

The complaint

Mrs B complains to Specialist Motor Finance Limited ('SFL') about a car it supplied her on finance.

What happened

The background facts are well known to the parties so I won't repeat those in detail here – instead I will summarise and focus on giving reasons for my decision.

Mrs B took out a hire purchase agreement with SFL. However, she is unhappy with the quality of the car and complained to SFL about it.

SFL acknowledged that there was an issue with the car leaking exhaust fumes into the main cabin and told Mrs B that the dealer would repair it if she took it in. It also offered her £200 compensation for the delay in coming to a resolution.

Mrs B was unhappy with the response and her complaint came to this service. Our investigator upheld the complaint and proposed a repair as a way forward along with some additional compensation.

Mrs B wants to reject the car instead so the matter was passed to me as ombudsman to make a decision.

I wrote to the parties and proposed an alteration to the investigator's view – I said it appeared that rejection was a reasonable way forward instead of a repair. Neither party has responded and my initial thoughts remain the same. I think both parties have had a reasonable opportunity to put forward submissions in respect of this complaint and my proposal so I am now moving to a final 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 resolves disputes informally – so I won't be commenting on everything said by the parties – only what I consider to be relevant.

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 Mrs B with a second-hand car. Here I note the car had travelled around 92,000 miles and was about 11 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 notably more repairs and maintenance than a newer, less road worn car. The price agreed was around £7,000 which would be much less than the new price but is still not an exceptionally low amount of money for a car.

I note that Mrs B (through her representative) has pointed out that many things need repairing on the car since it was supplied toward the end of July 2022. From what I can see the majority of these issues came to light in an inspection carried out around two months after the car was supplied.

It is worth noting that this is an old and high mileage vehicle so it will be reasonably expected that parts will be worn and many of the issues identified (such as brake pads) might reasonably require replacement in a short space of time after sale. There is a higher degree of acceptable risk that things will need maintenance here. However, one of the key things that has been identified at an early stage is that the car is leaking exhaust fumes into the cabin. Because I am upholding the complaint and directing rejection of the vehicle based on this factor I don't consider it necessary to go into detail about the other issues with the car and whether these are likely down to reasonably expected wear and tear or otherwise.

Although the car is old and high mileage it has to be sold in a safe condition. Safety is one of the factors to consider when determining if goods are of satisfactory quality under the Consumer Rights Act 2015. There would appear to be no dispute here that leaking exhaust fumes into the cabin poses a significant safety concern here. So if I were satisfied that the car was sold in a state where it was leaking exhaust fumes into the cabin I would fairly say that despite its age it would not be of satisfactory quality at the point of supply.

Although it is always going to be difficult to determine if the car was definitely leaking exhaust fumes into the cabin at the point of sale I only need to decide if it is more likely than not. Here I think it is. I say this primarily because

- the report that identified the issue was carried out relatively shortly after purchase; and
- the follow up expert inspection commissioned by SFL (while unclear on the way forward to remedy the issue- which I will come on to) appeared to accept that the issue had come about as a result of a problem that was likely present at the date of supply.

Furthermore, while the car had travelled apparently in excess of 1,000 miles before the detailed diagnostic revealed the issue with the fumes leaking I note that there is also no suggestion by the expert or persuasive evidence to show otherwise, that since Mrs B has been in possession of the car it has been misused or involved in an accident that would likely have caused the issues which appear to be linked to the exhaust leak into the cabin. Furthermore SFL has not provided persuasive evidence that this is an issue that would have been picked up pre-sale such as through the MOT or otherwise. Overall, SFL has not shown persuasively that this was an issue that was not in fact present at the point of sale – and

considering when said issue was first identified I don't consider it unreasonable to expect this from SFL. In the circumstances here I think overall the issue is more likely than not to have been present at the point of sale.

It follows, that despite the age and mileage of the car it was sold with an apparently significant safety concern – therefore, I consider that the issue with the exhaust fumes leaking into the cabin in particular renders the car of unsatisfactory quality.

The question here is a fair way to put things right. I note SFL has pointed out that it offered a return to the dealer to repair and remedy the issue. It appears Mrs B's reluctance to accept this was because she didn't trust the dealer. However, for me there is a deeper issue with carrying out a repair here. I have written to both parties about this and indicated that I think it would be fair for SFL to take the car back as a result.

I note that the repair option outlined in the expert report focused on clearing the DPF filter to resolve the issue. However, I have concerns about whether this is going to actually remedy the issue or if there are wider matters to take into account.

I note that the expert report commissioned by SFL mentions a crack to the engine within the exhaust or intake and the engine bay being heavily coated with soot from a leak. It also mentions a whooshing noise indicative of an exhaust or boost leak on the engine. However, apart from a photo of the sooting the report doesn't go on to say much more about this or conclusively rule it out as a cause of the fumes leaking into the cabin. It goes on to conclude that the exhaust gases entering the passenger compartment are characteristic of a blockage of the DPF.

