

The complaint

Mr S 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 November 2023, Mr S was supplied with a used car through a hire purchase agreement with SMF. The agreement was for £9,990 over 60 months; with 59 monthly payments of £320.38 and a final payment of £330.38. At the time of supply, the car was just over nine years old, and had done 46,446 miles (according to the MOT record for 28 September 2023).

On collecting the car, Mr S found that the heater wasn't working. He contacted the supplying dealership about this and, a few days later, he also advised them the coolant level was continually dropping and he suspected a coolant leak. The dealership agreed the car could be inspected by a garage local to Mr S, and this took place on 30 November 2023. The timing belt, water pump, and auxiliary belt were replaced, and the car was returned to Mr S on 5 December 2023. The dealership covered the costs of these repairs.

The heater still wasn't working, so Mr S returned the car to the local garage, who checked for an airlock in the coolant system. One wasn't found, but the car was still losing coolant and Mr S needed to continually top this up.

Mr S tried to contact the dealership about this, but they didn't respond to his communication. So, on 31 January 2024, Mr S took the car to a manufacturer's main dealer for a service. They advised him that the coolant cap was the wrong type for the car and replaced it. This still didn't resolve the issue so, in February 2024, Mr S took the car back to the main dealer. They replaced the coolant expansion tank as the one fitted to the car wasn't an original equipment manufacturer (OEM) part – it wasn't made according to the manufacturer's specifications. This also didn't resolve the issue, and Mr S was advised the most likely problem was a failed head gasket, which would need replacing.

Mr S complained to SMF on 16 February 2024, but they referred him to the broker who'd arranged the finance for him. The broker rejected his complaint as replacing the coolant cap and expansion tank hadn't been authorised. Unhappy with this response, Mr S brought his complaint to the Financial Ombudsman Service for investigation.

While we were investigating this matter, SMF arranged for the car to be investigated by an independent engineer. This inspection took place on 25 April 2024 and the engineer said the car had a defective engine that was leaking coolant internally, something indicative of a failed cylinder head gasket. The engineer went on to say that the cause was *"overheating due to an issue with the water pump / cooling system. The current issue is not classed as a failed repair but a continuation of the previous repair and therefore whoever paid for the previous repair should pay for the cylinder head gasket."*

Based on this report SMF said that, because Mr S had the coolant cap and expansion tank replaced without authorisation, he was responsible for the repairs to the head gasket.

Our investigator didn't agree. They said the coolant fault was present when the car was supplied to Mr S, and the dealership had already attempted to repair the car by authorising and paying for the replacement water pump and belts. There was nothing to show that the cylinder head gasket had failed because Mr S had non-standard parts replaced by OEM parts, so, as the finance provider, SMF were responsible for repairing the car.

However, given that a repair had already taken place and failed, the investigator said that Mr S should now be allowed to reject the car; receive a refund of the payments he'd made since 12 February 2024; be refunded for the £57.76 he'd spent on topping up the coolant; and receive an additional £250 for the distress and inconvenience he'd suffered.

SMF didn't agree with the investigator's opinion. They said the main dealer had misdiagnosed the fault or carried out an insufficient repair, so it wasn't fair to hold them responsible for this. And they felt the current state of the car was down to the negligence of both the local garage and main dealer. So, they asked that this matter be passed to an ombudsman to decide.

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. Mr S 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. So, if I thought the car was faulty when Mr S 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.

Mr S had been complaining about issues with the cooling system since shortly after the car was supplied to him. It's not disputed that the dealership authorised a repair – replacement of the water pump and belts – nor that this failed to resolve the issue. I've noted SMF's comments about who they think is responsible, and that the current state of the car i.e., the head gasket has failed and needs replacement, is as a result of the negligence of the local garage and/or the main dealer. I don't agree with this assessment and I'll explain why.

The car had a cooling issue before it was repaired by the local garage, and it still had the same fault afterwards. Had the local garage carried out a negligent repair, I would expect there to be some change in the car between before and after the repair, for example something getting worse, but there wasn't. What's more, as this repair was authorised and paid for by the dealership, if this repair was carried out negligently, it would be fair to hold the dealership responsible for this as they failed to ensure it was carried out correctly.

