasn't of satisfactory quality.

What happened

The details of this complaint are well known to both parties and have been set out by the investigator in her view, so I won't repeat them here. Instead I'll focus on giving the 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.

This service asked SMF to provide the business file for this complaint including the finance agreement. Despite repeated requests it did not provide this. So my decision is based on the evidence available to me. SMF has agreed to unwind Mr S's agreement and for Mr S to return the car. So I'm satisfied a regulated consumer agreement is likely in place and our service is able to consider complaints against it. Having considered the evidence I agree with the conclusions reached by the investigator for the following reasons:

- As the supplier of the car SMF is responsible for the quality of the car, and the Consumer Rights Act 2015 (CRA) employs terms into the agreement requiring the car be of satisfactory quality.
- I'm satisfied from the testimony presented, which included two independent inspections before and after repair, that the car wasn't of satisfactory quality, and I'm reassured that SMF has accepted this and agreed that Mr S can return the car and end the agreement. But it wasn't clear in its response to our investigator that SMF accepted all the recommendations our investigator made. It collected the car and Mr S has informed us that he has only received £132 refund with deductions for mileage.
- As well as recommending that Mr S be allowed to return the car and unwind the agreement our investigator made the following recommendations:
 - Refund Mr S's deposit, if applicable;
 - Refund Mr S's monthly repayments from December 2022 onwards;
 - Remove all information from his credit file.
 - Pay £400 compensation for any distress and inconvenience caused;
 - Reimburse him £25 for the valet.
- SMF provided no response to these recommendations. In its response it said: *"Please could you confirm that you will withdraw from the Ombudsman as we will look to go forward on the rejection. We are in the process of unwinding this agreement following further issues, after the adjudication was issued and as per Mr S's request."* SMF hasn't said whether it agrees with the refund of Mr S's deposit or payments. Our investigator suggested to SMF that if mileage was

being considered this would be a separate complaint. SMF disagreed saying “– *this does not need to be treated as a separate matter as we have already explained this has been unwound – however, the customer still wanted it to go to a Final Decision.*”

- Typically where we consider it fair that a customer is allowed to reject the vehicle we would expect the business to put the customer back in the position they were in had they not taken out the agreement.
- Despite our requests SMF hasn't provided a copy of Mr S's agreement so it's not clear to me if Mr S paid a deposit or if he part-exchanged a vehicle when entering the agreement. SMF hasn't provided any evidence or argument against refunding any such payments made. So I'm satisfied that it's fair and reasonable for it to refund any deposit paid.
- Mr S has said the car was undriveable from December 2022, and he had no courtesy car so had to arrange alternative transport. He said he stopped making payments in December 2022 and has since received Notice of Sums in Arrears. It's reasonable that SMF is able to deduct fair usage from any remedy available to Mr S. As Mr S hasn't been able to use the car since December 2022 I think it reasonable that payments from this date should be refunded or, if he hasn't paid them any associated adverse information is removed from his credit file. I also consider it fair and reasonable that SMF pay for any transport costs while Mr S was unable to use the car, on production of receipts or invoices.
- SMF hasn't provided any detail regarding the refund of £132 it made to Mr S but he has indicated deductions have been made for mileage. Mr S was able to use the car up until December 2022 and any deduction for usage has been accommodated in the above recommendation concerning payments.
- I can see that Mr S has tried very hard to get assistance from SMF, including through the credit broker, and has been increasingly frustrated with its lack of help and the time taken for it to respond. Our investigator recommended £400 compensation for the inconvenience caused and I agree that this is fair and reasonable.
- When Mr S's car came back after repair it was returned in an unacceptable state and provided photos to this service. He said he had to pay £25 (although did not get a receipt) for it to be cleaned before then realising the repairs had failed. I consider it fair and reasonable that he be refunded this amount.

Putting things right

To put things right Specialist Motor Finance Limited must:

1. End Mr S's finance agreement with nothing further to pay, if it hasn't already done so;
2. If Mr S paid a deposit or part-exchanged a vehicle when he took out the agreement then this amount must be refunded in full;
3. Refund Mr S any monthly repayments he made from December 2022 onwards;
4. Remove all information related to this agreement, including any adverse information, from his credit file;

5. The car has been collected, if there were any costs to Mr S for this collection then they should be refunded;
6. Pay Mr S £400 compensation for the distress and inconvenience caused;
7. Reimburse Mr S £25 for the valet, no receipt required;
8. Pay for any transport costs while Mr S was unable to use the car, on production of receipts or invoices;
9. For 2 and 3 above pay 8% simple interest from the time it was paid to the date of settlement.

My final decision

My final decision is that I uphold this complaint and Specialist Motor Finance Limited must put things right as set out above.

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

Maxine Sutton
Ombudsman