

## **The complaint**

Miss A complains that Specialist Motor Finance Limited (“SMF”) has treated her unfairly in the way it has dealt with a hire purchase agreement following her cancellation of the contract to purchase a used car.

## **What happened**

In July 2023, Miss A was supplied with a used car through a hire purchase agreement with SMF. The car was a “distance purchase” meaning that Miss A hadn’t had any opportunity to inspect the car before it was delivered to her home address. The hire purchase agreement was over 60 months, with monthly repayments of £451.95. At the time it was sold, the car was around four years old and had done 72,944 miles.

Since the car had been sold at a distance, Miss A enjoyed some additional rights that were required to be provided by the dealer. One of those was that she could cancel her purchase within 14 days of the car being delivered. The terms that Miss A agreed to when she purchased the car provided for some charges to be applied for things such as any mileage she had travelled in the car, and any damages caused to the car.

The dealer accepted Miss A’s cancellation of the purchase, however there was some dispute between the two parties about an acceptable level of charges for the items I have detailed above. I understand that the dealer did initially begin Court action to recover those charges however its claim was withdrawn following mediation.

SMF did not accept Miss A’s request to cancel her hire purchase agreement. It said that she hadn’t notified the firm of her wish to cancel the agreement until October 2023. And it reminded her that her right to reject the car under the Consumer Rights Act, required it to be of unsatisfactory quality. It said that since Miss A had collected the car from the dealership any distance selling rights did not apply. So it considered Miss A had abandoned her car and so it had reasonably taken steps to ensure it was stored securely. It considered that she was still liable for the payments due under the agreement.

Miss A was unhappy with that response so she brought her complaint to us. And she told us that SMF had added adverse information to her credit file in relation to the agreement. Miss A’s complaint has been assessed by one of our investigators. She didn’t think SMF had treated Miss A fairly. She said that the car had been returned to the dealer within the statutory 14-day period. So it wasn’t fair that Miss A was still required to make repayments on a car she no longer had. So she asked SMF to end Miss A’s agreement without any further payments and remove any adverse information from Miss A’s credit file. She also asked SMF to pay Miss A £100 for the distress and inconvenience she’d been caused.

Disappointingly SMF did not respond to that assessment. 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 Miss A 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 Miss A and by 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 consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Miss A's complaint arises from her wish to cancel a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Miss A's complaint about SMF.

Miss A purchased a car from a motor dealer. That sale was made at a distance so benefitted from the relevant distance selling provisions in legislation. And those provisions were incorporated in the terms of sale that she agreed with the motor dealer. Miss A appears to have complied with those terms and returned the car to the dealer within 14 days of its delivery to her. It is clear that there was some dispute between the dealer and Miss A about what she might need to reasonably pay in relation to her initial use of the car. It is possible that those disputes are now resolved, although I don't think that had been formally confirmed to Miss A by the dealer. But what isn't disputed by either Miss A or the dealer is that the car was successfully returned and the sale contract cancelled.

So it seems to me to be inherently unfair that Miss A is still being held to the finance agreement that was used to purchase a car that she has legitimately returned. It appears that the dealer resold the car returned by Miss A shortly afterwards. I would expect that it could only have done that with the consent of SMF. So at that time SMF should have confirmed to Miss A that she was no longer liable for the hire purchase agreement she had signed.

Miss A has told us that the hire purchase agreement remains active on her credit file, and that SMF is recording adverse information against her. There seems little doubt that will have caused Miss A distress and inconvenience. So I agree with the investigator that SMF should pay Miss A £100 compensation for that inconvenience.

## **Putting things right**

I am satisfied that Miss A returned the car to the dealer in line with her contractual rights. And I consider that any dispute about charges for the fair use of that car should be a matter between Miss A and the dealer and so have no effect on the termination of her hire purchase agreement that I am directing below. So to put things right, SMF should;

- End the hire purchase agreement with no further payments required from Miss A.

- Refund any payments already made by Miss A in relation to the agreement, including any repayments, charges or interest.
- Add interest of 8% simple a year on any refunded amounts from the date they were paid to the date of settlement. HM Revenue & Customs requires SMF to take off tax from this interest. SMF must give Miss A a certificate showing how much tax it's taken off if she asks for one.
- Pay £100 to Miss A for the inconvenience she has been caused.
- Remove any adverse information relating to this agreement from Miss A's credit file.

**My final decision**

My final decision is that I uphold Miss A'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 Miss A to accept or reject my decision before 27 June 2024.

Paul Reilly  
**Ombudsman**