

## **The complaint**

Miss A is unhappy with a car supplied under a hire purchase agreement provided by Specialist Motor Finance Limited ('SMF').

## **What happened**

Miss A acquired a used car in June 2022 funded by a hire purchase agreement with SMF.

The car cost £15,145 and SMF said the mileage was recorded as 59,001. The car was around four years old.

Miss A says the car had issues shortly after she acquired it. She said she immediately noticed a leak from the car where fluid pooled underneath it. She says the car was returned to the dealer, who initially said there was nothing wrong with it. She says she then noticed the temperature gauge in the car was too high when driving, and then got a warning light saying the engine needed coolant. After topping this up, she says the same thing happened and a mechanic told her not to drive the car.

Miss A says the car was returned to the dealer on multiple occasions for repairs, but was still leaking fluid when it was given back to her.

Miss A complained to SMF. It issued its final response in September 2022. This said, in summary, that the dealer had agreed to take the car back if it was provided with evidence of faults. It said Miss A had provided photos and a screenshot of a conversation with the dealer, but she had not provided a diagnostic report. SMF said it would cover the cost of this up to £50.

A garage saw the car in October 2022. The mileage was recorded as 60,489. This garage noted fault codes in relation to the power supply voltage, 'start enable', temperature sensor and 'electronic selector level module'.

It appears SMF asked Miss A to get a more detailed report. Miss A then referred the complaint to our service and said she wanted to reject the car.

An independent report was carried out in December 2022. This recorded the mileage as 61,313. This report said, in summary, that there were no visible leaks from the car, no warning lights, that the engine temperature remained steady without overheating and the air conditioning and heater worked as expected. It did note that a coolant pipe appeared 'recent in origin' and that a driveshaft CV joint should be replaced soon due to cracking.

Miss A was in disagreement with the findings of this report and took the car to a manufacturer's garage for a diagnostic in February 2023. This garage said, in summary, that there was damage to the driveshafts due to a previous issue/repair and it recommended these were replaced. And it said the 'switchover valve' was leaking coolant and required replacement.

Our investigator sent this information to SMF and then issued an opinion. He said, in

summary, that he thought the car had issues with the driveshafts and a coolant leak that meant the car wasn't of satisfactory quality when it was supplied. He said SMF should repair the issues, pay Miss A £250 to reflect the distress and inconvenience caused and reimburse her for the diagnostic reports.

Miss A responded and said she agreed with the outcome reached but said she wanted to reject the car rather than it being repaired. She said she hadn't used the car since the manufacturer's garage saw it in February 2023. And she said she hadn't been provided with any service history or a log book for the car.

While we were awaiting a response from SMF, in April 2023 Miss A told our service the car had been clamped and taken by the DVLA as it wasn't taxed.

SMF responded to the investigator's view. It said, in summary, that the manufacturer's diagnostic was only a free visual check, whereas the independent report was a full inspection. It said the manufacturer's garage had noted the driveshafts should be replaced as a recommendation. So it said this was a wear and tear issue. And it said it didn't believe the fault with the switchover valve was present or developing at the point of supply.

SMF also said that it was Miss A's responsibility to tax the car.

At the end of April 2023 SMF wrote to Miss A and said it was terminating the agreement. It said Miss A owed a balance of £16,381.91. SMF explained to our service that it had to pay a total of £1,170 to collect the car and gave a breakdown of these costs.

Our investigator then issued a further view on the case. He said, in summary, that he now thought Miss A should be allowed to reject the car. He said he didn't think the driveshaft issue was wear and tear. And he said he didn't think Miss A should be responsible for the storage or recovery costs for the car.

Miss A agreed with this opinion. SMF responded and said it didn't agree Miss A should be able to reject the car. And it said it was her responsibility to make sure it was road legal.

As SMF disagreed here, the case was passed to me to decide.

