

## **The complaint**

Miss L complains that a car acquired under a hire purchase agreement with Specialist Motor Finance Limited (SMF) wasn't of satisfactory quality.

## **What happened**

In September 2022, Miss L acquired a used car from a dealership (E). She didn't pay a deposit and the total balance of the purchase was provided by SMF under a hire purchase agreement. The car was seven years old and had covered approximately 37,500 miles when the agreement started. The agreement was for 60 months, and the cash price of the car was £11,208.01.

A couple of weeks after supply, Miss L contacted E. She was unhappy because the car had a damp smell and a leak, and the brakes were making a loud squeal when used. E carried out repairs to the car, but the problems remained, and Miss L contacted SMF a week later.

SMF didn't uphold Miss L's complaint. They said they had asked her for more evidence and had offered to pay something towards a diagnostic test, but Miss L hadn't provided anything further, so SMF said they would take no action.

In April 2023 Miss L provided SMF with an independent report she'd had done by a garage. The report concluded that there were two major water leaks in the rear of the car, and the brakes were making a loud squeal. Miss L wanted to reject the car at this point. However, SMF continued to not uphold her complaint. They said E would be happy to undertake an inspection, or SMF could arrange for an inspection to take place. SMF also said they didn't think the report Miss L had provided confirmed the faults were present when the car was supplied to her. Miss L refused both options to have the car inspected again and brought her complaint to our service.

Our investigator upheld it. She said she was satisfied there was a fault with the car, and that it wasn't of satisfactory quality when it was supplied to Miss L. She asked SMF to end the agreement with nothing more for Miss L to pay. She said the car should be collected at no further expense to Miss L, and that SMF should pay Miss L £250 compensation for the impact having a car of unsatisfactory quality had had on her.

Miss L accepted this. SMF didn't. They felt Miss L had waited too long from her initial complaint in October 2022 until she produced her report in April 2023, and they felt the report didn't support that the repairs done by E in October 2022 had failed.

As SMF didn't accept, it's been passed to me to decide.

## **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.

As the hire purchase agreement entered by Miss L is a regulated consumer credit agreement this service is able to consider complaints relating to it. SMF are also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Miss L entered. Because SMF supplied the car under a hire purchase agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

But on the other hand, satisfactory quality also covers durability. For cars, this means the components must last a reasonable amount of time. Of course, durability will depend on various factors. In Miss L's case, the car was used and had covered approximately 37,500 miles when she acquired it. So, I'd have different expectations of it compared to a brand-new car. Having said that, the car's condition should have met the standard a reasonable person would consider satisfactory, given its age, mileage, and price.

Our investigator has explained that she's satisfied the car wasn't of satisfactory quality when it was supplied to Miss L. I agree in this case. There is no doubt the car has faults – the reports and previous attempts to repair confirm that to be the case. And I'm persuaded, from what I've seen, that I can conclude the car wasn't of satisfactory quality when it was supplied to Miss L. I'll explain why.

The CRA explains that where goods are found not to have conformed to the contract within the first six months, it is presumed the goods did not conform to the contract at the point of supply. Unless the supplier, SMF in this case, can prove otherwise. Miss L brought the problems with the car to SMF's attention within two months of being supplied with it, having already had an attempt to repair from E. So, at that point, I'm satisfied Miss L had proven that the car wasn't conforming to the contract she'd entered at the point of supply, and it was for SMF to try to prove this wasn't the case. But, when Miss L notified SMF of her concerns, they didn't adhere to the CRA. They offered Miss L £50 towards a diagnostic test, or they said she could arrange for an independent inspection report to prove the faults existed. Neither of these options were the responsibility of Miss L or comply with the CRA – it was for SMF to accept Miss L's concerns and make their own arrangements to have the car inspected. It was their responsibility.

