

The complaint

Mr N is unhappy that a car supplied to him under a hire purchase agreement with Specialist Motor Finance Limited ('SMF') was of an unsatisfactory quality.

What happened

In January 2023, Mr N was supplied with a used car through a hire purchase agreement with SMF. He paid a deposit of £500, and the agreement was for £8,495 over 60 months; with 59 monthly payments of £264.48 and a final payment of £274.48. At the time of supply, the car was just over five years old, and had done around 98,000 miles.

Mr N said he started to have problems with the car shortly after it was supplied. He took it back to the supplying dealership who changed some wheel bearings in April 2023 and fixed a fault with the indicators and headlights in May 2023. However, Mr N wasn't happy that the car had been repaired correctly, and he complained to SMF.

SMF arranged for the car to be inspected by an independent engineer. This inspection took place on 27 June 2023, and the engineer said, *"we did note an unusual drone from the rear of the vehicle, which we suspect is one or more of the wheel bearings coming to the end of their in-service life."* The engineer also said there was an issue with the tyre pressure warning light having come on, but the tyre pressures were satisfactory.

In conclusion, the engineer said, *"the vehicle's overall general condition is acceptable for a vehicle that has covered well over 100,000 miles ... having to replace wheel bearings on a vehicle that has covered well over 100,000 miles would be classed as general maintenance and not premature and therefore not the responsibility of the sales agent. Similarly, the tyre pressure monitor light would not prevent the vehicle being fit for purpose with the most likely cause of the symptoms being the tyre pressure monitoring system requires replacement or a replacement pressure sensor which would be classed as maintenance."*

Having now inspected the vehicle, we are able to confirm that it would have been considered fit for purpose at the time of purchase and of a satisfactory standard."

Mr N wasn't happy with the engineer's report, as wheel bearings had already been replaced by the dealership in April 2023. On 12 July 2023, the independent engineer said *"based on additional information provided by the sales agents to the effect that they had previously had the wheel bearings replaced by a third party garage, we would confirm our opinion that this would therefore be regarded as a failed repair."*

The dealership did an in-depth inspection of the wheel bearings and tyres in July 2023, and concluded the issue was the rear tyres were out of shape, and this was what was causing the noise the independent engineer suspected to be the wheel bearings.

This report was sent back to the independent engineer who, on 20 July 2023, said *"we can concur ... that wear or delamination of tyres can cause road noise similar to a wheel bearing wear issue. Nevertheless such wear takes many hundreds of miles if not thousands to develop this issue, & in the light of this we would conclude that the sales agents should be*

responsible for any tyre replacement costs on the grounds of durability i.e., the vehicle was not sold with the tyre or tyres in a durable condition.”

Because the car went into the garage for inspection and potential repair in June 2023, and Mr N wasn't provided with a courtesy car, nor was the car returned to him, he stopped making payments. As a result of this, SMF repossessed the car and sold it at auction. SMF also said that they didn't consider the issue with the tyres to be present when the car was supplied to Mr N, so they didn't uphold his complaint.

Mr N wasn't happy with what'd happened, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said there was a fault with the car, which was linked to the tyres, and not to a failed repair on the wheel bearings. The investigator said that, if the tyres were out of shape when the car was supplied to Mr N, then the sound he heard would've been present from when the car was supplied, or at least from when the wheel bearings were replaced, and not something that occurred later. So, she didn't think the fault with the tyres was present when the car was supplied.

The investigator also said that the issue with the tyre pressure light was as a result of general wear and tear, and again wasn't something that was present when the car was supplied. As such, she didn't uphold Mr N's complaint about the fault with the car. However, the investigator thought that SMF could've dealt with things better, and that Mr N was inconvenienced by having to have the car repaired twice, shortly after it was supplied to him. So, the investigator thought SMF should pay Mr N £100 for the inconvenience he'd suffered.

SMF agreed with the investigator, but Mr N didn't. He said he'd been supplied with a car that had issues and that SMF had told him he could return the car due to a failed repair. Which is why he stopped paying for it, and this resulted in the car being repossessed and sold. He said that, had he been told he needed to, he would've continued to make payments towards the car.

I issued a provisional decision on 8 February 2024, where I explained my intention to uphold the complaint. In that decision I said:

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr N was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

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 goods, SMF are responsible. What's satisfactory is determined by things such as 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 and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless SMF can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr N to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr N took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask SMF to put this right.

It's not disputed that, shortly after the car was supplied to Mr N, it needed to be repaired twice – replacing the wheel bearings and fixing an electrical fault. It's also not disputed that these faults were present when the car was supplied to Mr N.

