

The complaint

Mr L has complained about the quality of a car provided on finance by Specialist Motor Finance Limited (SMFL).

What happened

SMFL supplied Mr L with a used car on a hire purchase agreement in July 2022. The cash price of the car was around £7,200 and it had covered around 85,200 miles since first registration in July 2012. The hire purchase agreement required payments of around £250 for 41 months followed by a final payment of around £260. The total amount payable was around £10,400.

Mr L said that within a few days of getting the car he noticed a number of mechanical problems. He said he contacted SMFL, and it told him to contact the selling dealer who I'll call D. Mr L said he contacted D who refused to take the car back and blocked his number.

Mr L said he contacted the complaints department at SMFL, and he said he was told there was nothing it could do, but he could end the agreement by settling the balance.

Mr L said he kept the car and made every single payment on time until there were around 21 payments remaining. Mr L said the car was unroadworthy and had deteriorated over time so that it wasn't worth the money to fix.

Mr L said that SMFL refused to take the car back and were not willing to work with him to terminate the agreement. He said he wanted the remaining balance written off and compensation as he had paid £6,000 for a car that wasn't worth that much.

Mr L said he did some research online and found that as he had paid over half the balance, he was able to sell it for £1,000. He said he was unhappy that he had to pay £10,000 for the finance and this made him depressed.

Mr L said that following his sale of the car SMFL demanded full settlement of the balance, or it would take further action. He said that he received a letter cancelling the agreement, but the monthly payment was still taken from his account. This led to Mr L making a complaint in July 2024.

SMFL said that Mr L contacted it in August 2022 about minor cosmetic damage on the car and an unforeseen change of financial circumstances which was causing financial difficulty. SMFL said that Mr L informed it that he had already contacted the broker who I'll call Z.

SMFL said that Z told it that faults had not been reported, but that Mr L had contacted Z to ask to reject the car as he had changed his mind. SMFL pointed out that Mr L may have been able to exercise his short term right to reject the car if there was a fault which made the car not of satisfactory quality.

SMFL said that Mr L contacted it again in August 2022 to say there was an oil leak, but as it was out of hours, he was asked to call again the following day. SMFL said that Mr L didn't contact it again until April 2024, when he called to get a settlement figure.

SMFL later found out that the car had been sold and wrote to Mr L to explain that he had breached the terms and conditions of the agreement, so the full balance of the agreement became due. SMFL said Mr L was aware that he didn't have the right to sell the car, and as there wasn't any evidence of faults with the car, it declined to do anything further. In May 2024 SMFL said they were happy for Mr L to continue to make monthly payments.

In its final response SMFL said that as no payments were made since April 2024, Mr L could contact its financial support team to discuss the arrears.

Mr L referred his complaint to our service. He said that he had been told there was nothing SMFL could do but he found out that he did have a cooling off period. Mr L supplied an invoice for £195 from October 2022, and another invoice for fitting a cambelt and a service for £175 in October 2022.

An investigator here looked at the complaint. He said that there wasn't sufficient evidence that there was a fault which made the car of unsatisfactory quality. He didn't recommend that SMFL do anything to resolve the complaint.

Mr L disagreed and supplied further evidence of paying £120 for a repair for an oil leak in August 2022. He said that SMFL were aware of the oil leak and should have the phone calls. He said he had no choice but to repair the car as he didn't get any help and he needed the car to get to work.

The complaint has been passed to me to make a 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've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. SMFL 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 (CRA) 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 CRA 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. In a case involving a car, the other

relevant circumstances might include things like the age and mileage at the time of supply and the car's history.

The CRA 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. The CRA provides for customers to be able to reject the goods if not of satisfactory quality within 30 days from the day after the date of delivery.

When Mr L acquired the car in July 2022 the mileage was around 85,200 and the cash price was around £7,200. The car was first registered in July 2012, so by this stage it was around ten years old. The mileage at supply was average considering its age, and it wouldn't be unreasonable to expect the car to be showing some signs of wear and tear, and that might include the underlying components. The price paid usually reflects the age and condition of the car.

As a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the car of unsatisfactory quality. Mr L has supplied an invoice from August 2022 which shows that a gasket and a seal were replaced to repair an oil leak at a cost of £120. He also supplied later invoices for £195 to pay for parts in October 2022, and an invoice for fitting a cam belt and service at a cost of £175 in October 2022 when the mileage had reached around 87,200. It doesn't appear that this evidence was supplied to SMFL at the time, so I can't say that SMFL have ignored evidence.

