

The complaint

Mr O complains Specialist Motor Finance Limited (SMF) supplied him with a car that he believes wasn't of satisfactory quality. He also complains about a number of customer service related issues

What happened

In July 2023, Mr O entered into a 60 month hire purchase agreement for a used car. The car's cash price was £17,135, it was around eight years old and had travelled 114,190 miles. The total amount payable under the agreement was £32,502 and Mr O was required to pay monthly instalments of £541.

Within a couple of months, he said he started to experience issues with the car. He said a diagnostic machine showed faults code related to the exhaust intake but on another occasion it showed it related to the oil pressure and pump.

In October 2023 the injectors were replaced under warranty. According to Mr O, there was a failure to check any potential consequential damage caused by this fault. He also said when the car was returned to him the mileage reading was a lot lower than before (around 17,000 miles less). He believed the mileage specifically the dashboard dials had been tampered with.

Mr O said within two weeks of that repair, the engine management lights (EML) would come on intermittently and for the next several months the car broke down on numerous occasions.

In April 2024, he complained to SMF about these issues. He also complained that when the car was returned to him there was a mileage discrepancy as the car was showing it has travelled only 9,000 miles which he says wasn't correct. He provided a picture of a diagnostic tool stating there was a fault code that read "Injector Circuit/Open Cylinder 6".

In June 2024 SMF arranged for an independent inspection, the car had travelled 123,213 miles at that point. In summary, the inspection concluded the following:

- There were stored fault codes however they didn't indicate why the engine wouldn't fire;
- The majority of the faults were voltage related which was to be expected considering the low battery;
- Further investigation of the non starting issue is recommended, there may be fuel starvation and this should be checked for previous repairs to the fuel injectors;
- The reported mileage discrepancy could not be confirmed, the mileage recorded on the diagnostic report matched the dashboard. The change of dashboard dials couldn't be confirmed so further investigation was required;
- There appears to be an issue with the fuel system, this is not obviously related to the previous repair, the symptoms are more of a characteristic of a loss of fuel pressure which is normally caused by a fuel pump issue rather than a fuel injector problem;

- The documentation provided suggests the car had covered approximately 9000 miles since purchase however Mr O says the miles were 'clocked' increasing it by around 4,000 miles, this couldn't be verified during the inspection;
- Given the time elapsed since the date of purchase, the car's high mileage and the fact that there was no evidence that the current issues were a result of a previous poor repair, the car owner should be liable for repairs, this was a general maintenance issue not a premature maintenance one.

Mr O strongly disagreed with the findings of the inspection report and said certain parts of the car weren't looked at, the diagnostic equipment used wasn't satisfactory and the documents provided to the inspector by SMF were falsified.

SMF said Mr O had covered in excess of 9,000 miles since purchase and the inspection report had determined the faults were not present at supply therefore they would not be upholding the complaint. Given his stance on the inspection, they said Mr O could arrange to own one from the car manufacturer or another independent inspector.

Following some back and forth, Mr O says SMF's director had made an offer without admission of liability to resolve matters. This offer was for the agreement to end and for the car to be returned at no cost to Mr O. However it was refused by Mr O as he believed he should receive significant compensation. He made a counter offer which SMF didn't accept. Later, Mr O changed his mind about the offer but he was told it was no longer available to him. He complained about this also.

Unhappy with SMF's response, the complaint was referred to our service. Our investigator recommended it wasn't upheld. She concluded there was insufficient evidence the faults reported were present or developing at the point of supply. She believed this was down to wear and tear. She said there wasn't enough evidence in relation to the allegation the mileage had been tampered with. Lastly, she said SMF weren't obliged to reinstate any of the previous offers made.

Mr O disagreed and maintained his stance.

As an agreement couldn't be reached, the complaint has been referred to me 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 decided not to uphold Mr O's complaint. I'll explain why.

But first, I'm aware I've summarised this complaint in less detail than has been provided and I've done so using my own words. No discourtesy is intended by this. I want to assure Mr O and SMF that I've reviewed everything on file. If I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Was the car of satisfactory quality at supply?

Mr O acquired a car under a regulated credit agreement. SMF was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 (CRA) is relevant 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”. To be considered “satisfactory”, the goods would need to 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. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.

Here, Mr O acquired a car that was around eight years old and had travelled over 114,100 miles. As this was a used car with considerable mileage and age, it’s reasonable to expect parts may already have suffered substantial wear and tear when compared to a new car or one that is less travelled. Meaning there’s a greater risk this car might need repair and/or maintenance sooner than a car which wasn’t as road-worn.

Based on the evidence of the warranty repair in October 2023, it’s clear there was an initial fault with the car – the oil injectors and they were replaced under warranty. I note Mr O had travelled over 1,000 miles at that point. But I must emphasise just because there is a fault that doesn’t necessarily mean the car wasn’t of satisfactory quality at supply. In this case given the age and mileage of the car and the amount of miles Mr O had travelled when that particular fault was identified, I don’t find that made the car of unsatisfactory quality. As mentioned above, it’s reasonable to expect parts would be nearing the end of its lifespan and needing replacing or maintaining for a car of that age and mileage.

I note Mr O’s comments that following that repair the engine management lights came on intermittently over the next several months and the car broke down several times. There’s also an indication of fault codes on a diagnostic machine however the results differed between attempts. However I haven’t been provided with sufficient evidence about the same such as what exactly the faults were, what was the mileage of the car at the time, etc. Therefore I can’t reasonably say these faults existed and they made the car of unsatisfactory quality.

