

The complaint

Ms E has complained that a car she acquired, using finance from Specialist Motor Finance Limited ('SMF'), wasn't of satisfactory quality at the point of supply.

What happened

On 11 June 2022, Ms E entered into a finance agreement with SMF, for a used car. It was around eight years old, and had around 60,000 miles on the clock. However, on 2 July 2022, she took the car back to the dealership and on 4 July wrote to both the dealership and the broker, to say she wanted to reject it. This was because she'd had a loss of fuel, heard loud spinning noises, and the car had been coasting/lost power.

The dealership couldn't find a fault with the car, and it also instructed a third party, which couldn't find a fault either. Ultimately, Ms E collected the car on 28 September 2022, but it then emerged there was a problem with the battery. The dealership put this down to the car having been sitting unused, and covered the cost of this.

Then, on 10 November 2022, Ms E told SMF that the car had broken down. She provided a report from the RAC, which said it thought there may be an issue with the starter motor. Accordingly, SMF instructed a third party to provide a report, which it did on 21 December 2022. SMF then contacted Ms E on 23 February 2023, to say the dealership had agreed to carry out repairs.

Ms E was unhappy with this response, so contacted our service. She explained she'd also had a report carried out, which found problems with the car starting (but not the starter motor), and wanted to reject the car.

One of our investigators looked into what had happened. She noted that as the car was second-hand, it would be reasonable to expect that it may have suffered wear and tear, commensurate with its age and mileage. And there's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn when it was supplied.

However, she was satisfied that there was a fault from November 2022, and that it would be reasonable for repairs to be carried out, as SMF had proposed. So, to put things right, our investigator recommended that the repairs should be carried out, at no cost to Ms E. She also thought SMF should refund Ms E some of her monthly repayments, and pay her the £150 compensation it had already offered, for the distress and inconvenience caused.

Ms E disagreed, and asked that her complaint be passed to me. I issued a provisional decision, explaining why I was intending to uphold the complaint and my proposed redress, and giving both parties the opportunity to respond with anything further.

In my provisional decision, I said as follows.

I can see that Ms E first reported problems in July 2022, and wanted to assert her 30-day

right to reject the car. So, I've thought about whether this is what should reasonably have happened.

I'm mindful that neither the dealership nor a third party were able to find a fault at that time. But equally, I can't see why a car would lose power if there were no fault present. And sometimes faults aren't found, despite an inspection, particularly if they are still developing, or are intermittent.

Further, Ms E was without the car for a significant time, and had only had it back for a month before it broke down again, and couldn't be started. Both SMF and Ms E seem to be in agreement that there was definitely a fault at this point. So, the question is, whether it was present, or developing, at the point of sale.

The report dated 21 December 2022, arranged by SMF, states:

"The symptoms noted are consistent with either a faulty starter motor or an issue with the body control module, in either instance, the vehicle can't start currently, and a meaningful inspection could not be completed.

The starting issues are almost certainly a result of the vehicle being sitting unused for a period of time, and as it has been returned to the sales agent and was in their custody, care and control, we believe that the sales agent should be responsible for getting the vehicle up and running again.

Regarding the noise coming from the rear; this will not be able to be checked until the vehicle is returned to a serviceable condition, having said this, it is unlikely to have been present the point of sale as the vehicle owner advised that the noise didn't become apparent until 4th July 2022, some 4 weeks after the date of sale, however, on the grounds of durability and based on the fact that the vehicle has covered minimal mileage in that time, we conclude sales agent should be responsible for rectification on the grounds of durability."

So, this report suggests that the car wasn't sufficiently durable.

I've also looked at the report provided by Ms E. This refers to an issue which could cause loss of power, which I'm satisfied could well explain what happened in July 2022.

Taking everything into account, it seems to me that the car was most likely developing a fault at the point of sale and/or wasn't sufficiently durable. This is backed up by both reports referred to above.

Accordingly, I'm satisfied that Ms E should have been able to reject the car when she requested this on 4 July 2022. It also follows that she should be refunded her deposit, and monthly repayments from when the car was returned to the dealership on 2 July 2022 - except for the period when she had the car after the battery was replaced - until it broke down on 10 November 2022.

Ms E will likely incur an admin fee for transferring her insurance to another car/cancelling it. If so, she should provide SMF with evidence of this, so it can refund her.

I think it was reasonable she had her own report carried out, as she had legitimate concerns about the car, so she should be refunded for this too.

I've also considered compensation for the distress and inconvenience caused. I agree that the £150 already offered is reasonable, and in line with awards made by our service in similar circumstances.

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.

SMF didn't add any further comments regarding the merits of the complaint.

Ms E responded, attaching a safety recall notice. Although I thank her for her response, it doesn't change the conclusion I've already reached, which is that the car can be rejected. Accordingly, I haven't looked into this point further.

Given the above, I'm not departing from my provisional decision, as set out above. It now forms part of this final decision.

Putting things right

To put things right, I require Specialist Motor Finance Limited to:

- cancel the agreement and collect the car at no cost to Ms E;
- refund her deposit in full, adding 8% simple interest a year, from the date of payment to the date of settlement;
- refund Ms E her monthly repayments in full for the period from 2 July 2022 until the car was returned to her after the battery was replaced, on a pro rata basis, adding 8% simple interest a year, from the date of payment to the date of settlement;
- refund Ms E her monthly repayments in full, on a pro rata basis, from 10 November 2022 onwards (insofar as Ms E has made these repayments), adding 8% simple interest a year, from the date of payment to the date of settlement;
- refund Ms E for the cost of providing her independent report, adding 8% simple interest a year, from the date of payment to the date of settlement;
- pay Ms E for any admin fee she incurs for cancelling her insurance policy, or moving it to another vehicle, upon receiving proof of this cost. For the avoidance of doubt, this relates only to an admin fee, not to any increases in premium;
- remove any negative information regarding the agreement from Ms E's credit file, and mark it as settled; and
- pay her £150 for the distress and inconvenience caused.

My final decision

It's my final decision that Specialist Motor Finance Limited must take the actions set out above, in the section entitled 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 19 August 2024.

Elspeth Wood

Ombudsman