

The complaint

Miss F complains about the quality of a car she financed on hire purchase with Specialist Motor Finance Limited ('SFL').

What happened

The facts of this case are well known to the parties so I will cover them only briefly here and focus on my findings.

The car was supplied to Miss F in June 2022. In summary, Miss F says that a few days after it was supplied she noticed it was vibrating in certain situations such as at higher speeds on the motorway. She says that it has been back to the dealer several times to have work done but the issue continues. She wants to reject it for a refund.

Our investigator concluded the car was not of satisfactory quality, therefore she directed SFL to take it back, end the finance agreement (with nothing further to pay and removing any arrears) and pay compensation.

SFL did not agree with this. In summary it says:

- an independent report from September 2022 does not confirm an inherent fault with the car. Despite this the dealer paid for a gearbox specialist to repair the car at a cost of over £2,100 and deliver it back to Miss F - and SFL also compensated her £250.
- a follow up report from an independent expert in December 2022 confirms that there is no fault with the car and the issues are due to general wear and tear.
- Miss F has travelled several thousand miles since supply which causes it to question why the car is not durable.
- the car when supplied was several years old with almost 77,500 miles accrued which indicates the issue is caused by wear and tear.

Since the investigator issued her view Miss F has said that she stopped driving the car since the end of October 2022 and it is now in storage.

The matter has come to me for decision.

I issued a provisional decision on this matter as follows:

What I've provisionally 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 won't be commenting on all the evidence submitted by the parties – only what I consider to be central. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. SFL is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

SFL supplied Miss F with a second-hand car. Here I note the car had travelled around 77,500 miles and was several years old at the point of supply. So it is fair to say that the reasonable person would accept that it is likely to require more repairs and maintenance than a newer, less road worn car. The price agreed was £14,499, which would be much less than the new price but is not an insignificant amount of money for a car.

I note that Miss F has mentioned problems with things like wipers, tyres and brake pads. However, these things are likely to be considered usual wear and tear in a car of this age and mileage.

The main issue Miss F complains about appears to be an ongoing vibration and judder when changing gears at higher (motorway) speeds – which she has indicated has made the car uncomfortable to drive and has meant she has not felt safe using it. So this is the issue I have focused on.

Miss F has provided credible testimony to explain that the vibration was evident within days of the car being supplied. She says:

'...there was a vibration and noise coming from the car, a noise that can only be explained as a rotational noise and a problem when changing the drive modes (can only be described as a judder)'

She says the dealership told her to get it looked at by a local garage, which she did. Then some repairs were carried out to try and eliminate the problem.

Miss F's credible testimony is backed up by invoices showing the early issues she experienced and the attempts to solve it. I note an invoice from a third party repairer dated within about two weeks of supply states that Miss F reported 'vibration when breaking at motorway speeds'. This is important – as it shows to me the issue with vibration central to this complaint was present with the car at an early stage and likely when Miss F was first supplied the car.

I can see that after several attempts at finding the source of the vibration (along with repairs) an independent report was carried out in September 2022.

The report appears to identify what the Miss F had been concerned with from the start and says 'I could feel a vibration through the whole car.....it appears to be a rotational vibration'. It then goes on to identify 'an issue with the transmission, the symptoms are consistent with the transmission clutches slipping under certain load conditions; this is normally caused by the transmission clutches having minimal future life expectancy and therefore not in a durable condition'. The expert goes on to recommend that the car is taken to a transmission specialist for repair with 'repair costs be borne by the sales agent on the grounds of durability'. He says that the car needs a complete transmission overhaul and clutch replacement.

SFL has indicated that this report does not confirm a fault with the car but I disagree with this. It is quite clear from the inspectors comments that the car has a fault causing excessive vibration which needs addressing. I also note that a repair to the automatic transmission was then attempted costing in excess of £2,000. I think it extremely unlikely that this sort of repair would have been agreed had the car not been found faulty.

I accept that just because a car is faulty does not mean it is not of satisfactory quality. I note that SFL refers to wear and tear. And I accept that certain issues with an older, higher mileage car can be put down to reasonably expected wear and tear. I have turned my mind to whether in the particular circumstances here a reasonable person would consider the goods to be of satisfactory quality.

I have considered what the expert says in his report about durability and although SFL has a different perspective my interpretation is that he is saying the symptoms (excessive vibration) indicate the transmission is failing – and that in the circumstances it isn't sufficiently durable or acceptable that the consumer foot the bill for it.

Even if I accept there are alternative interpretations here around the comments regarding durability of a transmission I also note the overall circumstances here in considering whether the car is of satisfactory quality. In doing so while I have regard to the age and mileage of the car at the point of sale I note that the vibration issue (which was later identified as linked to a major mechanical problem with the transmission) was discovered within days of Miss F using it. This shows it was likely present when she acquired the car rather than something that developed later. It seems that age and mileage notwithstanding a reasonable person would not expect to be sold this car for £14,499 with what appears to be an existing and significant vibration issue that requires immediate attention with repairs costing in excess of £2,000. I acknowledge that the car has now covered notable mileage – but when the issues with the excessive vibration were first identified this was not the case. Miss F has indicated she had to drive the car to get to work. And being able to drive a car, even longer distances does not in itself make it of satisfactory quality.

