

The complaint

Mr F complains about a car he acquired through a Hire Purchase agreement with Specialist Motor Finance Limited ('SMF'). He says there were problems with the car from the outset. The car was returned for repair and further issues have arisen since. He wants to hand the car back – or alternatively a price reduction for the car – and his repair costs to be refunded.

What happened

Mr F acquired the car through a Hire Purchase agreement with SMF in August 2023. The cash price noted on the agreement was £5,150.00. The car was almost nine years old and had covered 67,996 miles at the point of supply.

Within a week of having the car Mr F requested to reject the car as multiple issues had arisen. He spoke to SMF and it advised of his right to reject if there were issues, but that equally the dealership may agree to a repair and so it may be worth pursuing that option if Mr F wanted. He'd been in contact with the broker too and it was trying to contact the dealership. Mr F was to get back in touch if the issue remained unresolved.

A garage local to Mr F looked at the car and found a number of items requiring repair, including a replacement clutch kit, rear window motor and pipe, engine rocker cover gasket seal and passenger window regulator – with the work totalling £1,388.00.

The car went to the dealership for an inspection which found no faults. The passenger window wasn't working and a blown fuse was replaced which resolved the issue. But the dealer said Mr F was aware of this issue when the car was first supplied. Mr F complained to the broker at this time and contacted SMF.

Some weeks later, early in October 2023, another garage diagnosed a failed camshaft sensor. At this point the car had covered 68,776 miles, meaning it'd been driven less than 1,000 miles since supply. Mr F complained to the broker and SMF about the issues he'd had, including with his rear wiper and tyre pressure sensor.

The dealer repaired some of the issues and reimbursed Mr F's costs for repairs he'd had carried out. It said the tyre pressure sensor was lit because the car had driven over a nail.

Mr F wanted to carry out repairs himself as the dealership wasn't helping. SMF said these repairs wouldn't be authorised and it couldn't be held liable if there were issues with those repairs in future. This meant him being unable to use the car and losing work as a result.

Mr F has provided an undated message from the dealer to say the rear window tube had been reconnected – and so Mr F says that was an earlier attempt at repair when he actually had a right to reject the car.

SMF thought the repairs and reimbursements by the dealer resolved the issues raised up to that point and made the car of satisfactory quality.

I can see Mr F contacted SMF towards mid-to-late December 2023, where no issues were raised by Mr F and he enquired about settling the agreement early.

SMF responded to the earlier complaint soon after this. It said Mr F was initially advised rejection could be an option based on his testimony. But it transpired the car was fault free and so rejection wasn't an option. The cosmetic issues were accepted at the point of supply. And it said the complaint was reopened because of further issues raised and it worked with the dealership to secure a contribution to those repair costs.

Following this I can see a payment to an exhaust company on 17 January 2024 of £322.00. Mr F says the exhaust simply fell off and was replaced.

The dealership's comments indicate it first became aware of this when Mr F asked to reject the car on 27 January 2024, ten days later. This was the same day a garage reported the gears being stiff and this possibly being due to a linkage fault. But they said it'd need stripping down to properly investigate it. This report said the new exhaust was incorrectly fitted and could be causing a knocking sound. They also found there was no oil in the car. At this point, the car had now covered 71,189 miles, just over 3,000 miles since supply.

Mr F complained to the broker in late January 2024. He wanted to reject the car because of the further problems following previous repairs. In particular, the cambelt shaft sensor was faulty, the exhaust had fallen off and a potential gear linkage fault was found that required further investigation. He said if further repair was the only option then he wanted the car recovered and a courtesy car provided.

The broker indicated he'd be entitled to reject the car on the basis of the failed repairs he described, but it was in the process of chasing up the dealer to discuss the matter. The broker said Mr F would be liable for further damage or mileage if he continued to use the car. And he shouldn't repair the car without authorisation as this would prevent the dealer from having an opportunity to investigate and the right to repair any issues.

The dealer wrote to Mr F early in February 2024 outlining its position on matters so far. It said it had repaired some issues, reimbursed Mr F for repairs that he'd arranged himself and that other issues couldn't be found. It said Mr F had called in January 2024 to say he had an inspection carried out and the gearbox needed replacing. Though the dealer said it didn't have any evidence of this issue.

Mr F has provided an invoice dated 9 February 2024 for a repair to the gear cable linkage and a set of front brake discs and pads. However no further evidence or explanation has been provided to indicate the origin and nature of this issue.

The broker's response to Mr F's complaint following all this didn't go into detail about the issues encountered, but it said any repairs Mr F had carried out would be unauthorised. SMF responded in March 2024 with a similar reply and said because of the lack of evidence of the issues, along with previous repairs, it would not uphold the complaint.

An MOT that month showed an advisory for an oil leak, along with major exhaust emissions issues. A few days later the MOT passed with the 'not excessive' oil leak remaining.

The following month, Mr F says engine lights have come up and when he told a garage the fault codes, they said it indicated the cambelt chain was broken. But there's no other evidence or explanation for this issue.

Mr F referred the complaint to our service. The investigator who considered the complaint thought it was likely the car wasn't of satisfactory quality when it was supplied, but the

repairs and refunds provided by the dealership to cover repairs had put things right. This had made the car of satisfactory quality – and this was fair in the circumstances.

They felt the more recent issues were more likely linked to the use of the car since it was acquired. Those issues weren't linked to the original repairs and were consistent with wear and tear that would be expected on a car like this.

