

The complaint

Mr F complains about the quality of a car supplied on finance by Specialist Motor Finance Limited ('SMF').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

SMF supplied Mr F with a car via a hire purchase agreement in March 2023.

Mr F is not happy with the quality of the car. He says that problems started with it at an early stage and some issues continued despite repairs. In particular, a problem with the gearbox.

Mr F approached SMF to complain and requested to reject the car and receive compensation for the issues with it. SMF did not agree to this and said that repairs were carried out through the dealer – and there is no evidence these failed. It said an expert report supports this finding. It said Mr F had a courtesy car when the car was repaired so it would not be willing to offer compensation.

Mr F referred the matter to this service. Our investigator thought Mr F's car was of unsatisfactory quality – and he should have been given the opportunity to reject it sooner. As SMF had already repossessed the car our investigator recommended it end the agreement with nothing further for Mr F to pay, and pay Mr F compensation for what had occurred, and amend his credit file.

SMF did not respond substantively so the matter has come to me for 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. SMF is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from now on') says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

SMF supplied Mr F with a second-hand car that was around 9 years old and had done almost 96,000 miles at the point of supply. The dealer priced it at less than what a new or newer model with less mileage would cost. It is fair to say that in these circumstances a reasonable person would consider that the car had already suffered significant wear and tear – and was likely to require more maintenance and potentially costly repairs much sooner than you might see on a newer, less road worn model.

With that said, although the overall expectations regarding the durability of the car would be reduced, it was still priced at about £15,000 – which isn't an insignificant amount of money. In the circumstances I would not be expecting it to have issues with major components from an early stage. However, that is what appears to have occurred here. I will explain.

My starting point is that Mr F has provided very detailed and compelling testimony about the ongoing issues with the car. There have been several issues he is mentioned, and some (like an issue with a lock) look to be reasonably expected wear and tear on a car of this age and mileage. However, the ongoing issues with the gearbox in particular (and potentially related problems with handling and noise) appear to be more significant and less expected.

Mr F has shown via detailed photos and testimony that the car was leaking gearbox fluid very soon after he got it. He has provided a detailed evidence document with pictures from May 2023 showing what appears to be a serious gearbox leak. There is then evidence of a job sheet from June 2023 confirming what appear to be significant repairs to the gearbox components. The repairs total almost £1,000 and were arranged and paid for by the dealership.

The gearbox fluid leak was identified soon after Mr F got the car (he says he collected it at the end of March 2023) so it indicates the gearbox issues were likely present at the point of sale. Furthermore, while it isn't clearly linked – Mr F has described noises and issues with the car engaging in drive from an early stage. And although the car was recorded as having an additional 1,000 miles or so at the time of the June 2023 repairs there isn't persuasive evidence to show that Mr F did something which caused the gearbox problem. Or that, at this stage such significant issues are reasonably expected wear and tear.

I know SMF in its Final Response Letter to Mr F's complaint indicated he had the burden of showing if the car was not of satisfactory quality at the point of sale due to issues that occurred from October 2023. And it has indicated some repairs carried out by the dealer were based on goodwill. But it is clear that the gearbox had issues at a much earlier stage than October 2023. And SMF has not focused on this or persuasively shown that this was not indicative of a likely inherent fault. And while it is possible the early repairs were done out of goodwill rather than an admission of liability– it seems less likely here considering the nature and overall high cost of the repairs.

So I consider that, on balance, the gearbox was faulty at the point of sale, rendering the car not of satisfactory quality in the circumstances.

Repairs were carried out to the gearbox in June 2023 – which is not necessarily an unreasonable remedy under the CRA at this stage. However, Mr F has said the issues with the car continued since the repairs including various unusual noises and new handling issues and culminating in signs of further and worsening gearbox leakage on Mr F's driveway which I can see he has photographed from September 2023. He has also provided a report from a recovery company dated in early October 2023 which also confirms the gearbox leak.

From the information I have it appears that the dealer took the car back for further gearbox repairs in October 2023 and it was returned back again to Mr F. However, Mr F took further photos showing the car appeared to still be leaking gearbox fluid – which resulted in the dealer taking the car back once again.