For completeness I note SFL has referred to 'juddering' being a characteristic of this type or model of car. While I accept that certain cars will drive with different degrees of smoothness to me 'juddering' and the other symptoms described here indicate the issue is a fault rather than a reasonably acceptable characteristic of a particular model or type of vehicle.

In summary, I think there is compelling evidence to show the car was supplied to Miss F with significant mechanical problems – and that only after troubleshooting did it finally become clear this was the case. And despite the age and mileage of car at the point of sale I don't think the reasonable person would consider the car of satisfactory quality as a result.

Because the car was not of satisfactory quality at the point of supply Miss F has certain remedies under the Consumer Rights Act 2015. One of those is repair. I understand that repairs have been carried out but Miss F says they have not been effective – she claims that the car is still suffering from the vibration/gearbox issues which were present when it was first supplied. SFL disputes this and says that any current issues with the car are down to wear and tear.

I have considered what SFL has said in its detailed submissions and acknowledge that some information suggests that the car is presently suffering from issues as a result of usually expected wear and tear. However, I think that, on balance the evidence points to a failure to effectively repair the original significant mechanical issues originally identified with the transmission leading up to and including the expert report in September 2022.

I note that a report commissioned by Miss F and carried out in November 2022 shortly after the major works to the transmission/clutch says that the car is not engaging drive correctly at random intervals. It goes on to detail occasional slips/jolts during gear changes and concludes there is a fault with the automatic gearbox. It also identifies a rotational noise.

I note there is then a further report commissioned by SFL in December 2022 which confirms the car is still suffering from vibration as follows:

The vehicle is showing brief periods of vibration under acceleration not dissimilar to symptoms experienced from drive shaft wear, however this would require further checks under workshop control conditions to confirm.

I also note that Miss F says that when the car was returned after the gearbox repair she used it a couple of times and stopped using it completely when issues with the gearbox caused her to get stuck in a fuel station. Miss F's testimony, strength of feeling and decision to stop using the car (which I understand is now in storage) is also a persuasive factor here in indicating that the original (and significant) mechanical issues were not remedied by the major repairs carried out to the transmission.

On the face of it the evidence persuasively points to the original issue with vibration not having been remedied effectively.

I note the business that carried out the December 2022 inspection does reference a belief that normal wear and tear is the cause of the vibration. However, I also note that it is also stated (in the report and in later clarification commentary) that the cause of the vibration is only a suggestion and will need further investigation under workshop control conditions to confirm. So it is far from conclusive. I also note the road test carried out was around 8 miles and only with brief periods at higher speeds despite a recommendation in a prior report that after the repairs an 'extended' road test should be carried out. So arguably the full extent of the vibration and associated issues (which appear to be worse at higher speeds and temperatures) was not experienced. So overall, I don't think this December 2022 report or the later comments from the inspection business persuasively (in light of the other information here) shows the original mechanical issues have been satisfactorily remedied or that this vibration happens to be some other issue unrelated to the original vibration problem or as a result of reasonably expected wear and tear.

I appreciate there will be an element of uncertainty in cases like these – however, I need to decide what is most likely to be the case. And the evidence here points to the original mechanical issues which were present within days of taking the car (and causing the car to fall below the standard that a reasonable person would consider satisfactory) being ongoing. Therefore, I have considered what remedy would be a fair one to put things right. I note that

the Consumer Rights Act 2015 allows a supplier to make one attempt at repair before the consumer can claim other remedies. Here it appears there have been multiple attempts to remedy the vibration so I have considered other remedies including a final right to reject.

I understand that the car is now in storage and that Miss F is unwilling to continue using it so I don't think a partial refund is acceptable remedy. I also note Miss F's actions are consistent with rejection of the car. Overall, I think rejection is a fair remedy here. SFL should therefore take back the car at no further cost or inconvenience to Miss F, end the finance agreement and refund her the value of any deposit or part exchange contribution if any (by the looks of it there wasn't one here).

Miss F will not get a full refund of her payments because she has had notable use of the car. So I need to fairly reflect that. But I also need to think about any money she is fairly due back (or arrears that should be written off) in the particular circumstances here.

Miss F says she stopped using the car at the end of October 2022 because of the issues with it. This seems about right because the repairs on the gearbox appear to have been completed around this time (although it isn't entirely clear as the invoices are from the start of November 2022). I understand this is around the time she stopped paying for the agreement. In the round I think it is fair that SFL write off the arrears which have accrued (and any related charges) to reflect Miss F ceasing use of the car because she reasonably stopped using it as a result of the quality issues identified here.

Before she stopped using the car Miss F did not have completely unimpaired use of the car because it was vibrating excessively under certain conditions (namely motorway driving). So I think she should get a percentage refund of a portion of her monthly payments up until she stopped using the car to reflect this. Working out what fairly reflects impaired use is not a science, and I note she was not financing a brand new car here, however, it is not pleasant or expected to have juddering and vibration of the kind evident in this case. I also note there appear to have been some intermittent periods where Miss F didn't have the car at all when it was in for repairs (and no courtesy car provided either) so I have thought about this when factoring in compensation. Overall, I think SFL should also refund 10% of each monthly payment Miss F has made up to the point she stopped paying for the car to reflect impaired use and the intermittent periods where she did not have use of the car leading up to the time she stopped using it completely.

