

## The complaint

Mr S complains that under a finance agreement, Specialist Motor Finance Limited (“SMFL”) supplied him with a car that wasn’t of satisfactory quality.

## Background

I recently issued my provisional findings setting out the events leading up to this complaint and inviting comments from both parties as to how best the dispute should be resolved. I’ve reproduced my provisional findings below, which form part of this final decision.

## What happened

In March 2023 Mr S got a car he’d seen at a dealer “D”, supplied by SMFL under a hire-purchase agreement arranged through a credit broker “Z”. The cash price of the car (and the amount of the credit) was £8,999. At point of supply the car was just coming up to 10 years old with around 33,500 miles on the clock.

After a few months Mr S noticed that the car’s paint had begun to blister and peel. He contacted SMFL and Z with his concerns, and was told to obtain a report from a car bodywork specialist. Mr S says he did so, at a cost of £93, which was to be reimbursed.

Despite chasing payment, Mr S hasn’t been reimbursed this cost. The report indicated significant work was required on the vehicle, which for parts, paint and labour would cost in the region of £7,000.

Mr S was also concerned that he’d had to replace tyres and that a wheel alignment report obtained at that time indicated a bent anti-roll bar that could be consistent with accident damage. He passed all of the information to SMFL, who instructed an independent inspection by a qualified engineer “E”.

E’s report concluded that there was no evidence of structural damage to the car and that it was road legal. But it noted there were cosmetic issues with the paintwork, and that it had been poorly applied with *“excessive orange peel, dry edges and over spray...widely noted across the painted surface.”*

E considered that the appearance could be improved marginally by remedial work, and that paint flaking on the rear bumper had been caused by accidental damage. It ventured the opinion that the car was supplied in an acceptable condition for its age. As a result of this report, and taking into consideration vehicle checks Mr S undertook at the time he got the car, SMFL didn’t uphold Mr S’s complaint. So he referred matters to us.

Our investigator noted the provisions of the Consumer Rights Act 2015 (“CRA”), under which SMFL had an obligation to ensure the car it supplied was of satisfactory quality. He considered that the available evidence supported SMFL’s position that it had met this obligation, and didn’t recommend that the complaint should be upheld.

Mr S didn't accept the investigator's conclusions and the dispute has now been passed to me for review and determination.

### *My provisional findings*

The hire-purchase agreement in this case is a regulated consumer credit agreement, which means that complaints arising from it fall within the ambit of our service. As I've already noted, SMFL is the supplier of the car under this type of agreement and carries responsibility for matters such as whether it was of satisfactory quality.

For clarity, the CRA says that a contract to supply goods to a consumer is to be taken as including a term that the quality of the goods is satisfactory. Whether goods are of satisfactory quality is determined by reference to whether they meet the standard a reasonable person would consider satisfactory, taking account of matters such as price and description, and includes (among other things) matters such as appearance and finish, freedom from minor defects, safety and durability.

Mr S's claim is that the car SMFL supplied to him failed to meet at least some of these requirements, and therefore that it was not of satisfactory quality.

I'm conscious that the car was reasonably old, and that while the mileage wasn't high for its age it would have been subject to ordinary wear and tear and general deterioration that comes with vehicles as they get older. As such a reasonable person wouldn't expect the car supplied to Mr S be in perfect condition. It might have scratches, dents, fading or problems beginning to emerge with the bodywork such as perforation and rust.

But these aren't the problems identified as concerns by Mr S, the report from the bodywork specialist or highlighted in E's report. They point less towards issues due to the general age of the car and towards problems arising from poor attempts to repaint the car, resulting in a lack of paint adherence, bubbling and a failure to meet manufacturer or BSI standards. The price Mr S paid for the car is potentially relevant to this, as it might be expected that a substandard finish might have an impact on its value. Looking at the expected retail value on the vehicle checks Mr S carried out, the price of the car wasn't noticeably reduced in recognition of these paint issues.

As I've noted, the test of satisfactory quality is by reference to what a reasonable person would consider satisfactory. Whether the car is of road legal standard is not the key determinant. While I have the benefit of E's opinion of whether the car was sold in an acceptable condition, this is an objective test for me to decide.

I'm not currently persuaded that a reasonable person would expect, within a few months of acquiring a car of this age and price, the problems Mr S has experienced with its appearance and finish, and its durability. These arose, as E's report states, from poor attempts to repaint the car. There's nothing to suggest to me that this repainting took place after Mr S acquired the car.

In light of the available evidence then, I intend to find that the car SMFL supplied to Mr S was not of satisfactory quality. It follows that I also intend to conclude that SMFL hasn't treated Mr S fairly in rejecting that claim.

That brings me to the question of how best to put things right. The CRA sets out a range of potential remedies under section 19(3), in addition to other remedies that might be open to Mr S to seek. Mr S raised his concerns more than 30 days after he took delivery of the car, so the short-term right to reject isn't at play here. In some circumstances Mr S could exercise his section 23 right to repair or replacement. But the CRA broadly says that neither of those

remedies can be required if they are impossible, or disproportionate to one another, taking into account matters such as the value the goods would have if they conformed to the contract.

Clearly it's possible for the car to be resprayed to a satisfactory standard. But the cost of doing so may well be disproportionate, particularly when taking into account the overall value of the car. I'm further conscious that the quote Mr S obtained included replacement panels and parts. I don't think a claim based on a poor paint finish necessarily means that the bodywork itself was not commensurate with the general age and price of the car. Including this, as well as a complete respray, would inevitably result in Mr S being in a better position than the one to which he might reasonably be entitled. So I've thought about other remedies that might be open to Mr S as a fair and reasonable way of resolving the dispute.