I don't have detailed information about the tests and work carried out on the car at this time. But Mr F has provided credible testimony backed up by photos and other circumstantial evidence to persuade me there was some kind of gearbox fault after the repairs that were carried out in June 2023. This strongly suggests the initial repairs on the gearbox failed. If the repairs were successful it seems unlikely that a gearbox leak would occur within a few months. I say this also noting that during this time the car had not covered excessive mileage (the recovery company diagnosis in early October 2023 notes the mileage had increased by about 1,700 miles at that stage).

I know the dealer has indicated the later repairs to address the leaking gearbox fluid were for something unrelated to the earlier gearbox issues. However, it has not provided persuasive evidence of this. While things are not entirely clear I think it is unlikely the car would have gearbox fluid leaking if it was completely unrelated to the initial problems which were also highlighted by gearbox fluid leaking. Furthermore Mr F has provided credible testimony about the handling and noise issues with the car since the initial repairs. Which also could suggest it wasn't carried out properly. While this is only based on testimony and circumstantial evidence SMF has not provided persuasive evidence to show otherwise and reinforce a finding that those repairs in June 2023 were carried out successfully.

And while I note the expert report carried out in November 2023 does not identify any failed repairs. In considering this I note:

- The car was confirmed as leaking gearbox fluid in early October 2023 – at this stage repairs had already been attempted for what appears to be the same issue (in June 2023) so with the CRA in mind Mr F fairly should have been given the opportunity to reject the car at this stage. I know that it could be argued he 'accepted' repairs at the time. However, on a fair and reasonable basis I don't think this is a clear case of Mr F agreeing to repairs rather than rejection – it seems he wasn't really given any other option at the time; and
- it appears from SMF's system notes that further gearbox related repairs were likely carried out on the car by the dealer after the second attempt at repairs in October 2023 and before the expert report was carried out. I note that information, including correspondence from the credit broker (prior to the expert report being carried out) suggests that the dealer was planning to carry out further repairs in November 2023. Once again if even more repairs were required then it gives further reason why Mr F fairly should have been given the opportunity to reject the car under the CRA.

The investigator's findings align with mine. In that it seems likely the car had an inherent gearbox fault, and that this wasn't properly repaired, fairly allowing Mr F to reject the car. Yet I note that SMF has not provided a substantive response to the investigator's view. SMF's lack of substantive response, and Mr F's credible and detailed testimony, along with the circumstantial evidence factors in to my overall, on balance findings here.

Overall, because of the apparent ongoing issues with the gearbox in particular, I think when Mr F complained to it SMF should have looked at matters more closely and accepted rejection of the car in accordance with Mr F's rights under the CRA. So I now turn to a fair way to put things right in the particular circumstances.

I note things have moved on because SMF repossessed the car in January 2024 and defaulted the account. Mr F has complained of certain issues which he says were a result of the repossession/default including impacting his credit rating and its impact on loans he was able to get from around January 2024. I am sorry to hear about that. However, I note this isn't something that appears to be part of his original complaint to SMF (and which was referred to this service). That complaint is about the quality of the car. I also note that information on SMF's file indicates the car was repossessed and the agreement defaulted in January 2024 because the car was not insured (it also appears Mr F has not been paying the agreement from around November 2023 too). This would appear to be something separate to the quality of the car issues that could have a significant consequences on the status of Mr F's credit file.

Even if Mr F's reasons for not insuring (or paying) for the car were because of the quality issues I am still minded to say the matter is distinct from the complaint he has made to SMF that was referred to this service - which is not about the repossession/default or the impact of this on his credit rating specifically. Therefore, I am only considering and setting out redress in respect of his complaint about the quality of the car - and not the decision to repossess the car or default the agreement. Or the manner of said repossession/default or any consequential impact of the repossession or default of the agreement including debt collection/recovery action or the adverse information recorded on Mr F's credit file from that point onward. Mr F has not specifically objected to this, and he can complain to SMF separately about these later events if he wants.

In respect to the quality of the car issue. I think that it isn't fair for Mr F to pay for the car after he stopped using it in October 2023. I note Mr F appears to have stopped paying after this point – so isn't due any money back in that respect from SMF. I understand the agreement is now terminated following the repossession. If it isn't then the agreement should be ended. However, SMF should also ensure any outstanding arrears are now written off so Mr F has nothing further to pay in respect of the hire purchase agreement.

