

The complaint

Mr B complains about the quality of a car supplied to him by Specialist Motor Finance Limited ("SMF").

What happened

Mr B acquired a used car under a hire purchase agreement with SMF in July 2022. The car cost £9,495. Under the agreement, Mr B was required to make 59 payments of £238.10, followed by a final payment of £248.10. At the time of supply, the car was around ten years old and had covered around 114,000 miles. The car was supplied from a dealership I'll refer to as "D". The hire purchase agreement was brokered by a company I'll refer to as "F".

In December 2022, Mr B complained to SMF. He said he was unhappy with the car and it was broken. However, SMF said Mr B called the wrong department and the call ended.

Following this, in late January 2023, Mr B referred a complaint to this service. He said the car broke down two days after he acquired it. He said the fuel pump wasn't covered by the 12 month warranty, as it was a pre-existing condition when he purchased the car. Mr B said D agreed to carry out a repair but it wasn't carried out correctly. Mr B said he had only been able to use the car for around three weeks since it was supplied to him.

In late March 2023 and April 2023, Mr B complained to SMF again. SMF arranged an independent inspection through a company I'll refer to as "M". M said it couldn't carry out a road test as the battery of the car was flat and no fault codes were showing when a diagnostic test was carried out. M said it understood some repairs had already been completed to the fuel pump, but it said the wrong fuel pump was replaced and corrective measures were required to replace the primary fuel pump housed within the fuel tank. It said considering the mileage, the car was in an acceptable condition but given Mr B had only covered 500 miles in the car since being supplied with it, M said on grounds of durability, D should be responsible for the rectification costs. In June 2023, the repairs were completed.

In late June 2023, Mr B raised a complaint about SMF's reporting to his credit file. He said his credit file was showing several missed payments. Mr B said he was told his account would be frozen. SMF agreed to treat the missed payments as deferred payments instead of missed payments.

In July 2023, Mr B called SMF and said his glove box was broken and was taped up. He said his car needed to be professionally cleaned. Later that month, Mr B confirmed the glove box was fixed. And in August 2023, Mr B said the issue with the fuel pump was also fixed and he was happy with the car.

However, in August 2023, Mr B contacted SMF and said he had found the nearside front wheel was a different size to the rest of the wheels on the car. He said this could cause damage to the differential of the car. He said he hadn't had any issues, but was concerned about the differential and the car pulling to the right at slow speeds. Mr B said he would obtain an independent report to show the faults. But he later said this would cost in excess of £1,000 and this was a cost he wanted F to pay. In September 2023, Mr B sent SMF a video of the incorrect tyre.

In September 2023, Mr B referred his complaint to this service again. He reiterated the issues that had gone on since he acquired the car. And he said that a new issue with the

gearbox had appeared on the car's dashboard. He said this was likely caused because of the difference in the tyre sizes on the car. He said D shouldn't have ever passed an MOT as the car was unsafe to drive. He said D had knowingly put his life at risk. Mr B said the car was unable to be used due to the gearbox fault and he couldn't work due to having no transport. Mr B said he wanted a substantial five figure sum as compensation for the distress and inconvenience caused and he said he wanted repairs and the MOT to be carried out at an independent garage. Mr B also said he had a medical condition which was exacerbated by stress and anxiety.

In October 2023, D wrote to Mr B and said it didn't carry out its own MOT testing and so, it couldn't have carried out any fraudulent testing. It said it had been 15 months since it supplied the car to Mr B and Mr B hadn't shown there was an issue with the tyres or gearbox at the point it was supplied to him. It said the issue with the tyres would be general wear and tear and when M's report was completed in April 2023, M didn't make any suggestions the car wasn't road legal. It also agreed that it was an MOT fail if two tyres were not the same size across an axle, but both MOTs carried out were passed and so it wasn't possible that the tyres were incorrect at the time of the car being supplied to Mr B.