As SMF didn't take any action at this time, Miss L provided them with an inspection report in April 2023. This report confirmed the car had two areas of severe water ingress from the rear of the car, filling the boot with water and making the back seats wet, and there was a loud squeal from the front and rear brakes. This report identified the same faults as E had reportedly repaired in October 2022. And I'm satisfied, based on everything I've seen, that the repairs in October 2022 had failed – the report from April 2023 supports that when you consider the faults in April 2023 are the exact same areas looked at by E a few months earlier.

SMF have raised concern that Miss L provided the report five months after they had asked her to provide one. And they feel this has led to the damage being more severe, and they don't believe it proves the initial repairs in October 2022 hadn't fixed the problem. But I think SMF are missing the point here. As I've mentioned previously, it wasn't the responsibility of Miss L to arrange for a report or to have to prove to SMF that the car wasn't satisfactory –

she just did what they asked her to do when they responded to her original concerns in December 2022. Why it took Miss L a few months to be able to provide the report isn't important in this case – as it was never her responsibility to have to do so. Had SMF adhered to the CRA when Miss L raised her concerns with them in October 2022, the problem could have been resolved much sooner one way or the other. I also don't agree that they should have asked Miss L to allow E, or SMF, to arrange another inspection when Miss L complained further in May 2023. SMF had had the opportunity to arrange something when Miss L first let them know about her concerns with the car – and Miss L had then produced her own independent report to confirm the problems remained with the car. There was no need for any further reports to be suggested.

In relation to their comment that the report doesn't confirm the initial repairs were unsuccessful, I've explained above why I don't accept that, and that the evidence supports that the repairs carried out in October 2022 have failed prematurely.

Miss L has said that she would like to reject the car. As I'm satisfied that SMF haven't complied with the CRA and didn't take action when they should have in October 2022, when Miss L first contacted them, I'm satisfied that they've had the opportunity to resolve things. And I'm satisfied that the initial repairs have failed. So, it follows that my decision is that Miss L can reject the car. SMF should end the agreement with nothing further for Miss L to pay, and they should make arrangements with Miss L to collect the car – at no further expense to Miss L.

SMF have also argued that, as Miss L has continued to use the car, the faults can't be too severe, and they're concerned that the car could be 'driven to destruction.' I haven't seen any evidence to support that. I accept that Miss L has continued to use the car – she has confirmed that the mileage currently stands at just under 54,000 – but I'm satisfied her continued use was through necessity rather than choice. Miss L needs to be mobile for her work and needed to ensure she could keep up with the monthly commitment to pay under the agreement, so I don't think she had any other option other than to continue to use the car. I'm satisfied it was reasonable for her to do that. However, as it seems she has had almost continued use of it I think it's reasonable for SMF to retain all the monthly payments Miss L has made so far against the agreement.

Miss L has arranged and paid for an independent inspection and report. As I've already explained, it wasn't her responsibility to do that. As such, I'm satisfied SMF should reimburse her the cost of that report. If she hasn't done so already, Miss L should send SMF the invoice to confirm how much the report cost her, to enable SMF to settle it.

Miss L has also explained her health concerns and how they were impacted by the dampness in the car. It's clearly been a challenging time for her to have been left with a car that wasn't of satisfactory quality and I think she should be compensated for that. SMF should pay her £250 to reflect the impact having a car of unsatisfactory quality has had on her.

### **My final decision**

For the reasons above, I uphold this complaint. Specialist Motor Finance Limited must:

- end the agreement with nothing further for Miss L to pay;
- collect the car at no further cost to Miss L;
- refund Miss L the cost of the report she had prepared in April 2023, once this has been provided to them;

- pay 8% simple interest on this amount from the date of the report until the date of settlement;\*
- pay Miss L £250 to reflect the distress she's been caused because the car wasn't of satisfactory quality when it was supplied to her;
- remove any adverse information from Miss L's credit file in relation to this agreement.

\*If Specialist Motor Finance Limited consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss L how much they've taken off. They should also give Miss L a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 19 August 2024.

Kevin Parmenter  
**Ombudsman**