Although Mr F should have maintained his payments as required by the agreement, the car was not of satisfactory quality and should have been taken back sooner. So in regard to Mr F's credit file SMF should fairly remove adverse information about missed payments up to but not including the point they repossessed the car and defaulted the agreement in January 2024.

Mr F does not appear to have paid a deposit or provided evidence of paying for any repairs relating to inherent faults – so he will not get money back in that respect.

Mr F has generally used the car prior to November 2023. So my starting point is SMF can retain his monthly rentals. However, he was without the car for periods while repairs were carried out. So he should be fairly compensated for loss of use. SMF has not really been clear about the times Mr F was without the car while it was being repaired so I have to lean on what Mr F has said here.

Mr F said he had a courtesy car for the majority of the time. He says the car was in for repairs for 60 days in total and he had a courtesy car for 50 of these. So fairly he should get back 10 days of rentals when he was without the car.

I note that Mr F says that at least one of the courtesy cars was not equivalent to his car. I note that the dealer has claimed it provided a '*like for like*' car each time the car was being repaired though. Overall, neither side has really made its case out very clearly on this point but I am willing to accept that Mr F suffered at least some degree of impairment.

I also recognise that Mr F has had a degree of impaired use from the car as supplied by SMF, when he was driving it but it wasn't functioning correctly (handling or noise issues for example). However, I note it appears that at least some of the issues with the car were due to reasonably expected wear and tear on an older higher mileage car. And I am persuaded that at least some of the time Mr F received repairs and a courtesy car these were on a goodwill basis when he would normally have been out of pocket for them. So I have to take this into account when balancing what is fair and reasonable.

Overall, I don't think a significant award is due for impaired use in the circumstances. I note our investigator has recommended that SMF refund Mr F 15% of his rentals for a period of 29 days to reflect impaired use (which follows Mr F indicating this being the period he had a courtesy car which wasn't the same specification as his car). I am not necessarily following that exact logic. But noting this is not a science, and factoring in my comments above it seems fair to reflect overall impaired use in the particular circumstances here.

It isn't clear what days Mr F had impaired or loss of use. However, for simplicity I think it fair that any out of pocket interest award on these refunds is calculated from the date of the first set of gearbox repairs in June 2023.

I consider Mr F has been caused distress and inconvenience by the quality issues with the car. And I think this could have been mitigated by SMF acting sooner to resolve these. Mr F has described how things have impacted him and caused stress and inconvenience to his plans with his family. In line with our approach to awards for distress and inconvenience (as featured on our website) I think that £300 which the investigator awarded is fair. I think the

issues have caused more than the usual inconvenience expected in everyday life – with an impact over a notable period of time. In making this award I note that while I have considered Mr F was impacted by how the problems affected his family– I am not able to make an award for their distress and inconvenience specifically. I also note that the overall distress and inconvenience suffered by Mr F has been mitigated to a degree by the courtesy cars which have been provided to him to date.

I consider this is a fair way to put right the quality issues with the car. Mr F can decide if he wants to accept my decision but he is free to reject it and consider other avenues (such as court) if he wishes.

Putting things right

I direct SMF to put things right as set out below.

My final decision

I uphold this complaint and direct Specialist Motor Finance Limited to:

- Ensure that the agreement has ended with no further liability for Mr F;
- remove all adverse information on Mr F's credit file relating to said agreement up until the date the car was repossessed;
- refund Mr F for 10 days of his finance payments;
- refund Mr F 15% for 29 days of his finance payments;
- pay 8% simple yearly interest on this award calculated from the first gearbox repairs in June 2023;
- pay Mr F £300 compensation for distress and inconvenience*

**If SMF does not pay Mr F this award within 28 days of Mr F accepting it then SMF will also be required to pay 8% simple yearly interest on the £300 compensation award calculated from the last date the settlement should have been paid by up until the date it actually pays.*

If SMF considers it should deduct tax from the interest award it should provide Mr F with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 February 2025.

Mark Lancod
Ombudsman