

The complaint

Mr P complains that a car supplied to him under a hire purchase agreement by Specialist Motor Finance Limited ("SMF") was of an unsatisfactory quality.

What happened

In November 2022 Mr P was supplied with a used car through a hire purchase agreement with SMF. The agreement was for £4,419 over 48 months, with monthly repayments of £144.10. At the time it was sold, the car was just over nine years old and had done 98,209 miles.

Less than six months after the car had been supplied it developed some faults. Mr P raised the problems with the original dealer who agreed to replace the front sub frame of the car. But it didn't agree that it should make any repairs to the clutch of the car saying that the failure of this component was due to normal wear and tear. But it paid him £100 compensation for the problem. Unhappy with that response Mr P raised a complaint to SMF in June 2023.

SMF commissioned an independent inspection of the car in July 2023. The inspection was somewhat limited since the lack of use of the car meant that its battery was flat. That meant that the inspector couldn't confirm the current mileage but noted that Mr P said the car had travelled less than 3,000 miles since its purchase. The inspection concluded that the failure of the clutch in that timeframe suggested it was not of sufficient durability when the car was supplied.

SMF told Mr P that it would agree to repay the costs of repairing the clutch up to a maximum of £900 (of which £100 had already been paid by the dealer). Unhappy with that response Mr P brought the complaint to us.

Mr P's complaint has been assessed by one of our investigators. He was satisfied that the car was faulty at the time the complaint was made. And he thought that it was likely that the fault with the clutch was due to a lack of sufficient durability when the car was sold. He noted that SMF had agreed to pay for the repair of the clutch, but didn't think that was sufficient. He thought that SMF should also refund the repayments that Mr P had made whilst the car was off the road. But he thought that refund should be capped at August 2023 since Mr P hadn't provided the repair quotations that SMF had requested.

In response Mr P showed that he had in fact passed suitable quotations onto SMF but it had failed to respond to his emails. So the investigator altered his response to SMF asking that it refund all Mr P's hire purchase repayments from the time the fault occurred with the car, up until the repairs were completed. And Mr P provided an updated quotation for the repairs. SMF didn't accept that quotation and said that the repairs could be completed more cheaply. But despite our investigator's requests SMF has failed to provide any evidence of alternative quotations for the repair.

So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr P accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr P and SMF. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumers, as far as is possible, in the position they would have been if the problem hadn't occurred.

Mr P was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. The relevant law – 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 finance used to purchase the car, SMF is responsible. What's satisfactory is determined by 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.

The CRA also implies that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. But, if the fault is identified after the first six months, then it's for Mr P to prove the fault was present when the car was supplied. So, if I thought the car was faulty when Mr P took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to expect SMF to put this right.

As I said earlier, SMF arranged for an independent inspection of Mr P's car. The report that SMF arranged makes it clear that the engineer's duty is that of an expert to help the Court. So, regardless of who instructed the engineer, and who paid for the inspection, the engineer is independent of either SMF or Mr P. Because of this, I think it's reasonable to rely on the contents of this report.

The report acknowledges that there were some limitations on the checks the engineer could make due to the car not having a working battery at that time. So the engineer couldn't independently verify the current mileage of the car. But Mr P provided his estimate of the mileage and I have no reason to doubt what he said. I have not seen anything to make me think the mileage is greater than the estimate that was provided to the engineer.

The report concludes that the damage to the clutch system, given the use of the car since it was supplied, is likely to be representative of it not being sufficiently durable at the time of sale. So I think it is right that SMF has agreed to take responsibility for the repairs. And I understand that SMF now accepts that a repair to the clutch of this vehicle will also necessitate the replacement of the flywheel. So I think that it is fair that Mr P is reimbursed for the full cost of that repair, including any costs that are incurred in transporting the car to the garage selected to complete the repairs.

Mr P has provided SMF with a number of quotations for the repairs. Naturally, given the time that has now elapsed since those quotations were supplied, they will need to be refreshed. But I think the time has now reasonably passed for SMF to have any choice over which garage Mr P chooses to complete the repair. So Mr P, should he accept this final decision, should arrange for the repair of his clutch and flywheel at a garage of his choosing, and present the repair invoice and evidence of its payment to SMF for reimbursement.

Mr P has been without the use of his car since April 2023. I don't think it reasonable that he should make repayments on his hire purchase agreement for a car that he is unable to use due to it not being of satisfactory quality when it was supplied. So I will be directing SMF to refund any payments Mr P has made since April 2023 and until the car is repaired.

There is no doubt that this matter, and the extended period that the car has been off the road, will have caused inconvenience to Mr P. So I will also direct that SMF pays him £100 for that inconvenience.

Mr P has expressed concerns that other problems might arise with the car in the future. At this stage I've not seen evidence that any other problems are present. If any do arise in the future he would need to consider whether they were reasonably present, or foreseeable, at the time the car was supplied, and whether they would suggest that meant it was not of satisfactory quality. I cannot, in this decision, make findings about matters that have not yet arisen, and may never do so.

Putting things right

In order to put things right, SMF should do the following;

- Given the clutch system of the car was not of sufficient durability when supplied SMF should pay for its repair. Mr P should arrange for the necessary repairs to the clutch and flywheel to be completed and present evidence of those repair costs to SMF. The cost of the repairs should be refunded to Mr P within ten working days of the invoice being submitted. Should payment not be made within that time, SMF should additionally add interest at a rate of 8% simple per year from the date the invoice was paid by Mr P until the date of settlement.
- Mr P's car has been off the road and not drivable since April 2023. During this period, he wasn't supplied with a courtesy car. So during that time Mr P has been paying for goods he was unable to use. For the reasons given above, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and therefore SMF failed to keep Mr P mobile. So I'm satisfied it should refund the repayments he has made since April 2023.

- SMF should pay Mr P simple interest at a rate of 8% per annum on each of the monthly repayments I am directing should be refunded from the date they were paid to the date of settlement. HM Revenue & Customs requires SMF to take off tax from this interest, and any interest it pays in relation to the repair costs. SMF must give Mr P a certificate showing how much tax it's taken off if he asks for one.
- SMF should pay Mr P £100 for the distress and inconvenience he has been caused.

My final decision

My final decision is that I uphold Mr P's complaint and direct Specialist Motor Finance Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 7 June 2024.

Paul Reilly
Ombudsman