SMF issued its response to Mr B's complaint in November 2023. It said the issues with the fuel pump had been repaired at no cost to Mr B and it agreed to defer Mr B's outstanding payments until the end of his contract. It said Mr B had told SMF he had fixed the issue with the glove box. And, by the time Mr B raised his complaint about potential damage to the differential as a result of different tyres on the car, it had been more than six months since Mr B was supplied with the car, so it was down to Mr B to show there was a fault.

Mr B contacted this service and said he hadn't paid for any repairs to the car, but he said he had paid for modifications to the car. He used the car for work and off-roading. He said he had spent money on a roof rack, matt black paint, radio equipment, an armrest and new tyres. He said he only noticed the incorrect tyre when he went to change his tyres in 2023. Mr B said he wanted £30,000 compensation as his life was put in danger, for his loss of earnings and stress caused. Mr B said the incorrect tyres had caused the gearbox issue by straining the cogs in the gearbox. He said neither SMF, D or F would agree to obtaining an independent report to demonstrate this fault. Mr B said he wanted the car repaired.

Our investigator looked into the complaint but thought the car was of satisfactory quality. He said the outstanding issue Mr B was complaining about concerned the incorrect tyre size and the gearbox fault. He said this service couldn't consider any potentially fraudulent activity by D, as garages didn't fall into our remit and it would be for the courts to decide or an alternative ombudsman scheme. Our investigator said whilst there was a potential fault with the gearbox, he hadn't seen anything to suggest the car had an incorrect tyre when it was supplied to Mr B and he had no information to suggest this was what was causing the issue with the gearbox. He said in his opinion, the faults likely existed due to a reasonable level of wear and tear. And so, he thought the car was of satisfactory quality.

Mr B disagreed and reiterated his complaint. He said he wanted us to consider the issue with the fuel pump, which caused him stress and inconvenience as he was unable to use the car. He said due to this, he couldn't work and so this led to him defaulting on debts. He said he acquired the car for off-roading and after the repair in June 2023, he changed the tyres but this was when the gearbox fault appeared on the dashboard. Mr B reiterated he wanted compensation totalling £30,000, which included £15,000 for the agreement and £15,000 compensation for the distress and inconvenience caused to him over the last 18 months. Mr B said he was self-employed and hadn't been able to work for 18 months which cost him £4,000 per month.

As Mr B remained unhappy, the complaint was passed to me to decide.

I issued a provisional decision on 22 January 2024, in which I said the following:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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

I've read and considered the whole file and acknowledge that Mr B has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

What I need to decide in this case is whether the car supplied to Mr B was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. SMF is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mr B acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In this case, the car supplied to Mr B had covered around 114,000 miles and it was around ten years old. So I think a reasonable person would assume that the car may have some potential wear and tear issues during the lifetime of the car.

Mr B has complained about the fuel pump, the glove box and the wheel sizing which he says has led to gearbox faults. I've considered these issues separately.

Fuel pump

Mr B initially says he reported the issue with the fuel pump two days after he acquired it. In relation to the fuel pump, there seems to be no dispute that this fault made the car unsatisfactory quality at the time it was supplied to Mr B. This is because M's independent report confirmed that the issue shouldn't have occurred so soon after Mr B acquired the car, given the low amount of mileage the car had travelled. F also agreed to carry out repairs at no cost to Mr B. The repairs were successfully completed in June 2023.

Having reviewed the independent report and considering the age and mileage of the car, I agree that the fault with the fuel pump made the car of unsatisfactory quality. I'll go on later in this decision to say whether I think SMF has done enough to put things right for Mr B in relation to this.

Glove box

Around a year after acquiring the car, Mr B said the glove box was broken. Apart from Mr B's testimony, there is no supporting information to demonstrate this fault occurred. I'm minded to accept it did occur, as Mr B told SMF later that month that the issue was repaired. However, there's no information to suggest how or why the glove box was broken, so I don't think this fault made the car of unsatisfactory quality. It follows that I don't think SMF need to do anything further in relation to the glove box.