However, for clarity, I don't think this repair was carried out negligently. This is because the independent engineer (who had confirmed their duty is to the courts, meaning it's reasonable to rely upon their report) has said that the head gasket had failed due to an issue with the water pump / cooling system, not that a negligent repair has caused the head gasket failure.

Turning to the work carried out by the main dealer. As part of a service, they replaced non-standard coolant system parts with OEM parts. SMF have said that this was an unauthorised repair, but the terms of their agreement with Mr S clearly states that Mr S must *"keep the vehicle in good repair and condition [and] have the vehicle regularly serviced at a reputable garage."* I don't think that, in complying with these terms, SMF meant that Mr S would need to get their specific authority for any work that needed to be done on the car i.e. replacing worn out parts, nor would it be reasonable to expect him to do this.

The car was supplied to Mr S with an incorrect coolant cap and a non-standard coolant expansion tank. I don't think that replacing these without first obtaining specific authority from SMF to do so, falls outside of Mr S's obligations under the terms of the agreement. What's more, the independent engineer hasn't said that this work caused the failure of the head gasket – again, this was as a result of an issue with the water pump / cooling system, something the dealership authorised a repair upon. As such, I'm not satisfied that the work done by the local garage (on behalf of the dealership) or the main dealer (in line with the terms of the agreement) means SMF are absolved from their responsibilities under the CRA.

As I've stated above, as the issue with the car happened within the first six months, and given the contents of the independent engineer's report, SMF are responsible for this.

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 confirm 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.

The replacement of the water pump and belts, authorised and paid for by the dealership and carried out by the local garage, is the single chance of repair. The CRA is clear that, if the single chance at repair fails, as was the case here, then Mr S has the right of rejection. Section 23(2) of the CRA also states *"If the consumer requires the trader to repair or replace the goods, the trader must (a) do so within a reasonable time and without significant inconvenience to the consumer."* Mr S has been without a working car for around a year, and I don't think this is a reasonable time for him to wait. As such, I'm satisfied that Mr S should now be allowed to reject the car, and SMF need to do something to put things right.

Putting things right

Mr S hasn't been able to use the car since he was advised a new head gasket was required on 12 February 2024. This lack of use is also supported by the expiry of the MOT and the

car being registered as SORN with the DVLA. What's more, he hasn't been provided with a courtesy car while the car supplied by SMF is off the road.

As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as SMF failed to keep Mr S mobile; I'm satisfied they should refund the payments he's made since February 2024.

As I've explained, it was Mr S's obligation to ensure the car was kept in good repair and was regularly serviced. As such, I won't be asking SMF to reimburse Mr S the costs associated with the replacement coolant cap and expansion tank, as these were done as part of the service. However, I do think it's fair that SMF reimburse him for the cost of the coolant he had to put into the car between being supplied with it and 12 February 2024 (when he stopped using the car). This is because these costs were only incurred because the car wasn't of a satisfactory quality when it was supplied to Mr S.

Finally, I think Mr S should be compensated for the distress and inconvenience he was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended SMF pay Mr S an additional £250, to recognise the distress and inconvenience he's been caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Mr S would've felt by having to arrange for the car to be repaired, and by this repair being unsuccessful. So, this is a payment I'm directing SMF to make

Therefore, SMF should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr S;
- remove any adverse entries relating to this agreement from Mr S's credit file;
- refund any deposit Mr S 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 all the payments Mr S has made from 12 February 2024 to the end of the agreement;
- upon receipt of proof of payments, reimburse Mr S the cost of purchasing coolant needed to keep the car's coolant levels topped up (between November 2023 and February 2024 only);
- apply 8% simple yearly interest on the refunds, calculated from the date Mr S made the payment to the date of the refund[†]; and
- pay Mr S an additional £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (SMF must pay this compensation within 28 days of the date on which we tell them Mr S accepts my final decision. If they pay later than this date, SMF must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires SMF to take off tax from this interest, SMF must give Mr S 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 S'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 S to accept or reject my decision before 27 March 2025.

Andrew Burford
Ombudsman