

The complaint

Mr E is unhappy with a car supplied under a hire purchase agreement provided by Specialist Motor Finance Limited ('SMF').

What happened

Mr E acquired a used car at the end of March 2023 using a hire purchase agreement with SMF. The car cost £17,495, Mr E paid a deposit of £247 and he was due to make 59 repayments of £512.82 followed by a final repayment of £522.82. The car was just over eight and a half years old and had covered around 86,000 miles.

Unfortunately Mr E says he began to have issues with the car. He said a service light became illuminated, the rear washer wasn't working and the boot had water ingress. He said it was returned for repairs to the dealer but these did not resolve the issue.

Mr E complained to SMF in July 2023 and asked to reject the car. He said the car was returned to the dealer. Mr E then made our service aware of the complaint.

SMF issued a response to Mr E's complaint in October 2023. This said, in summary, that the car was returned to the dealer at the end of July 2023. But it said the dealer had explained it was under the impression the car was being returned for repairs rather than rejection, and so it was delivered back to Mr E.

SMF said it then had an independent report carried out, which said the water ingress was still present and would have been 'leaking after the repair date'. SMF said it was 'supportive' of Mr E's request to reject the car, but it wasn't able to confirm this or close the account. It said as Mr E had referred the complaint, it would work with our service to bring the matter to a close.

Mr E remained unhappy and asked our service to investigate. He told our service he has not used the car since July 2023 and it was not repaired when it was returned to him.

SMF didn't respond to multiple requests from our service for various information about the case. So, our investigator issued an opinion without any further information from SMF. She said, in summary, that based on the very limited information she had that she was satisfied there was likely a fault with the car which meant it was of unsatisfactory quality.

Our investigator said Mr E should be allowed to reject the car and that SMF should pay Mr E £350 to reflect the distress and inconvenience caused.

SMF responded and sent some testimony from the broker. They pointed to what the independent report said about the water ingress and explained it didn't think any issue was present at the point of supply. The broker also said Mr E might have poured the water into the car himself.

Our investigator explained to SMF that it hadn't sent a copy of the independent report to our service, so the contents hadn't been considered in her view.

SMF again didn't respond to further requests for information and so the case was passed to an Ombudsman for a decision. Shortly after, SMF passed some information onto our service including a copy of the independent report.

Our investigator then issued a second view. She explained she now thought the complaint should not be upheld. She said, in summary, that she thought the car was of satisfactory quality when supplied based on the content of the report.

Mr E disagreed and said he still thought he had a right to reject the car. So, the complaint was passed to me to decide.

I asked Mr E to provide some further information to our service. Mr E responded and said he first noticed the water ingress at the end of April 2023 or beginning of May 2023.

I sent Mr E and SMF a provisional decision on 16 October 2024. My findings from this decision were as follows:

Firstly, I'd like to explain to both parties that I may not comment on every point raised nor every piece of evidence. I'll instead focus on what I think are the key facts and what I consider to be the crux of Mr E's complaint. This reflects the informal nature of our service.

Mr E complains about a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr E's complaint about SMF.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint.

This says, in summary, that under a contract to supply goods, the supplier – SMF here – needed to make sure the goods were of 'satisfactory quality'. Satisfactory quality is what a reasonable person would expect, taking into account any relevant factors. In this case, it's important to note the CRA explains the durability of goods can be considered when thinking about satisfactory quality.

I'm satisfied a court would consider relevant factors, amongst others, to include the car's age, price, mileage and description.

It's worth stating up front that there is a lack of evidence on this case. I don't have job sheets, nor a history of repairs or other details of what happened when the car was returned to the dealer. So, this being the case, I've had to make findings based on what I think most likely happened from the limited information I have.

I've seen a copy of the independent report which is dated 21 August 2023. The mileage of the car is noted as 88,555. In relation to the water ingress this stated:

"I opened the tailgate and removed the spare wheel which revealed 2 separate areas of water ingress. The rear washer was operating; however, I could not track a leak."

"The standing water in the spare wheel well will require further investigation. The vendor reported the vehicle had not been driven since returned which suggests water is ingressing into the car, however whether it's a leak from the body or tubing is currently unknown."

"The main issue is water ingress into the luggage compartment, at time of inspection we can't state the cause there is no obvious reason why, having said this from past experience it is known that the tubing that supplies water to the rear washer wiper system can leak and

enter the luggage area.”

Thinking about this, I’m satisfied Mr E’s car had an issue with water ingress into the boot.

In reference to when this occurred, the report notes:

“The level of water ingress would suggest that the water ingress has been ongoing issue for some considerable time however is impossible to state if the water ingress was present at the point of sale, having said this there was no evidence of surface corrosion to the luggage compartment area, no evidence of any mould build up which would suggest that the water ingress has occurred after the date of sale in March 2023.”

