

The complaint

Mr A complains that Specialist Motor Finance Limited ("SMFL") supplied him with a car that wasn't of satisfactory quality.

What happened

Mr A acquired a used car, financed using a hire purchase agreement with SMFL, in December 2022. The agreement was for 60 months, where a deposit of £3,000 was to be paid; and then 59 monthly repayments of £260.33; followed by a final repayment of £270.33, which included an optional fee of £10 to purchase the car. The cash price of the car listed on the agreement was £11,490. The car supplied was over seven years old, and the invoice for the car said its odometer reading was 56,780 miles.

Mr A said he contacted the supplying dealership around ten days after he was supplied the car due to issues with its left side-mirror. Mr A said he then got it repaired himself as he said the dealership ignored him.

Mr A also said over the initial months after being supplied the car he experienced several problems with it. Some of the problems Mr A said he experienced related to the car's engine speed, its exhaust, and, in early January 2023, an engine management light ("EML") appeared on the car's dashboard.

Mr A supplied screenshots of his phone, which were of messages between himself and the dealership. On 13 January 2023, Mr A told the supplying dealership that the EML had illuminated again. And further messages from the supplying dealership show they sent Mr A the name of a third-party garage, who I'll refer to as 'P'. Mr A said the dealership told him to take the car to P to look into the problems he experienced.

Mr A said the car was arranged to be repaired on several occasions to get issues fixed by P. He said he was given a courtesy car on one occasion when they attempted to repair an issue with the car's exhaust and other problems identified. Mr A said that both the supplying dealership and P eventually stopped communicating with him.

Mr A said the repairs carried out didn't resolve his issues and the car continued to experience loss of power and engine related issues. He says the car was stuck in one drive mode and had stop/start problems. So, Mr A complained to SMFL, and provided them a diagnostics report completed by a specialist garage for the car manufacturer in September 2023. The mileage recorded on the report was 66,588.

A summary provided by the specialist garage explained, among other things, that the EML could appear due to exhaust flap and soot content fault codes, but further investigation was required to indicate when the fault occurred. The summary explained that the exhaust flap is in the rear exhaust section. The specialist garage also said there were fault codes for the "teach in" of four injectors and the diagnostic report said the ECO start/stop function detected excessively low engine speed.

SMFL gave Mr A their final response in September 2023 where they told him they didn't uphold his complaint. In summary, they said that the diagnostic report does not show the issues identified were developing at the point of sale, but rather believed they were due to serviceable items for which Mr A was responsible for maintaining.

Mr A remained unhappy with SMFL's response as he believed he provided evidence that issues occurred during the first six months of acquiring the car. And he said that the car's MOT history showed that in June 2022, the car failed the test for problems with an EML. So, he referred his complaint to our service.

Our investigator initially found that SMFL hadn't acted fairly in this instance and upheld Mr A's complaint. In summary, he concluded that there was a fault with the car, in particular to the start/stop function and the exhaust flap having an electrical fault. The investigator found that the faults presented themselves soon after acquiring the car and that SMFL should arrange repairs to them or reimburse Mr A if he carries out the repairs. The investigator also found that Mr A should be reimbursed the cost of repairing the wing mirror, as well as for the cost of the diagnostic report. And he said that SMFL should pay Mr A £300 to recognise the distress and inconvenience caused.

Mr A initially accepted the investigator's findings but queried with our investigator whether he could reject the car. Our investigator didn't think he could reject the car as he didn't think the evidence was strong enough to recommend rejection, as he couldn't say with certainty whether the faults Mr A encountered made the car of unsatisfactory quality or not.

SMFL disagreed with the investigator's findings and provided further comments. Among other things, SMFL didn't believe the problems Mr A experienced early on showed there was a fault with the car at the point of sale which made it of unsatisfactory quality. SMFL said there was no evidence, such as job sheets for the repairs from P.

SMFL also said the diagnostic report Mr A provided in September 2023 showed the EML wasn't illuminated at that time and the fault codes identified could have been historic, rather than an accurate state of the car.