#### *Suggested remedies to the claim*

I don't know whether it would be possible or practical for SMFL to replace the car – an identical replacement (without the paint issues) as specified in the CRA<sup>1</sup> would mean sourcing a car of the same age and specification with equivalent mileage. For a 10-year-old car that's not necessarily going to be something SMFL is able to do. However, if a replacement that meets the key aspects can be sourced, then I would consider that an appropriate remedy – provided that any material differences such as the colour of the car can be agreed as mutually acceptable.

If this remedy – I'll call this "Remedy A" – can be achieved, then SMFL should arrange to collect the car from Mr S and facilitate the purchase and supply of the replacement at no additional cost to Mr S and under the existing finance terms.

By way of an alternative remedy, I'm minded to propose that SMFL offers Mr S a suitable amount by way of a contribution towards the cost of rectifying the problems with the car ("Remedy B"). This amount would take into account the cost of his obtaining the respray but exclude replacement body panels. If Mr S prefers this remedy, I would propose that SMFL pays him £3,000 by way of settlement.

I've proposed these remedies as a way of resolving the dispute within the confines of the existing arrangements between Mr S and SMFL, so that he is able to keep the car he wanted and SMFL can receive the payments under the finance agreement. However, if neither remedy A nor remedy B are satisfactory to the parties, the remaining option would be that Mr S is entitled to exercise a final right of rejection ("Remedy C").

This would involve Mr S returning the car to SMFL (with SMFL covering any costs of doing so) and the lender agreeing to terminate the hire-purchase agreement with nothing further for Mr S to pay. SMFL should pay Mr S £500 in recognition of his impaired enjoyment of the car. Any other monies Mr S has paid under the agreement can be retained to reflect the use he's had of the car.

In addition to the above, I noted that Mr S incurred a cost of £93 to obtain the report from Z on the car's condition, which had yet to be reimbursed. I advised both parties that I intended to direct SMFL to reimburse this amount – with interest at 8% simple annual interest from the date of payment to the date of settlement – unless SMFL provided evidence it had already reimbursed the payment.

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<sup>1</sup> Consumer Rights Act 2015 – Explanatory Notes (132)

### *Response to my provisional findings*

As I've said, I invited the parties to let me have their comments as to my proposed findings and the alternative resolutions – as well as any other remedy they wished to suggest, before making my final determination.

Both SMFL and Mr S responded to my provisional findings with further comments. Mr S was minded to favour attempting to repair the car by way of a respray. He provided a second quotation and video evidence from a professional body repairer to support the level of work needed for an effective repair. These submissions have been shared with SMFL.

From my discussion with Mr S, he appears to recognise that it may not be reasonable to expect SMFL to cover the full cost of the work involved, even if that work is deemed necessary before the body repairer will undertake a respray.

SMFL wasn't in favour either of Remedy A or Remedy C. It felt they were disproportionate without being afforded the opportunity to repair the car. However, it also said that the sum proposed in Remedy B didn't seem proportionate to the price of the car. SMFL noted the difference between the remedial action indicated by E's report and the detailed list of additional work proposed in the original quote Mr S had obtained.

### **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 my provisional decision I outlined my intended findings in respect of whether the car met the test of satisfactory quality, in addition to a number of ways in which the dispute might be resolved. I've not been provided with any reason to reach a different outcome in respect of whether the car was of satisfactory quality or what the CRA says about liability for this. For clarity, my findings on these aspects are unchanged from those I set out in my provisional decision.

I appreciate the difficulties that are involved in establishing a fair resolution, which is why I set out a range of alternatives. It seems to me that both parties would favour a repair to the car, so the issue at hand is the extent to which that can be achieved without the cost of doing so becoming disproportionate.

I referenced in my provisional decision a quote Mr S had obtained, which I felt covered rather more work than might reasonably be expected to deal with the paint defects. I said previously that there will inevitably be a degree of betterment when a professional respray is carried out. It would also be unreasonable to expect a professional to undertake such work where the base material is potentially defective, as is suggested here and in the attached video that Mr S obtained to provide an expert opinion of the work required.

SMFL hasn't offered evidence of any steps it has taken to effect a repair or obtain its own quotes of the work necessary to achieve the appropriate appearance and finish. In the absence of this or Mr S being able to find a professional willing to undertake the work without replacing doors and panels, it seems that the repairs quoted might be the only way in which an appropriate appearance and finish might be achieved.

Given the evidence of the body repair expert, which includes concerns over the amount of filler material in the areas for repair as well as the depth of paint and likelihood of poor adhesion, I don't consider the suggestions made by the E to be a suitable remedy. But with the degree of betterment, I also don't consider it right that SMFL meets the full cost as

shown in the repair quotes, though it should of course pay the £93 cost of Z's report as it previously said it would.

It's with this in mind that I have decided that SMFL paying a total of £3,093 as a contribution to the overall cost Mr S either has or is likely to face represents a fair way to resolve the dispute.

### **My final decision**

My final decision is that I uphold this complaint. To settle it, I order Specialist Motor Finance Limited to pay Mr S £3,093 within 28 days of the date on which we tell it of his acceptance of this decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment, calculated at 8% a year simple.

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

Niall Taylor  
**Ombudsman**