Incorrect tyre size and gearbox

In August 2023, Mr B complained about the nearside front tyre being an incorrect size. He said this has led to the current gearbox faults. Mr B has provided a video of the different tyre sizes to SMF and to D. D in its response said it would be considered an MOT fail if one tyre on the same axle was an incorrect size.

It isn't for this service to determine whether an MOT has been carried out correctly and neither can this service say an MOT was carried out fraudulently. Mr B will need to take independent legal advice if he's unhappy with the way in which the MOTs were carried out.

I can see that Mr B complained about the incorrect tyre size more than a year after he was supplied the car. In July 2022 and June 2023, the car passed its yearly MOT. The MOT carried out in July 2022 was passed with no advisories. The MOT carried out in June 2023 was passed but listed some advisories relating to three of the tyres. One of these advisories related to the nearside front tyre – which is the tyre Mr B says had the incorrect rating. On balance, had the nearside front tyre had an incorrect rating, I think it's more likely than not that the independent MOT assessor would have picked this up as part of their assessment.

In addition, when M inspected the car in April 2023, the inspector commented that, "There was no suggestion the vehicle was not road legal at the point of sale, and based on the MOT history, we believe it was fit for regular use on the public highway". So another independent party has also confirmed that the car was road legal and road worthy.

Based on all this information, I think it's unlikely the nearside front tyre had an incorrect rating at the time the car was supplied to Mr B. And so, I'm not satisfied there was a fault with the tyre which has led to the gearbox problems Mr B has now complained about. It follows that I don't think SMF need to do anything further in respect of the tyre or the gearbox.

I appreciate this is likely to come as a disappointment to Mr B and I understand that he has tried to obtain an independent report. However, given the length of time that has passed since Mr B has been in possession of the car, it would be down to Mr B to obtain supporting information to demonstrate the faults he is now complaining about.

How I intend to direct SMF to put things right

I've considered what SMF needs to do in relation to the fuel pump to put things right.

The fuel pump has already been repaired at no cost to Mr B. So I've only considered any consequential losses as a result of the fuel pump being faulty.

I'm persuaded based on the information provided to me that the issue with the fuel pump likely occurred shortly after Mr B acquired the car. I say this because Mr B raised a complaint with SMF in December 2022 and when he referred his complaint to this service in January 2023, he said D had agreed to carry out repairs, but these were unsuccessful. M in its independent report in April 2023, noted that the repairs had been carried out to the wrong fuel pump.

Mr B says that he only used the car for 800 miles. However, the mileage of the car at the time M completed its report was 114,517. The mileage of the car at the time it was supplied to Mr B was around 114,000. So Mr B only completed around 500 miles in the car in nine months. At the time the MOT was completed in June 2023, the reported mileage was around 116,360. So between M's report and the MOT in June 2023, the car had travelled around 1,800 miles.

Bearing all of this in mind, it's clear Mr B didn't use the car much in the first nine months he had the car. Given Mr B only used the car for around 2,360 miles in the 11 months before the repair was completed, this demonstrates little use and I don't think Mr B was fairly able to use the car as a result of the faults with the car. As a result of this, I think SMF should reimburse Mr B the first nine monthly payments made towards the agreement, with

applicable interest from the date of each payment until the date of settlement. SMF is entitled to retain two monthly payments for the use Mr B did have of the car.

I've also considered the impact of Mr B being without the car whilst the fuel pump issue was resolved. I don't think SMF caused any unreasonable delays in instructing M to carry out a report or to arrange the repairs, as the car was repaired within three months of Mr B referring his complaint to SMF. However, overall, the issue took around 11 months to resolve.

Mr B told this service and SMF about the impact to his health whilst his complaint was ongoing. I won't go into detail about this given the extensive submissions Mr B has made about this to both SMF and this service. However, I'm sorry to hear about the impact to Mr B's health and it's clear that Mr B's health was impacted as a result of the car being of unsatisfactory quality. Mr B has also said he couldn't work as a result of the car being faulty. But he hasn't demonstrated that he had any lost earnings as a result of the car being off the road. Having said this, I can see that Mr B made a number of phone calls with various different parties to try and resolve the issue. Repairs that were initially carried out also failed, so Mr B had to arrange repairs again. This caused unnecessary delays in the repairs of the car and was inconvenient for Mr B.

