

The complaint

Mr S complains about a car he acquired using a hire purchase agreement with Specialist Motor Finance Limited ("SMF"). He says the dealership agreed to fix known issues with the car but didn't do so.

What happened

Mr S entered into a hire purchase agreement with SMF in April 2023. The agreement set out that the cash price of the car was £10,950 and that Mr S paid a deposit of £1,850. The car's mileage at the point of supply was around 104,000.

Mr S says that when he viewed the car at the dealership, he noticed a rattle coming from the engine when it was idling, and he was assured by the dealership that this would be investigated and fixed prior to him collecting the car.

When Mr S subsequently took possession of the car, he noticed the front passenger door didn't lock, and the car created an audible noise alerting him to this. Mr S says he noticed this when he first viewed the car but didn't know what this was indicating, and the dealership didn't tell him.

Mr S took the car to a third-party garage in May 2023. The garage noted that the near-side front and off-side rear door locks were faulty, the engine oil level was very low and there was a rattle from the timing chain when the car was started.

Mr S contacted the dealership and asked them to look at the car and to resolve the problems that had been identified. The dealership attempted a repair. However, Mr S says the same noises occurred after the car was returned to him and it broke down shortly afterwards.

Mr S complained to SMF, but they didn't provide their response setting out their position on the complaint. So, Mr S referred the matter to us. Our investigator recommended that the complaint should be upheld. He felt the car wasn't of satisfactory quality when it was supplied to Mr S.

Mr S agreed with our investigator's view, however SMF didn't agree. They said an independent inspector had looked at the car and asked our investigator to review his findings. Our investigator didn't think the contents of the report were enough to change his view.

As the matter remains unresolved, Mr S's complaint has been passed to me to review.

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 want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr S and SMF that I've reviewed everything on file. And if I don't comment on something, it's not

because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this,

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

SMF supplied to the car to Mr S under a regulated hire purchase agreement. Because of that, our service can consider complaints about the hire purchase agreement and the goods, in this case the car. As the supplier of the car, SMF has an obligation to ensure it was of satisfactory quality – as set out in the Consumer Rights Act 2015 ("CRA"). Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car.

Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods: (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

It's reasonable in my view to note the car wasn't new and had travelled significant mileage at the time of supply. So, it would be unreasonable to expect a used car like this to be in the same 'as new' showroom condition which it would have been when first supplied. But just because the car was used with mileage, doesn't mean that SMF had no requirements in relation to satisfactory quality.

I've seen a copy of the dealership's sales invoice from April 2023 prior to Mr S acquiring the car. This set out that the dealership would look at the rattle noise in the engine. So, that corroborates Mr S's comments that this was agreed as part of the condition of him taking possession of the car. The third-party garage who inspected the car in May 2023 also noted that there was a rattle present upon the car starting. So, it seems clear to me that there was an issue with the car at the point of supply.

The dealership attempted repairs in June 2023 by using what they said on their invoice was: 'timing chain kit – full kit with pulleys'. It's unclear to me whether the timing chain was replaced or repaired. However, it's clear that some form of repair was carried out by the dealership. And this would seem to be the work they had agreed to do in investigating the rattle noise in the engine.

Mr S though says this work didn't resolve the issue. I've seen a video that he sent to us which is dated 20 August 2023. This does in my view show that there was a significant and loud rattling noise coming from the car. So, it does appear likely that the problem wasn't fixed by the dealership. I've seen also an invoice from August 2023 showing the car had to be recovered. This accords with Mr S's comments that the car broke down at that point.

From the evidence I've seen, I find that the car wasn't of satisfactory quality when it was supplied. It seems clear to me that the dealership was aware of issues with the car prior to Mr S acquiring it and that those issues weren't fixed. Not only that, Mr S entered into the hire purchase agreement on the understanding that those issues would be fixed.

I note that SMF has referred to a report from an independent third-party who inspected the car in November 2023. However, SMF hasn't said why they think this is compelling and persuasive evidence to support their decision not to uphold the complaint. Notwithstanding that, the report doesn't in my view show that the car was of satisfactory quality. The report says that a failure of the timing chain was a 'plausible scenario' in why the car wouldn't start. But it also says that 'without detailed examination under workshop control conditions we can't state the cause'. So, the report isn't particularly detailed on what caused the fault with the car. The report also mentions that a timing chain fracture, if that was what caused the problem, would be classed as general maintenance. However, this ignores the fact that the dealership agreed to repair the issue with the car prior to Mr S acquiring it, and failed to do so.

So, for the reasons I've set out above, I find that the car wasn't of satisfactory quality when it was supplied to Mr S, as required and as set out in the CRA. I also find that Mr S entered the transaction on the basis the dealership would repair the issue with the rattle in the engine, but they failed to do so.

I will now go on to decide how to fairly compensate Mr S.

Putting things right

The CRA sets out a number of possible remedies where goods were found to have not been of satisfactory quality. One of those remedies is to allow one opportunity for the goods to be repaired. Where that doesn't resolve the issue, the consumer can then seek the right to reject the goods. I've had regard to the CRA when considering what is a fair and reasonable remedy in this instance for Mr S.

I've set out above why I consider the car wasn't of satisfactory quality when it was supplied to Mr S. A repair was attempted and Mr S provided evidence to support that the problem with the car remained. As SMF has had one opportunity to repair the car and this has been unsuccessful, I'm satisfied that it would be reasonable for SMF to now accept Mr S's request to reject the car and end his hire purchase agreement with them.

SMF needs therefore to arrange to take back the car from Mr S and end the agreement with nothing further owed. I'm satisfied that Mr S hasn't been able to use the car since 21 August 2023 when it broke down. So, SMF should refund all payments he made to them since that date, with interest. I also find that it would be reasonable for SMF to refund Mr S his deposit of £1,850 and the £160 recovery cost he paid when the car broke down and pay interest on those amounts.

Mr S has also suffered inconvenience as a result of being supplied with a car that wasn't of satisfactory quality. SMF should make an additional payment of £150 in recognition of this. And they should ensure that any adverse information is removed from Mr S's credit file in respect of this agreement.

I note our investigator recommended that Mr S is refunded some rentals based on when he did have use of the car. However, I find the above fairly compensates Mr S.

My final decision

My final decision is that I uphold Mr S's complaint. I direct Specialist Motor Finance Limited to settle the complaint by:

- Taking back the car and ending the hire purchase agreement with nothing further owed.
- Ensuring any costs associated with taking the car back aren't passed on to Mr S.
- Refunding the £1,850 deposit Mr S paid, applying interest at 8% simple each year from the date of payment to the date of settlement.
- Refunding all monthly payments paid by Mr S under the hire purchase agreement since 21 August 2023, applying interest at 8% simple each year from the date of each payment to the date of settlement.
- Refunding the £160 recovery cost to Mr S, applying interest at 8% simple each year from 21 August 2023 to the date of settlement.
- Ensuring no adverse information is recorded on Mr S's credit file once the agreement has ended.
- Paying Mr S £150 for the inconvenience he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 September 2024.

Daniel Picken
Ombudsman