I sent Miss A and SMF a provisional decision on 10 July 2023. My findings from this decision were as follows:

*I should begin by explaining to both parties that I'm going to focus on what I think are the key points here and the crux of this complaint. I want to reassure both parties that I've carefully considered all of the information and evidence on this case. Where I haven't commented on something, it isn't because I consider it unimportant – this just reflects the informal nature of our service.*

*Miss A complains about a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Miss A's complaint against SMF.*

*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. The CRA explains under a contract to supply goods, the supplier – SMF here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.*

*I would consider relevant factors here, amongst others, to include the car's age, price,*

*mileage and description.*

*So, I'll consider that Miss A's car had covered around 59,000 miles and was around four years old. So, I don't think a reasonable person would expect it to be in the same condition as a newer car with less miles. But, the car still cost over £15,000. So, I think a reasonable person would expect it to have been free of anything other than minor issues and would expect trouble free motoring for a reasonable period.*

*I've firstly considered whether Miss A's car had a fault with it. Having done so, I think it did. I'll explain why.*

*I've considered the reports that were carried out on the car. The first report Miss A got from a garage only noted fault codes. Given the lack of detail here, I've not put much weight on this. Instead, I've focused on the independent inspection and the manufacturer's report.*

*I've firstly thought about the coolant leak. Having considered the evidence, I'm satisfied it's most likely Miss A's car had a coolant leak when she acquired it. I say this as she's been consistent with what she's said here. She's provided photos which she says were from the time, where fluid can be clearly seen underneath the car. And she's provided screenshots of what she says was a conversation with the dealer. Here the dealer says:*

*"This was a visual leak and got fixed"*

*I've also considered what the independent report said here. This noted a likely recent repair to a coolant pipe. But, the independent report also specifically said that there was no issues with a coolant leak at the time.*

*So, thinking about this, it appears there is a case to be made for a coolant leak being present, but then repaired by the dealer. But, the manufacturer's garage later noted:*

*"Switchover valve leaking coolant. Requires replacement"*

*I take on SMF's point about the timings involved here. This was noted around eight months after Miss A got the car. But, the car had only covered around 500 miles since the independent report, and under 3,000 miles since Miss A acquired it.*

*I appreciate this is somewhat finely balanced. I accept it's possible that the car could've had a coolant leak which was fixed by the dealer, and then later developed a completely separate coolant leak. But, I need to consider what I think most likely happened. I think this situation would be quite a large coincidence. So, I think it's more likely that the car had an underlying fault with a coolant leak that wasn't put right.*

*That being said, I understand this isn't clear cut. So, I've also considered the other main issue raised with the car around the driveshafts.*

*An issue with the driveshaft was noted in the independent report which said:*

*"We performed a road test and we found at the offside front driveshaft there was light cracking on the CV joint"*

*The manufacturer's garage said:*

*"Previous repair on driveshafts, suspect damage from previous issue/repair. Recommend replacement pair"*

*So, both reports seem in agreement there was an issue with the driveshafts. I've thought about what SMF said about it believing this was a wear and tear issue. But I don't agree here. The reason I say this is I've also looked at the car's MOT history. It appears this was tested shortly before Miss A got the car. The car failed the MOT and the test noted:*

*"Repair immediately (**major defects**):*

*Front drive shaft joint constant velocity boot split or insecure" (emphasis added by myself).*

*The car then later passed an MOT the same day.*

*Thinking about this, I'm satisfied I can see a clear timeline of what likely happened. The car failed an MOT for a driveshaft issue and it appears a repair was attempted. The independent report then noted an issue with the driveshaft and then the manufacturer's garage also noted an issue with the driveshafts, due to suspected damage from a previous repair.*

*Thinking about all of this, I'm satisfied the car had a fault with the driveshafts before it was supplied to Miss A. And I'm satisfied this wasn't repaired. I also don't agree with SMF that this was a wear and tear issue, nor a minor one.*

*I've then gone on to consider satisfactory quality. Having done so, I don't think a reasonable person would expect an underlying issue with the coolant leak. As set out above, the coolant leak issue is somewhat finely balanced. But, either way, I still think the car would not have been of satisfactory quality due to the driveshaft issue – which I'm satisfied is much clearer.*