Having considered the impact Mr B has detailed, I'm persuaded he was caused distress and inconvenience as a result of the issue with the fuel pump. And so I think SMF should pay Mr B £650 to reflect the distress and inconvenience caused.

I would also like to take this opportunity to remind SMF of its obligations to treat Mr B with forbearance and due consideration if he is currently in financial difficulty.

My provisional decision

My provisional decision is that I intend to uphold Mr B's complaint. I'm minded to instruct Specialist Motor Finance Limited to put things right by doing the following:

- Refund Mr B nine monthly payments from July 2022 as Mr B made very little use of the car between this time;**
- Pay Mr B 8% simple interest on these amounts from the date of each payment until the date of settlement;***
- Pay Mr B £650 for the distress and inconvenience caused; and*
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement until June 2023.*

**Specialist Motor Finance Limited is entitled to deduct this amount from the arrears owed by Mr B under the hire purchase agreement, should it consider it appropriate to do so. If it decides to do this and it results in there being a surplus after the arrears are cleared, it should refund any overpayment amount directly to Mr B, with applicable interest.*

***If Specialist Motor Finance Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate."*

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've read and considered the whole file and acknowledge that Mr B has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but

because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

SMF didn't respond to my provisional decision.

Mr B responded. In summary, he reiterated his complaint and said:

- SMF admitted liability in a call and said his request for £30,000 compensation was conservative and not over the top.
- He said he hadn't changed the tyre and passing an MOT where there were two different tyres on the same axle was a major failure. Mr B said the MOT was passed illegally.
- He was unhappy with the amount of compensation suggested in the provisional decision.
- He expected £14,000 to settle the finance on the car and keep the car. And he wanted £16,000 compensation for the distress and inconvenience, impact to his mental health and his loss of earnings.

I appreciate Mr B feels strongly about his complaint and has provided extensive submissions throughout his complaint. I've reviewed all of the information that SMF and Mr B have provided. And I've also considered what Mr B has said in response to the provisional decision I issued.

Having done so, Mr B has mentioned that SMF accepted liability in a call and said his request for compensation was conservative. However, I've reviewed SMF's system notes and having done so, SMF hasn't accepted any liability for the further issues that occurred. And neither do any of its system notes show that SMF said Mr B's request for £30,000 compensation was conservative. In any event, Mr B referred his complaint to this service to decide and so, it would be for this service to decide what's fair and reasonable in the circumstances of this complaint.

The other points Mr B has mentioned in response to my provisional decision have already been covered in my provisional decision. I don't consider that Mr B has provided any new supporting information for me to consider about these points following my provisional decision. So, it follows that there is no reason for me to reach any different conclusion than set out in my provisional decision.

Putting things right

For the reasons given in my provisional decision which I have outlined above, Specialist Motor Finance Limited should:

- Refund Mr B nine monthly payments from July 2022 as Mr B made very little use of the car between this time;*
- Pay Mr B 8% simple interest on these amounts from the date of each payment until the date of settlement;**
- Pay Mr B £650 for the distress and inconvenience caused; and
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement until June 2023.

*Specialist Motor Finance Limited is entitled to deduct this amount from the arrears owed by Mr B under the hire purchase agreement, should it consider it appropriate to do so. If it decides to do this and it results in there being a surplus after the arrears are cleared, it should refund any overpayment amount directly to Mr B, with applicable interest.

**If Specialist Motor Finance Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr B how much it's taken off. It should

also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.”

My final decision

For the reasons I've explained, I uphold Mr B's complaint. Specialist Motor Finance Limited should follow my directions above.

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

Sonia Ahmed
Ombudsman