I’ve thought carefully about this. Mr E has told our service he first noticed the issue with water ingress around a month after getting the car. I’ve not received anything to make me think this version of events isn’t correct.

Water ingress such as this is not something I think would necessarily be noticed immediately. So I think on balance, given it was noticed only a few weeks after getting the car, that this issue was present or developing at the point of supply.

I appreciate Mr E’s car was used. However, I don’t think a reasonable person would expect a car costing around £17,500 to have water leaking into the boot. It follows I’m satisfied this means the car was not of satisfactory quality.

I’ve noted SMF have raised the particular part of the report that suggested the water ingress happened after the car was supplied to Mr E. I think there are some contradictions in the statement here, as the report also says in the same paragraph as set out above that it is “impossible” to tell if the water ingress was present when Mr E got the car and that it had been going on for “some considerable time”.

But it’s worth explaining that even if I accepted the issue wasn’t present when Mr E got the car, I am satisfied it appeared at some point in the first few weeks of him getting it. Given how soon this was, I’m satisfied a reasonable person would not consider the car to have been durable. It follows this that I would still reach the same conclusion and find the car was not of satisfactory quality even if I accepted what SMF pointed out here.

I have considered what SMF told our service about the broker believing Mr E might have poured water in the car himself. But it has provided nothing to back this accusation up. I think this is highly unlikely. So this doesn’t change my opinion.

The report made other references to issues with fault codes, a hinge cover, cracked body filler and an oil leak. And Mr E also raised some further issues from the time he first got the car. However, there is limited information and testimony about all of these potential faults.

Ultimately, these additional issues wouldn’t affect the outcome of the complaint nor redress, so I don’t need to make any findings here.

What I now need to consider is what SMF needs to do to put things right. Mr E has asked to reject the car. So, I’ve thought about whether he had this right under the CRA.

The CRA explains Mr E would have the ‘final right to reject’ if the car was of unsatisfactory quality and “after one repair or one replacement, the goods do not conform to the contract”.

In simple terms, this means Mr E would have the final right to reject if a repair was carried out to fix the water ingress but it was unsuccessful.

While I don't have full details, I'm satisfied the car was returned for a repair at least once due to water ingress. And the independent report found that the issue still remained.

So, it follows I'm satisfied Mr E had the final right to reject when he told SMF he wanted to reject the car. I think, given Mr E explained he hasn't driven the car since it was returned to him from the last repair, that it's fair and reasonable he is now allowed to do this.

I've also noted SMF in its response to Mr E's complaint stated "We are supportive of your request to reject". But, it then didn't allow Mr E to do this. I suspect here SMF may have been led by the broker and dealer giving their opinions about the right to reject, which is disappointing to see. I would respectfully remind SMF that it is the supplier here and the obligations under the CRA are SMF's to meet, regardless of what any third party thinks.

I've gone on to consider what else SMF needs to do to put things right. I'm satisfied, given I think it's likely the car had water ingress that it wasn't performing as it should. But, I don't think this would've affected Mr E driving the car, and I can't see it's impacted the use of it for the time he was driving it. Mr E also explained he had a courtesy car when his was in for repairs. So, I find SMF can retain the monthly repayments for the time Mr E had use of the car.

Mr E says he stopped driving the car when it was returned to him on 28 July 2023. I can see from the independent report that Mr E told the author at that point that this was the case. And I've not been provided to any evidence to the contrary. So, I think this is most likely and any payments post this point should be reimbursed.

I also think Mr E has suffered distress and inconvenience due to what's happened. I think it's likely he had to take the car to the dealer on multiple occasions. He explained he had to store the car for what is now a considerable time, and I think it must have been stressful to know the car remained in his possession for over a year since he stopped using it. And Mr E has explained he's had to find another car to use during this time. Thinking about this, I find SMF should pay Mr E £350 to reflect what happened.

I gave both parties two weeks to come back with any further comments or evidence.

SMF did not respond to my provisional decision. Mr E replied and confirmed he would like the car collected as soon as possible.

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 thought about everything again, I still think this complaint should be upheld. This is due to the reasons I explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint. I instruct Specialist Motor Finance Limited to put things right by doing the following:

- Cancel the agreement with nothing further to pay
- Collect the car at no cost to Mr E at a time and date suitable for him

- Reimburse Mr E's deposit of £247*
- Reimburse Mr E all repayments made to the agreement post 28 July 2023* **
- Pay Mr E £350 to reflect the distress and inconvenience caused
- Remove any negative information about this agreement from Mr E's credit file

* SMF should pay 8% simple interest on these amounts from the time of payment to the time of reimbursement. If SMF considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr E how much it's taken off. It should also give Mr E a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

** I believe Mr E stopped making payments towards the agreement around this time – if this is the case Mr E should not be responsible for any arrears on the account added for the period post 28 July 2023.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 29 November 2024.

John Bower
Ombudsman