*So, I now need to think about what would be fair and reasonable to put things right.*

*Our investigator initially recommended SMF repair the car. And he later said, because of the time that had passed, Miss A should be allowed to reject it. Considering Miss A's rights under the CRA, I'm satisfied she did have a final right to reject the car. But this isn't due to the same reasons put forward by our investigator.*

*I say this as I'm satisfied the dealer most likely attempted a repair to the car that wasn't successful. I've based this on the screenshot of messages, Miss A's testimony and the recent repair to a coolant pipe noted in the independent report.*

*I've then gone on to consider what else would be fair and reasonable to put things right. The circumstances here are somewhat unusual. The agreement has been terminated following the car being seized and it appears SMF already have it back.*

*I've thought about Miss A's use of the car. She told us she stopped driving it in February 2023 when the manufacturer's report was completed. And prior to this, she explained she was only using the car for short journeys due to the issues with it. I'm satisfied the usage of the car Miss A had, given the above, was impaired. I would normally consider instructing SMF to reimburse a proportion of the monthly payments she made to reflect this impaired usage.*

*But, SMF has explained Miss A has only paid five repayments towards the car. And it appears she was using the car, albeit less than she might normally have, for around eight months. Thinking about things in the round here, it seems fair and reasonable that SMF retain 100% of the repayments made, but do not hold Miss A responsible for the arrears.*

*I'm satisfied, as our investigator explained, that Miss A has suffered distress and inconvenience here. She's had to take time out to get reports, has explained she hasn't felt safe using the car and I think it must have been upsetting to realise the car had issues with*

*it. I've noted our investigator recommended £250 to reflect this.*

*I've also considered that Miss A has paid out for two diagnostic reports, one for £60 and one for £189. Our investigator recommended both of these to be reimbursed.*

*Finally, I've thought about the issue with the car being taken by the DVLA due to it being untaxed. SMF has explained it has incurred costs of £1,170 here.*

*On one hand, if SMF had accepted rejection of the car earlier, this situation wouldn't have happened. If Miss A was back in the position she would've been in had nothing gone wrong here – in this case meaning not being supplied with the car of unsatisfactory quality in the first place - this issue also wouldn't have taken place.*

*On the other hand, I need to consider if Miss A has mitigated any losses here. I appreciate she says she was never supplied with a V5 for the car and says she raised this with the dealer and SMF. But, I've seen no evidence of what happened here. Even if I accepted Miss A's version of events, she acquired the car in June 2022 and it was clamped by the DVLA in April 2023 – around ten months later. SMF have explained it believes the car was untaxed for around four months prior to this.*

*Considering this, I don't think Miss A did enough here to prevent this situation happening. Even if she wasn't supplied with a V5, I think it might have been prudent for her to rectify the situation with the DVLA, rather than leaving the car untaxed for several months.*

*I need to consider what would be fair and reasonable to both parties here. Thinking about things in the round, rather than SMF reimbursing Miss A for the costs of the diagnostics and paying her an amount to reflect the distress and inconvenience caused, I think it should instead write off the costs from collecting the car. I'm satisfied this means Miss A is roughly meeting SMF halfway with the costs it incurred, and this seems like a fair and reasonable way of resolving things under the very specific circumstances of this complaint.*

I gave both parties four weeks to respond with any further information or evidence.

SMF didn't get in touch following the provisional decision.

Miss A contacted our service and said she accepted what I'd recommended.

### **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.

Having thought about everything again, I still think this complaint should be upheld. This is due to the same reasons I explained in my provisional decision and which I've set out above.

### **My final decision**

My final decision is that I uphold this complaint.

I instruct Specialist Motor Finance Limited to put things right by doing the following:

- Write off any arrears/outstanding balance and charges due under the agreement\*

- Amend Miss A's credit file to reflect that the car was rejected rather than the agreement terminated
- Remove any other adverse information about the agreement from Miss A's credit file

\*To be clear, this should include any collection or storage costs for the car

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 6 September 2023.

John Bower  
**Ombudsman**