As there appears a suggestion that the engine is leaking and no explanation as to why the DPF repair has been put forward as the resolution I am not persuaded the cause of the leak has been conclusively identified.

In considering the remedies under the Consumer Rights Act 2015 I note that (discounting the 30 day short term right to reject here) repair or replacement become the next remedies available to the consumer where goods are of unsatisfactory quality. A replacement is clearly not practical here and I am not persuaded that a repair is a fair and reasonable way forward either.

I know this is an old and high mileage car – but it needs to be sold in a safe condition and if a potentially significant safety concern is identified I don't consider it unreasonable for a clear pathway and rationale for a fix to have been produced by SFL.

Further expert investigations will likely cause more inconvenience to the consumer so I think now that rejection is a reasonable way forward. Particularly as SFL has not got back to this service to explain persuasively why it isn't a reasonable way forward.

Because (and with the Consumer Rights Act 2015 in mind) I think rejection is a reasonable way forward SFL will have to collect the car at no cost to Mrs B and end the finance agreement. I don't believe there is a deposit to refund here but if there is one this should come back to Mrs B.

Mrs B has indicated she had to get another car to use due to the concerns about this one. With this in mind I think if there is adverse credit data on her file from this agreement due to non-payment it should fairly be removed.

I don't think it fair that Mrs B pay for the period she stopped using the car. However, she needs to pay for the use she did have. From what I can see the car was used for at least

3,500 miles between supply and up until the independent report commissioned by SFL in November 2022. After that it isn't clear to me what the use has been. Mrs B's representative has indicated the car didn't have a lot of use – and is now off road as the last MOT was not renewed in July 2023.

I am satisfied that the car has not been used from July 2023. Mrs B has had an opportunity to show it wasn't used prior to this by showing the current mileage. I don't have this information so in absence of that (and noting this is not a science) I think the fairest thing is to say that if Mrs B can show SFL the car has not accrued more than 100 miles since the independent report in November 2022 (where the OUK mileage was logged as 95,944) then SFL should also refund any monthly payments from the period relating to the date following the expert report. For me it will fairly show that Mrs B effectively (and reasonably) rejected use of the car from that point on. Otherwise SFL will only be required to refund payments relating to the period after the MOT expired in July 2023.

Like our investigator I think it fair for SFL to refund Mrs B the cost of the diagnostic report carried out in October 2022 as this identified the issue in respect of the car being not of satisfactory quality. I understand the report cost £120 but Mrs B needs to show SFL she incurred this cost either directly or paying back the person who laid out for it as I cannot award losses to third parties here.

I note Mrs B has mentioned other work on the car and provided information showing a repair to a water pipe costing £179.99. I also understand there might have been some costs in respect of brake pads. Overall I don't consider it fair and reasonable to refund these costs taking into account the use of the car to date and noting that she would likely have had some reasonably expected maintenance costs during this time in any event. I also note the costs evidenced to date are not so excessive as to be unfair in light of her rejection of the car overall.

I note SFL has offered Mrs B £200 for distress and inconvenience due to the time taken to look into things and offer a repair option. Mrs B's representative has described the stress caused to her with the issues with the car and I have taken this into account when deciding what is fair. I think that SFL (while helpfully commissioning a report) could have done more here. And I think £200 is broadly fair considering our scale of awards for distress and inconvenience.

It is worth noting the difficulty in deciding fair redress is compounded by the lack of response or fuller information from the parties during the investigation. As an informal dispute resolution service I am looking to decide a fair way to resolve this dispute in light of the information I do have. My findings might not be scientific or completely to the liking of either party – however, broadly I think this is a fair way of allowing the parties to move forward.

Mrs B does not have to accept my decision – and it might be that she decides to work with SFL on another way forward, such as attempts at repair. However, that is not what I am fairly proposing here. It is up to Mrs B as to whether she wants to accept this.

Putting things right

If Mrs B accepts my decision SFL should put things right as follows.

My final decision

I uphold this complaint and direct Specialist Motor Finance Limited to:

- Collect the car at no further cost to Mrs B and end the finance agreement refunding

any deposit (if any);

- Refund Mrs B payments relating to the period of use following the expiry of the MOT in July 2023 or (if Mrs B is able to show she stopped using the car in line with my decision) from the date of the expert report carried out in November 2022;
- Pay Mrs B £120 for the diagnostic report if she is able to show she is out of pocket for this;
- Pay 8% simple yearly interest on any refunds from the date of payment to the date of settlement;
- Pay £200 compensation; and
- Remove any adverse information in respect of the agreement from Mrs B's credit file.

SFL should provide Mrs B with a certificate of tax deduction if it deducts tax from the interest element of my award so that she might claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 19 November 2023.

Mark Lancod
Ombudsman