Mr F disagreed and said some of the issues were present at the point of supply, like an oil leak. He returned the car very soon after first getting it and felt the dealer had their opportunity to fix the car and failed to do so.

The investigator thought the oil leak was minor and didn't make the car of unsatisfactory quality. They felt there wasn't enough evidence to say that issues persisted which were present or developing at the point of supply.

Mr F asked for the case to be reviewed by an ombudsman and so it has been passed to me to issue 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.

I'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.

I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

Mr F acquired the car through a Hire Purchase agreement with SMF. Under this type of arrangement, SMF became the supplier of the car and is responsible if the goods aren't of satisfactory quality when provided. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.

Satisfactory quality is described as the standard that a reasonable person would expect taking into account, among other things, the description, age and price of the goods. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.

Mr F acquired the car in August 2023. The car was first registered in September 2014, meaning at the point of supply the car was eight years and 11 months old. It had covered 67,996 miles in that time and cost £5,150.00.

From the timeline of events outlined above, it's clear the car has had a number of issues. The dealership has disputed the existence of some of these issues, but I think some of them are likely to have presented as Mr F has described.

However simply because there have been issues doesn't automatically mean the car isn't of satisfactory quality or that Mr F has a right to reject the car (or any other remedy under the CRA).

Before considering what's satisfactory quality, it's important to consider the nature of the goods provided. In this instance the car was not new. Where used goods are provided, it's not reasonable to expect them to be in the same condition or have the same level of durability or appearance as goods that are new.

In this instance the car was very almost nine years old. In those circumstances it would be expected that parts will have already had a degree of wear and tear, they'd age more quickly, and additional wear and tear would have a more noticeable impact than with a new car. This would've been reflected in the original price for the car – and I must consider this when assessing whether the car was of satisfactory quality.

Given the issues complained of up to October 2023, it's likely on balance they were present or developing at the point of supply given how soon after acquiring the car they arose.

I acknowledge the dealership contended that Mr F having the car inspected or repaired at other garages prevented it from being able to identify and remedy some of these issues. But the dealership nevertheless repaired issues Mr F raised or reimbursed him for the repair costs he'd incurred within the first few months of having the car.

I can see that Mr F had mentioned rejection of the car, for instance in his initial contact with SMF, however it seems he ultimately pursued the option to repair the car. There's some dispute about the diagnosis of the faults, but the dealer either repaired those issues found or reimbursed Mr F for repairs he had carried out. This seemed to have resolved matters to the extent that Mr F was considering paying off the agreement in full in order to become the owner of the vehicle.

I don't think Mr F would have done this if he had any appreciable concerns about the condition of the car at that point. So I'm satisfied that the car was operating as expected by December 2023. At this stage the evidence indicates that the matters above had been resolved.

In the subsequent complaint, the gear linkage and cam shaft sensor faults were mentioned alongside the exhaust falling off. The cam shaft sensor seems to have already been repaired by the time of the complaint. However the circumstances around the exhaust issue are unclear.

All we've been provided with is an online banking screenshot showing a transaction to an exhaust repair company. I don't know what this work was for or specifically why it was carried out. I haven't seen any other evidence relating to this issue – or any substantial description of what went wrong with it.

I haven't seen any evidence that the dealership, the broker or the lender were made aware of any problems with the exhaust until at least ten days after this transaction. It's not clear when any repair took place or when the incident first arose. Ultimately, I haven't got any evidence to show there was an issue with the exhaust that would've been present or developing at the point of sale.

I can't exclude the possibility that the exhaust needed replacing because of damage caused to it in the course of driving the car. It may also be that the overall age and mileage of the car at the point of supply contributed to the wear and tear of this item. Additionally, given this

was a number of months since supply, and with additional miles, had it been defective at the point of supply it's likely this would have been apparent sooner.

Following all this, the gear linkage fault seemed to be the main issue that remained unresolved. In this respect all I've seen is an invoice that mentions the gears being stiff, which might be related to the gear linkage, and that would require further investigation.

The dealer suggested it might be because of the nature of this particular manufacturer's components. However, I can't rule out the fact that the gears could be stiff because of the age of the car and the amount of use it already had at the point of supply. Had they been defective at the point of supply, this issue would have been apparent sooner and raised sooner than it ultimately was. Because it wasn't raised sooner, it's likely they were working as expected when supplied. Any issue now being experienced is more likely as a result of the wear and tear expected as a result of the overall age of the car and the mileage now travelled.

Given the car was significantly used at the point of supply, it's quite likely that wear issues of this sort might arise sooner than might otherwise be expected. Some of its components would inevitably require repair sooner than a newer, less used car would.

The dealership's steps to repair or cover the costs of repair fixed the issues that arose soon after acquiring the car. I think that was fair in the circumstances. Having considered the subsequent issues Mr F has raised about the problems he experienced some months after the car was supplied, I'm not persuaded based on the evidence provided that these specific issues demonstrate the car was not of satisfactory quality when it was first supplied.

Ultimately the evidence isn't sufficiently persuasive for me to conclude the car is now faulty in a way that means it was not of satisfactory quality at the point of supply, when taking into account its age and level of use at the point of supply and since then.

My final decision

I appreciate Mr F will be disappointed by the decision I've reached. However, I don't consider there's enough evidence to conclude the car was ultimately of unsatisfactory quality.

My final decision is that I do not uphold Mr F's complaint against Specialist Motor Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 3 December 2024.

Scott Walker
Ombudsman