Specifically, regarding the stop/start function, SMFL believed under certain parameters it shouldn't be active and that it doesn't mean there is a fault with it.

Our investigator then requested an odometer reading of the car, which Mr A supplied showing the car's mileage in February 2024 to be 71,320.

Our investigator then issued an updated view where he concluded that he didn't uphold Mr A's complaint. In summary, he reached this conclusion as Mr A had been able to drive the car for around 14,000 miles since he acquired it and because it wasn't unusual for the faults listed in the diagnostic report to be there given the age and mileage of the car.

As Mr A disagreed with the investigator's findings, the complaint had 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.

Having done so, I'm not upholding this complaint and I'll explain why below.

Mr A complains about a car supplied to him under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr A's complaint about SMFL.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – SMFL here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note here that the car Mr A acquired was used, over seven years old and cost significantly less than what it would have done if it had been brand-new.

So I don't think a reasonable person would expect the car to be in the same condition as a new one. But, that being said and considering all the relevant factors above, I think a reasonable person would expect the car to be in reasonable condition, free from anything other than very minor issues and would expect trouble free motoring for some time.

What I need to decide in this case is whether the car was of satisfactory quality when it was supplied. So I first need to consider whether the car developed a fault, and then whether that fault was present or developing at the point of supply. I have focussed my findings on the EML as well as loss of power to the engine. Mr A says these were issues which he identified in January 2023, but continued to persist after the car was attempted to be repaired by P.

I'm satisfied there was a fault with the car. I have seen messages Mr A sent to the supplying dealership in January 2023 – within a month of acquiring the car – which indicated the EML had appeared "*again*". And there's a photo from the time, which while blurry, does appear to show an EML illuminated. So, I think it is fair to say that the EML had intermittently appeared on more than one occasion shortly after acquiring the car, and that Mr A made the supplying dealership aware of the problem.

Mr A says the car was taken to P to be repaired on several occasions. It's worth noting to both parties that there is a lack of evidence in this case. Despite P being recommended by the dealer on one occasion, no job sheets have been provided. Furthermore, no details about what was discussed at P, and why the car needed to be taken back on other occasions has been provided either.

Mr A says after giving the supplying dealership the opportunity to repair the EML issue, as well as a repair to the exhaust, he still experienced loss of power and engine related problems. But I'm also mindful that Mr A hasn't provided any evidence, such as emails, texts, job sheets, invoices, photos etc. to show that issues still persisted with the car within the eight-month gap between taking the car to P and a diagnostic report being completed on it. And within that time, several thousand miles were driven in the car.

Considering the above, I'm not persuaded from what I have seen that the car wasn't repaired, and any faults identified with it in January 2023 were not resolved.

Several months later, in September 2023, a diagnostic report was completed on the car when Mr A complained to SMFL. Mr A believes the issues from January 2023 and those identified in the report are connected, as he believes the issues with the EML and loss of power to the engine persisted.

A summary of the report from the third-party company was provided alongside the report. The summary email said:

“EML – The exhaust flap & soot content fault codes. The exhaust flap fault code has been known to cause the soot content fault codes on other vehicles”.

It later says:

“... the report does not indicate when this fault occurred / mileage etc...”

I have inferred from this summary that an EML fault wasn't present at the time diagnostics were taken (as it didn't indicate when the fault occurred). And fault codes on their own also do not confirm there is an actual fault with the car, as they could be historic codes.

I have also noted that the summary of the report suggests the EML can appear due to exhaust flap and soot content codes, on other cars, but doesn't clearly say that it was a fault with this particular car.

Mr A also says he also complained about the stop/start function and the eco/sport function being faulty too. And he's continued to raise the fact he believes the car is experiencing a loss of power. But there is no testimony, beyond the fault codes, about any of these issues in the report.

So, having considered the diagnostic report Mr A supplied, I can't see any faults identified within it, which were confirmed to be present or developing at the point of supply. And, I haven't seen enough evidence to persuade me that repairs carried out to faults in January 2023 still persisted with the car. So, it follows that I don't think SMFL needs to do anything further here.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 November 2024.

Ronesh Amin
Ombudsman