

## **The complaint**

Mrs M is unhappy that a car supplied to her under a hire purchase agreement with Specialist Motor Finance Limited ('SMF') was of an unsatisfactory quality.

## **What happened**

At the end of March 2023, Mrs M was supplied with a used car through a hire purchase agreement with SMF. The agreement was for £5,000 over 60 months; with 59 monthly payments of £132.29 and a final payment of £142.29. At the time of supply, the car was around nine and a half years old and had done 85,711 miles (according to the MOT record for 31 March 2023).

Mrs M started to have problems with the car in early May 2023 – there was a loud noise from the engine, and smoke coming from the exhaust. She took it to a local garage, who told her the engine needed stripping so the fault could be identified. And they advised her not to drive the car.

Mrs M had the car recovered to the supplying dealership, but they said they were unable to find any faults with the car. And they told her she was liable for the recovery costs of £480. When the car was returned to Mrs M the engine noise and smoking exhaust had stopped, so she thought the car had been repaired. However, the dealership confirmed they hadn't done any repairs, which was why she was liable for the recovery costs. Mrs M paid the recovery costs on 30 May 2023.

The car was inspected by an independent engineer on 3 June 2023. The engineer confirmed that the car had a slight misfire, and the timing belt had been recently replaced. Mrs M complained to SMF, but they didn't respond to her complaint. So, she brought her complaint to the Financial Ombudsman Service for investigation.

SMF didn't engage with our investigation, so our investigator formed her view based on the information that'd been provided by Mrs M. The investigator was satisfied there was a fault with the car when it was supplied to Mrs M, and this made the car of an unsatisfactory quality. The report from the independent engineer suggested this had been repaired, and the investigator thought this had most likely happened when the fault was being investigated by the supplying dealership.

While the car was with the supplying dealership for investigation/repair, Mrs M wasn't provided with a courtesy car and wasn't kept mobile. So, the investigator said that SMF should refund Mrs M the equivalent of two-weeks payments to reflect this. The investigator also said that Mrs M shouldn't be responsible for the recovery costs of the car, and these should be refunded to her, along with £150 compensation for the distress and inconvenience she'd been caused.

Mrs M agreed with the investigator, but SMF didn't respond. Because of SMF's continued non-responsiveness, this matter has been passed to me to make 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs M was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, SMF are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless SMF can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mrs M to show it was present when the car was supplied.

So, if I thought the car was faulty when Mrs M took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask SMF to put this right.

I've seen a copy of the independent engineer's report, dated 3 June 2023. At the time of this report the car had done 87,047 miles – 1,336 miles since it was supplied to Mrs M.

The engineer said *"there is evidence of disturbance around the [timing] belt/chain area. Securing bolts have been removed and refitted, along with some engine parts, hoses, and induction pipes. The identified work is consistent with component replacement, potentially chain/belt. It was not possible to examine this further, without dismantling."*

The engineer also said the engine had a light tick, which was consistent with the car's age and mileage, and there was a slight misfire present due to a faulty coil pack. Due to the mileage the car had covered since supply the engineer said that, even though coil packs can fail without warning, this was the responsibility of the dealership to repair.

Finally, the engineer confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

I've considered the engineer's comments, as well as the age and mileage of the car. While a coil pack wouldn't be expected to fail after 1,336 miles, this would only be the case if the car was supplied with brand new coil packs. I haven't seen anything to suggest this was the case, and it isn't something I'd expect in a car that was approaching ten years old and had done more than 85,000 miles. Coil packs are a wear and tear item and, as such, I won't be asking SMF to replace these.

When a timing belt needs replacement, the external indicators of this are excessive engine noise accompanied by smoke. Mrs M had said this is what happened to the car, and I don't doubt this was the case. I say this because she arranged for the car to be recovered to the dealership, and I don't believe she would've done this had she not been told to stop driving the car. So, I'm satisfied there was a fault with the car that manifested itself around a month after supply.

While the supplying dealership have said they found no fault with the car, and they didn't repair anything, this is not supported by the evidence. When the car was returned to Mrs M, the symptoms of a failed timing belt were no longer present, and there is evidence that this had been replaced. So, I'm satisfied it's more likely than not that the supplying dealership replaced the timing belt. And I suspect they denied doing any work on the car so they weren't held liable for the recovery costs.

I'm also satisfied that the failure of the timing chain made the car of an unsatisfactory quality when it was supplied – even allowing for the age and mileage, it's reasonable for Mrs M to expect the car's major components to last little more than a month before failing. As such, I'm also satisfied that SMF need to do something to put things right.

### **Putting things right**

In situations such as this, the CRA allows for a single chance at repair. For the reasons given, I'm satisfied this repair took place. And all the evidence suggests this repair has been successful, with no reoccurrence of the engine noise or smoking exhaust. Mrs M wasn't charged for this repair by the supplying dealership, so there are no repair costs to reimburse.

However, the car was off the road and undrivable for two weeks while it was with the dealership being repaired. During this period, Mrs M wasn't supplied with a courtesy car. As such, she was paying for goods she was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as SMF failed to keep Mrs M mobile; I'm satisfied they should refund half (£66.15) of the payment Mrs M made in May 2023.

Mrs M has provided evidence of the costs she's incurred in having the car recovered to the supplying dealership. Given the distance between the dealership and where Mrs M lives, I don't consider these costs to be unreasonable or excessive. As the recovery costs were only incurred because the car supplied was of an unsatisfactory quality, I'm satisfied that these should also be refunded to Mrs M.

Finally, it's clear that Mrs M has been inconvenienced by having to arrange for the car to be recovered to the dealership, and by being without access to a car while it was being repaired – Mrs M has explained that she works in a location with limited public transport, so needed to take a train and two busses to get to work while she was without the car. Mrs M also needed to travel to the dealership to collect the car once the repair had been completed.

So, I think SMF should compensate her for this. The investigator had recommended SMF pay her £150, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, SMF should:

- refund £66.15 of the payment Mrs M made for May 2023;
- reimburse Mrs M for the £480 recovery costs she paid on 30 May 2023;
- apply 8% simple yearly interest on the refund/reimbursement, calculated from the date Mrs M made the payments to the date of the refund<sup>†</sup>; and

- pay Mrs M an additional £150 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>HM Revenue & Customs requires SMF to take off tax from this interest. SMF must give Mrs M a certificate showing how much tax they've taken off if she asks for one.

### **My final decision**

For the reasons explained, I uphold Mrs M's complaint about Specialist Motor Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 November 2023.

Andrew Burford  
**Ombudsman**