

The complaint

Mrs M complains that charges levied by Specialist Motor Finance Limited (“SMF”) following her return of a car that was rejected due to it not being of a satisfactory quality are unfair.

What happened

Mrs M was supplied with a car by SMF under a hire purchase agreement in May 2023. Following problems with that car SMF agreed that Mrs M could exercise her final right to reject and the car was returned to the supplying dealer in October 2023. SMF advised Mrs M that an end of agreement inspection would be completed and she would be notified of any repair costs that arose.

Around three weeks later Mrs M was told of damage that the dealer had identified on the returned car, together with photographs and an estimate for the repairs. Mrs M disputed some of the costs, and SMF reduced the final charge. But SMF still required Mrs M to pay a total of £1,731.57. Unhappy with that response Mrs M brought her complaint to us.

Mrs M’s complaint has been assessed by one of our investigators. He initially thought most of the charges being claimed by SMF were fair. But after reviewing some photographs provided by Mrs M of the car when it was first supplied, he changed his assessment. Ultimately the investigator thought that only two of the charges imposed by SMF were fair. So he asked SMF to recalculate what Mrs M owed. And he said SMF should pay Mrs M £100 for the distress and inconvenience she’d been caused.

SMF didn’t agree with 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 Mrs M 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 Mrs M 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.

Mrs M was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. This complaint isn't about whether the car was of a satisfactory quality when it was supplied – both parties have agreed that it was not, and Mrs M was allowed to reject the car and end the hire purchase agreement. Here, I need to decide whether the charges SMF has asked Mrs M to pay for damage to the car whilst it was in her possession are fair.

Our investigator has set out the basis on which he has determined whether the damage to the car should be considered to be the result of fair wear and tear. He has used guidance provided by the British Vehicle Rental and Leasing Association ("BVRLA"). That guidance sets out parameters for what might be considered acceptable wear and tear when a vehicle is returned.

SMF has said it doesn't think that guidance is applicable here, but I don't agree. I accept that Mrs M held the car for a relatively short period. But there isn't anything in the guidance that suggests fair wear and tear might be greater if the length of time for which the vehicle was used was greater. It simply provides a snapshot at a given point in time (the point the vehicle is returned) as to what is acceptable. And I accept that Mrs M's car was returned earlier than might have been anticipated when the hire agreement was first taken out. But I don't think that negates the provisions of the guidance and means it shouldn't be applicable here.

SMF has set out for Mrs M the areas of damage that it thinks needed to be repaired at the end of the agreement. I accept that SMF didn't make its own assessment of that damage, and has been reliant on the evidence supplied by the dealer. But here the dealer was clearly acting on SMF's behalf, and agreed the course of action with the firm. So I am satisfied it is reasonable to treat the dealer's assessment as being that of SMF.

I have carefully reviewed the photographs that SMF has sent us showing the areas of damage it thinks are the responsibility of Mrs M. And I have compared those photographs to ones provided by Mrs M from both the original sale advert, and those taken by her when she took delivery of the car. I am satisfied that some of the damage within SMF's claim was present at the time of supply, and so isn't the responsibility of Mrs M.

I have also compared other aspects of the damage with the guidance provided by the BVRLA. Having done that I am not satisfied that there is sufficient damage to one of the NS alloy wheels that would mean Mrs M was liable for its repair. That damage appears to me to be within the 50mm tolerance suggested by the BVRLA. But I agree that the other NS wheel does have damage exceeding that amount, and so Mrs M should pay for its refurbishment.

SMF has identified damage to the OS sill of the car. Although there is no clear sizing comparison of the two dents identified, I think it reasonable to conclude that both dents could be considered to be in excess of the 15mm allowed by the BVRLA guidance. And I'm not persuaded that the photographs Mrs M has sent from the sales advert show damage in that same location. So I think Mrs M should pay for those repairs too.

But otherwise I am satisfied that there is either insufficient evidence of the claimed damage, or that the damage was present when the car was supplied to Mrs M. In particular I haven't seen sufficient evidence to support the claim for repairs to OSR quarter panel. And I am satisfied that the claimed damage to the bonnet, and to the OSF corner bumper, were present on the car at the point it was supplied to Mrs M. So I don't think it reasonable to ask Mrs M to pay charges for those repairs.

So, in summary, I think it reasonable that Mrs M be asked to pay the repair costs for one alloy wheel, and the damage to the OS sill. But that then presents a problem since the original repair estimate that SMF received did not break down the repair costs across the various bodywork items. And it now seems that the car has been resold, so the necessary repairs might have been completed, or the car no longer available for inspection and repair.

So I have discussed with SMF what I think would be a fair way of estimating the costs that Mrs M should pay. SMF has said that given the time that has elapsed it will not be able to break down the original repair invoice to just include the items I have noted above. So I have told SMF and Mrs M that I think it is necessary for me to determine what I think are fair costs for these two repairs and given details of my estimates of those costs. Mrs M has said that she accepts my estimates in this regard. SMF has not provided any alternative analysis.

SMF appears to have required Mrs M to continue making her monthly rental payments in lieu of the damages it claimed. I'm not persuaded that was an entirely reasonable way of proceeding. However I note that SMF has accepted that Mrs M has now repaid more than it claimed, regardless of the outcome of this complaint. So it has refunded the excess payments that Mrs M has made. But there seems little doubt that the prolonged dispute here will have caused some distress and inconvenience to Mrs M. So I agree with our investigator that a further payment of £100 should be made to Mrs M in that regard.

To save further dispute, I am now setting out how the financial matters resulting from the rejection of the vehicle should be concluded. I accept these didn't form an explicit part of Mrs M's original complaint. But in order to decide that complaint and direct appropriate compensation, all the financial aspects of the rejection need to be resolved. So I think my findings here, that are entirely in line with our well documented normal approach, are appropriate.

SMF has accepted Mrs M's rejection of the car. So it should refund to her the deposit of £500 that she paid on the agreement. I am satisfied that the monthly repayments made by Mrs M are a fair reflection of the use she enjoyed of the car whilst it was in her possession. But those repayments should have ceased at the point of rejection. So any additional repayments should be refunded to her. And then it is reasonable for SMF to charge Mrs M for the two items requiring repair that I have set out above.

Putting things right

SMF agreed to Mrs M's rejection of her car as it was not of a sufficient quality when it was supplied. So, to put things right, SMF should;

- Refund the deposit of £500 that Mrs M paid on the car.
- Refund any monthly repayments collected from Mrs M following the date the car was rejected and returned to the dealer.

SMF should add interest of 8% simple a year on any refunds above from the date they were paid (if they were) to the date of settlement. HM Revenue & Customs requires SMF to take off tax from this interest. SMF must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

- In line with my findings above I think it reasonable for SMF to charge Mrs M for the damage to one alloy wheel, and the OS sill. As I have set out for both parties I think those repair costs should be £120 and £250 respectively.

As I have said above, it seems that SMF has already refunded some of the overpayments Mrs M has made. So it may deduct the charges for the damage, and the overpayment refund it has made, from the refunds I have set out above.

In addition SMF should pay Mrs M £100 for the distress and inconvenience she has been caused by the matters forming this complaint.

My final decision

My final decision is that I uphold the majority of Mrs M'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 Mrs M to accept or reject my decision before 19 November 2024.

Paul Reilly
Ombudsman