Miss F stopped paying for the car in October 2022 – and while it is usually best practice to continue to make payments I don't think in the circumstances here it would be fair for her credit file to be impacted by her decision. She has explained she had to stop paying so she could fund alternative transport. So I don't think it is fair for her to have adverse information on her credit file as a result.

Miss F is claiming back the cost of storage of the car. I think there are questions as to how reasonable these costs are and whether Miss F could have reasonably opted for a more inexpensive solution. However, in any event because she is the customer of SFL and took out the finance I need to be persuaded that she (as the eligible complainant to our service) has suffered a financial loss here. From the evidence she has provided I am not persuaded that is the case so I will not be awarding these costs.

I acknowledge that Miss F might have paid out for some minor repairs to the car including brake pads. However, from what I can see as she has used the car for several thousand miles it is likely she would have had some expense of this kind in any event – so I don't propose to direct SFL to pay this back.

I acknowledge what has occurred with the car has caused Miss F distress and inconvenience. I think that despite the issues with the car SFL has made a reasonable effort to assist Miss F with finding out the issues and has paid for expert reports and repairs to be carried out. I understand it has also made a compensation payment to her of £250. In the circumstances (and in light of my other redress) I am not going to be awarding a significant amount of additional compensation here. However, I do note what Miss F has described to us about the impact of the situation on her and her particular circumstances around the time and ongoing and think that an additional £150 should also be paid to reflect the distress and inconvenience caused.

My redress might not exactly reflect the detriment perceived by either party here – however, in my role resolving disputes informally I have come to what I think is overall a globally fair and reasonable way to put things right and resolve this dispute so the parties can move forward.

My provisional decision

I direct Specialist Motor Finance Limited to:

- end the agreement with nothing further to pay and write off unpaid rentals/arrears to date and any associated late payment fees or charges;*
- collect the car at no further cost to Miss F;*
- refund Miss F's deposit/part exchange contribution if applicable*
- pay a refund of 10% of each monthly rental payment to date;*
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;*
- pay £150 additional compensation to reflect the distress and inconvenience caused; and*
- remove any adverse information from the customer's credit file in relation to the agreement.*

I asked the parties for their comments.

Miss F explained that the £250 paid to her by SFL was not general compensation but to pay for a courtesy car while the car was being fixed. It also covered only a week when the hire was longer.

SFL did not respond to 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.

I note that in her response to my provisional findings Miss F has specifically referenced the £250 paid by SFL and what this represented.

I think it is worth clarifying here that I had anticipated that Miss F had some transport costs for periods where the car was in for repairs. SFL had referred to paying Miss F £250 compensation towards potential taxis or car hire – but it wasn't clear the exact costs incurred by Miss F at the time or if she had a hire car to rely on so this figure appeared to be more speculative compensation than a specific refund.

As a result my proposed redress was more global. In that the £250 represented an additional amount to factor in overall how much money Miss F should fairly receive (and keeping in mind that these awards are not scientific).

Miss F has now confirmed her car hire during the major repair and the costs for that. But I don't think that changes my overall recommendation here. It is worth noting that Miss F would not fairly get back both her SFL rentals for that time and the full cost of the hire car as she would have had to pay for transport in some way during that period in any event. In light of the particular circumstances here including Miss F's prior use of the car and when she stopped paying for it, the £250 Miss F got from SFL already and the proposed 10% refund of monthly payments (plus interest) made to date toward periods of impaired and intermittent use I think my overall redress is fair and reasonable here. And that an additional payment of £150 compensation for distress and inconvenience is still fair (particularly noting that it is now evident Miss F did have a car to rely on during the major repairs - albeit one she had rented).

In summary, my redress is not a science, but a way to informally resolve disputes on a fair and reasonable basis. After considering what Miss F has said and the information she has sent in I still think that the redress I am directing SFL to pay is broadly fair and reasonable in the specific circumstances.

All things considered neither party has given me reason to depart from my provisional findings (as copied above) which I think are a fair and reasonable way to settle matters.

Putting things right

I direct SFL to put things right as directed below for the reasons specified here (incorporating my provisional findings).

My final decision

I direct Specialist Motor Finance Limited to:

- end the agreement with nothing further to pay and write off unpaid rentals/arrears to date and any associated late payment fees or charges;
- collect the car at no further cost to Miss F;
- refund Miss F's deposit/part exchange contribution if applicable
- pay a refund of 10% of each monthly rental payment to date;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay £150 additional compensation to reflect the distress and inconvenience caused; and
- remove any adverse information from the customer's credit file in relation to the agreement.

If SFL considers it needs to deduct tax from the interest element of my refund it should provide Miss F with a certificate of tax deduction so she can claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 27 October 2023.

Mark Lancod
Ombudsman