

The complaint

Mrs C is unhappy with the charges being applied by Specialist Motor Finance Limited ('SMF') after they allowed her to reject a car supplied to her under a hire purchase agreement.

What happened

In October 2022, Mrs C was supplied with a used car through a hire purchase agreement with SMF. She paid a £474 deposit, and the agreement was for £4,221 over 60 months, with 59 monthly payments of £107.75 and a final payment of £117.75. At the time of supply, the car was around nine years old, and had done 72,094 miles (according to the MOT record for 12 October 2022).

In March 2023, Mrs C started to have problems with the car, and she raised this with the broker who'd arranged the finance. The broker arranged for the car to be inspected by an independent engineer, who found that the clutch had worn due to normal wear and tear, and that the crankshaft bearings had also worn. The engineer said the bearings had failed sooner than could be expected, so the car wasn't sufficiently durable when supplied. As such, the supplying dealership were responsible for the repairs.

The car was repaired by the dealership and returned to Mrs C on 5 July 2023 along with the documentation relating to the replacement clutch as she was paying for this herself. No paperwork was supplied relating to the bearings repair, and this wasn't supplied to her when Mrs C asked for it.

The car broke down again in November 2023 due to an oil leak from the engine. Mrs C thought this related to the previous repairs and she complained to the dealership. Mrs C supplied a report from her local garage to support her view and, based on this, the dealership accepted rejection of the car.

In January 2024, SMF wrote to Mrs C confirming they'd agreed to the rejection. However, they said that, because of the mileage Mrs C had done in the car before rejection, they would be keeping the deposit and all the payments she'd made. Unhappy with this response, Mrs C brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator didn't think the car was of a satisfactory quality at the point of supply, so they thought it was fair for SMF to allow rejection. However, they didn't agree with what SMF were charging for fair usage, as this wasn't in line with our usual approach on these matters.

As such, the investigator said that SMF should refund the deposit Mrs C paid, along with the payments she's made between March and June 2023, when the car was being repaired. What's more, the investigator said that SMF should pay Mrs C an additional £350 for the distress and inconvenience she'd been caused.

Mrs C agreed with the investigator's opinion, but SMF didn't respond. Where a financial business doesn't respond, we consider they have rejected the investigator's opinion. As such, this matter has been passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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. Mrs C 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 Mrs C to show it was present when the car was supplied.

So, if I thought the car was faulty when Mrs C 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.

In this instance, it's not disputed there was a problem with the car that made it of an unsatisfactory quality at the point of supply. And rejection of the car has already taken place. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think SMF should do to put things right.

Putting things right

Mrs C was able to use the car while it was in her possession, so I think it's only fair that she pays for this usage. SMF have said that Mrs C travelled 8,851 miles in the car, so they think she should be charged £2,212.75 fair usage charges - £0.25 a mile. However, the agreement doesn't charge Mrs C based on the mileage she covered, instead charging a fixed monthly fee. What's more, there's nothing in the agreement that limits the mileage Mrs C was able to do, charging her for exceeding this.

As such, I don't think it's fair that Mrs C is charged for fair usage based on the mileage covered. Instead, I think SMF should be allowed to keep the payments Mrs C made for each month she was in possession of the car – this is our usual approach to matters like this.

But I also need to take into consideration that the car was off the road and undrivable between 28 March and 5 July 2023, and Mrs C wasn't provided with a courtesy car. As such, she was paying for goods she was unable to use. As, for the reasons already stated, it's not disputed that the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as SMF failed to keep Mrs C mobile; I'm satisfied they should refund the payments she made during this period.

Finally, it's clear that Mrs C has been significantly inconvenienced by what's happened. So, I think SMF should also compensate her for this. The investigator had recommended SMF pay her £350, 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 final decision.

Therefore, if they haven't already, SMF should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mrs C;
- remove any adverse entries relating to this agreement from Mrs C's credit file;
- refund the deposit Mrs C 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);
- refund the equivalent of the payments Mrs C made for the period 28 March to 5 July 2023;
- apply 8% simple yearly interest on the refunds, calculated from the date Mrs C made the payment to the date of the refund[†]; and
- pay Mrs C an additional £350 to compensate her 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 Mrs C a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Mrs C'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 Mrs C to accept or reject my decision before 10 July 2024.

Andrew Burford
Ombudsman