I’ve carefully read the findings of the inspection report. I recognise Mr O doesn’t accept its findings or the equipment used to inspect the car. However in the absence of strong and compelling evidence to contest its findings, I believe it’s reasonable to rely on it. As a service, we are not car mechanics however the inspector has the relevant expertise and knowledge to provide an independent conclusion.

There’s insufficient evidence to substantiate Mr O’s claims that the inspector’s equipment was inadequate or the documents provided were falsified by SMF or any other party. Based on SMF’s contact notes, during a call Mr O agreed to the documents that SMF said they would provide to the inspection company. Additionally, while the report says the car’s vehicle identification number (VIN) didn’t automatically detect, based on the pictures of the car and the VIN, I’m satisfied it was the car in question and I’m not persuaded that meant the tools used during the inspection was inadequate.

Given how strongly Mr O felt about the inspection’s findings, SMF agreed that he could arrange his own inspection and they would consider it. I believe that was a reasonable course of action. However I can’t see Mr O arranged for one to take place.

The report makes it clear there are faults with the car but says further investigation is required to identify the source of it. The inspector has also fairly taken into account the previous repair to the oil injectors and having done so, his opinion was that the current faults were not a result of those repairs. It concludes given the significant amount of mileage Mr O managed to cover before the car stopped working (over 9,000 miles), the faults were a result

of wear and tear. Even with further queries made to the inspector in light of Mr O's concerns, the report's findings remained unchanged.

In the absence of any other compelling or expert documentary evidence, I find it's fair to rely on the findings of the inspection report. In light of the above, I find the car was of satisfactory quality when Mr O bought it.

Was the mileage tampered with?

Mr O has also complained the mileage had been tampered with when the oil injectors were replaced. He's provided a picture of a dashboard showing 97,482 miles and according to him, it was taken in October 2023 which was around the time of the repair. However having referred to the car's MOT history between April 2023 and April 2024, I can't see any mileage discrepancy. The job card for the oil injectors also say the car's mileage was 115,293 at the time of repair. I note the dashboard picture provided by Mr O doesn't match the dashboard picture taken by the independent inspector, they appear to be two different ones. I'm satisfied the picture taken by the inspector belongs to the car based on the VIN number. For these reasons and similar to the investigator I find there is insufficient evidence of the mileage being tampered with as alleged by Mr O.

Other

Mr O has also complained the overall service he's received from SMF has been to a poor standard. This includes but not limited to:

- They took longer than eight weeks to investigate the complaint;
- They made an offer to resolve the complaint then withdrew it;
- They sent recovery agents to his home address to recover the car.

SMF accepts Mr O complained to them in April and not May 2024. They agreed to backdate the complaint meaning they had eight weeks from that point to investigate Mr O's concerns. I accept their complaint response wasn't provided within that timeframe but they said this was because Mr O had contested the inspection report and he wanted them to question with it with the inspector involved. SMF made this clear to him in written correspondence, gave an indication when to expect the final response letter and also said he could refer the complaint to our service as the eight weeks had passed. I believe SMF acted fairly in this regard.

Concerning Mr O's conversations with SMF's director, I accept an offer was made to allow the agreement to end at no cost to Mr O and the car to be returned. SMF doesn't deny that happened, they've explained given the extent of the correspondence with Mr O and how strongly he felt about the matter, they were trying to reach a mutual agreement and resolution. However they've made it clear that offer was made without prejudice and without admission of liability.

Having determined the car was of satisfactory quality at supply, I don't find SMF were under any obligation to make such an offer. It was their commercial decision and discretion to do so, as was it Mr O's choice to refuse it. As an agreement couldn't be reached on that informal basis, SMF were under no contractual or legal obligation to reinstate the offer or accept any counter offers from Mr O. SMF have confirmed their offer is no longer available to Mr O and it's not for me to say it should be reinstated.

From my understanding, since this complaint has been at our service, SMF has started the process to recover the car from Mr O which he is unhappy about. They've told our service the reason for this is because they believed the car (their asset) is at risk given Mr O's

comments about disposing it, selling it for salvage, stripping it down or leaving it on a public highway. They also say the car is uninsured and the account is in significant arrears. If this is true, that would be a breach of agreement terms. So as the legal owners of the car, I can understand why SMF had concerns and believed the car could be at risk and needed to be recovered. However they've made it clear that if they do recover the car, they won't do anything with it, it would be stored for safekeeping until our service has reached a final answer on this complaint. Given the circumstances, I find that was a fair and reasonable course of action.

Lastly, there is an indication on file that the account is heavily in arrears and Mr O is experiencing financial difficulty. If that is the case, I would like to remind SMF of their obligations under CONC and they should be treating him with forbearance and due consideration. If following this decision SMF decides to proceed with recovery proceedings, I expect them to do so fairly, in accordance with the relevant laws and in line with the terms of the agreement.

Summary

Taking everything into account, I find the car was of satisfactory quality at supply and the faults identified are a result of wear and tear following Mr O's use of the car.

In regards to the service related issues, I don't find SMF has acted unfairly so I won't be asking them to do anything to resolve this complaint.

My final decision

For the reasons set out above, I've decided not to uphold Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 19 November 2024.

Simona Reese
Ombudsman