I can see that Mr L did contact SMFL within the first 30 days. I've seen the contemporaneous notes from the call Mr L had with SMFL on 9 August 2022, although I don't have access to the actual call recording. The note said "not happy with the vehicle, only noticed after couple of days that there were chips etc. Has been hit for child support, can't afford car. Z refusing to take back and D won't answer phone. Advised will still be liable for cost of vehicle." [sic] I don't think this call note reflects that mechanical defects had been reported, so I don't think it was unreasonable for SMFL to direct Mr L to seek assistance from Z or D, as it didn't consider it had any liability.

It seems that Mr L was also reporting a change in circumstances which was causing financial difficulty. SMFL were required to treat Mr L with forbearance and due consideration, but I won't deal with that aspect as part of my decision as it doesn't form part of his complaint.

Mr L said he found out later that he had a cooling off period. He may have had the right to withdraw from the agreement in the first 14 days, but that would only have allowed him to buy the car from SMFL through cancelling the agreement by paying it off.

I can also see that Mr L contacted SMFL towards the end of August 2022. The note SMFL recorded from the time said "customer advised vehicle has a leakage losing oil and wanted to make a complaint, I advised he would need to speak to the complaints department, provided him with direct line number to call them tomorrow." SMFL could have followed up on this at the time, but I think it would also be reasonable for Mr L to have tried to mitigate the situation by following up on this, especially if it was a significant problem. I think he was given a reasonable instruction on what to do. Had he done so I think SMFL might have taken a closer look at what happened. But I can't see that Mr L contacted SMFL again, even though he paid for a repair in August and again in October 2022.

When something goes wrong with a car it isn't automatically something that the finance provider is responsible for. Sometimes the underlying components of a car suffer wear and tear which might mean that they come to the end of their serviceable lifespan during the course of a finance agreement.

The issue with the oil leak could be due to damage sustained during Mr L's possession of the car, or reasonably expected wear and tear, which wouldn't be SMFL's responsibility. Or it could point to a defect that was present at the point of supply. We don't now have any way of establishing what was wrong which meant it needed those initial repairs.

I've considered other evidence available to me such as the MOT history. This shows that the car passed an MOT in July 2022. The mileage was around 85,200 and there were some advisories, but nothing connected to the faults now reported. The car also passed an MOT in July 2023 with a mileage of around 91,000 and then again in July 2024 with a mileage of around 95,700. I appreciate that by the latest date the car may have left Mr L's possession. But it seems a lot of this mileage could have been covered by the time Mr L sold the car in around April 2024. An MOT check would usually discover excessive or continuous oil leaks, so this doesn't persuade me there was a fault that made the car not of satisfactory quality. I find it unlikely that a car would have been able to cover this mileage with a continuous oil leak, and I haven't been made aware of the nature of any other faults.

I've not seen sufficient evidence to clearly say that there was a fault, and that fault made the car not of satisfactory quality. I've considered Mr L's testimony, and the invoices, but I haven't seen anything else such as an independent report. I'm not saying something definitely didn't go wrong, merely that I don't think it would have been unreasonable for SMFL to have expected there to be some sort of supporting evidence for the faults. And it isn't clear that SMFL were aware of all the faults reported.

I can see that Mr L didn't contact SMFL between August 2022 and April 2024. So, I think it is likely that he was happy with the condition of the car at this time and that he continued to drive it. SMFL said that Mr L asked for a settlement figure in April 2024. I've listened to a call recording and looking at SMFL notes from the time I'm satisfied that Mr L he understood that he could make a complaint. I'm also satisfied that Mr L acknowledged that he could have taken his complaint further at an earlier stage, but so much time had elapsed he didn't think it was now worthwhile. The advisor said he had permission to sell the car, but he needed to be able to settle the agreement in full, and the balance was around £4,600. SMFL received another call on the same day from a third party claiming to have already bought the car.

Mr L has told me that he had already sold the car in March 2024. This was before he contacted SMFL, so I don't think it had an opportunity to offer him alternative options such as voluntary termination which required the car to be handed back.

SMFL found that the car had been sold to a third party, so it terminated the agreement as Mr L had breached the terms and conditions by selling it without settling the agreement. SMFL said the full balance became payable, but it was happy to continue to take monthly payments. I don't think SMFL have acted unreasonably, there was no reason to assume that the balance had been waived or the agreement ended with no further liability, or that Mr L could sell the car and not settle the balance at the same time. It might be fair for SMFL to take further action to collect this debt if it isn't paid. If Mr L is unable to pay due to his financial circumstances, then SMFL need to treat him with forbearance and due consideration. Mr L may want to consider getting debt advice, if he needs support with this our investigator can signpost him to relevant organisations.

I appreciate Mr L is unhappy he feels he's lost out. I'm sorry to disappoint Mr L, but without sufficient evidence of a fault which made the car of unsatisfactory quality and considering the wider circumstances around how SMFL treated him, I find I don't have the grounds to direct SMFL to do anything.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 April 2025.

Caroline Kirby
Ombudsman