I've seen a copy of the independent engineer's report dated 27 June 2023, and the correspondence from the engineer following this report. The key extracts from the report and subsequent correspondence have been quoted above, so I won't repeat them here. However, I have seen that the engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

The engineer initially said there was a fault with the wheel bearings and, after being advised the wheel bearings had been changed, said this was a failed repair. However, this opinion was based on the noise coming from the car, and a visual inspection of the car itself. It wasn't based on a physical examination of the wheel bearings themselves.

Once a physical examination of the wheel bearings took place, it was discovered that the noise the engineer had initially thought related to the bearings was actually as a result of excessive tyre wear. And it was the engineer's opinion that, given the time taken for such wear to take place, the tyres weren't sufficiently durable when the car was supplied to Mr N, and it was SMF's responsibility to put things right.

However, even though they were in possession of this opinion on 20 July 2023, SMF still came to the differing conclusion that the car was of a satisfactory quality when it was supplied to Mr N. And they didn't think they needed to do anything more.

Section 24(5) of the CRA says "a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract." This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for SMF – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

What this means is, as the dealership had already had two attempts to fix the car, and an issue with the tyres which the independent engineer says was present when the car was supplied remained, then Mr N has the right of rejection under the CRA. However, this doesn't mean that Mr N is required to reject the car, and he is able to agree an alternative remedy i.e., further repairs to the car.

In circumstances like this, where the outstanding repair can be quickly and easily fixed i.e., by replacing the tyres that weren't sufficiently durable when the car was supplied to Mr N, then I would say it's reasonable to allow another repair attempt to take place. But this isn't possible for Mr N.

Mr N has said that he was advised he had the right to reject the car. While I haven't seen anything to show me that was the case, for the reasons given, he did indeed have that right. As such, he stopped paying for the car in June 2023 (after which point it wasn't in his possession anyway). And, despite being told by the independent engineer that they were liable for the issues with the car due to its lack of durability at the point of supply, SMF chose

not to repair the car or allow rejection, but to repossess the car instead. Given the circumstances already described, I'm satisfied this was something SMF shouldn't have done. And they should now do something to put things right.

The car was off the road and not in Mr N's possession from June 2023 onwards, and Mr N wasn't supplied with a courtesy car. As such, I would usually ask SMF to refund the payments Mr N was paying for goods he was unable to use. However, as Mr N stopped making payments in June 2023, in this instance I won't be asking SMF to refund any of the payments made.

However, it's clear that Mr N has been inconvenienced by having to arrange for the car to be repaired twice shortly after it was supplied to him, and by these repairs not resolving all the issues that were present when the car was supplied. So, I think SMF should compensate him for this. The investigator had recommended SMF pay him £100, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my decision.

Therefore, I intend to ask SMF to:

- end the agreement as if the car had been rejected, not repossessed, with nothing more to pay;*
- remove any adverse entries relating to this agreement from Mr N's credit file;*
- refund the £500 deposit Mr N paid (if any part of this deposit is made up of funds paid through a dealer contribution, SMF is entitled to retain that proportion of the deposit);*
- apply 8% simple yearly interest on the refund, calculated from the date Mr N paid the deposit to the date of the refund[†]; and*
- pay Mr N an additional £100 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

[†]If HM Revenue & Customs requires SMF to take off tax from this interest, SMF must give Mr N a certificate showing how much tax they've taken off if he asks for one.

Responses

Mr N agreed with my uphold decision, and he provided a copy of a message from SMF, dated 20 July 2023, which said the supplying dealer was liable “*as the car would not have been sold in a durable condition. This does not change us pushing for a rejection.*” However, Mr N said that he'd been told that, if the car was faulty, then he would get back two payments in addition to his deposit.

SMF chose not to respond to my provisional decision.

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.

As SMF haven't said anything to the contrary, I'm taking their lack of comments to mean they don't object to my provisional decision.

The additional correspondence Mr N has provided from SMF has been noted. As this indicates that SMF accepted both liability for the fault, and that the car would be rejected, this only adds to my provisional decision.

Mr N has also said that he feels he should receive a refund of two payments in addition to the deposit he paid. For the reasons stated in my provisional decision, and repeated above, I'm satisfied that Mr N shouldn't be refunded any payments. And Mr N's limited comments don't change my mind on this matter.

As such, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision and ask SMF to do something to put things right.

Putting things right

SMF should:

- end the agreement as if the car had been rejected, not repossessed, with nothing more to pay;
- remove any adverse entries relating to this agreement from Mr N's credit file;
- refund the deposit Mr N paid (if any part of this deposit is made up of funds paid through a dealer contribution, SMF is entitled to retain that proportion of the deposit);
- apply 8% simple yearly interest on the refund, calculated from the date Mr N paid the deposit to the date of the refund[†]; and
- pay Mr N an additional £100 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires SMF to take off tax from this interest, SMF must give Mr N a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr N's complaint about Specialist Motor Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 8 April 2024.

Andrew Burford
Ombudsman