

The complaint

Mr H complains that a used car he acquired through a hire purchase agreement financed by Specialist Motor Finance Limited ('SMFL') is of unsatisfactory quality.

What happened

In April 2023, Mr H took out a hire purchase agreement to cover the cost of a used car. The car cost £16,020. It was just over four years old and had around 99,208 miles on the odometer.

Mr H said he had numerous problems with the car since picking it up. These issues included knocking in the front right suspension, blemishes on the instrument display, the hands-free boot not opening, and problems with the automatic transmission and the rear suspension. Mr H took the car to a local branch of the supplying dealer on 11 July 2023. They inspected the car and said a new gearbox was required. Mr H complained.

SMFL investigated and issued their final complaint response on 20 November 2023. They said they'd tried to arrange for inspection and repair of the car. As it wasn't possible to agree anything within a reasonable timeframe SMFL said they'd agreed to take back the car and unwind the agreement. They set out the amount due back to Mr H after deducting 25 pence per mile to cover Mr H's use of the car.

SMFL said they'd considered the additional expenses Mr H told them about. They weren't prepared to cover the cost of hiring a car while on holiday, but as a gesture of goodwill they'd consider a reimbursement of 50% of the car hire cost in the UK if Mr H could provide invoices. Mr H didn't agree with SMFL's proposal and there followed some negotiation about how to put things right. SMFL maintained their original offer was fair but agreed to pay Mr H £200 for the trouble and upset caused to him.

Unhappy with SMFL's stance Mr H referred his complaint to our service, where one of our investigators looked into what had happened. Our investigator said the car wasn't of satisfactory quality at the time of supply. But he concluded that SMFL's offer to put things right was fair, so he didn't think SMFL needed to do more.

Mr H didn't agree. In summary, he said the car had been of unsatisfactory quality from the outset. He added that SMFL hadn't done enough to try to resolve the problem sooner. Mr H said the car was collected from him in early January 2024. It was sold again in early February 2024, but Mr H said SMFL had still not unwound the agreement and instead reported overdue payments to the credit reference agencies.

SMFL did not respond to our investigator. As no agreement could be reached, the complaint was passed to an ombudsman – and it came to me. I issued a provisional decision on 20 December 2024. In that I said:

"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'm inclined to say that SMFL need to do more to resolve Mr H's complaint."

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

Mr H first complained about the issues he'd been experiencing on 10 August 2023. SMFL liaised with the credit intermediary (who I'll refer to as "D") to arrange for an inspection and repair of the car. It appears that D had difficulties getting in touch with the supplying dealer. When they eventually responded to D on 6 October 2023, the dealership insisted on the car being returned to the location that supplied it (around 100 miles away) rather than accepting the diagnostics from a local branch of the same dealership.

D attempted to mediate, but this failed – and so, SMFL agreed to Mr H's request to reject the car in early November 2023. I don't think that was unreasonable. I understand the car has been recovered and was sold in February 2024, so I don't intend to reach a formal finding on the satisfactory quality of it as all parties appear to accept the car wasn't of satisfactory quality when it was supplied.

What remains for me to decide is what SMFL should do to put things right for Mr H. Both parties have confirmed that the car was returned on 3 January 2024. Mr H said the dealership refunded him £1,510.58, which appears to be the deposit/part-exchange Mr H paid. Unless either party has evidence to show differently, I'm satisfied that the deposit has been returned to Mr H. I'd usually award interest on the return of the deposit for the time Mr H was out of pocket. I can't see that this was included in the refund, so I intend to say SMFL should pay that now.

The CRA sets out that where the final right to reject is exercised, any refund can be reduced by a deduction for use, taking account of the use the consumer has had of the goods (in this case, the car). If there hadn't been an offer to resolve the complaint already, my starting point would be to consider how much of the monthly rental the lender may keep, bearing in mind the impaired use of the vehicle.

From what I've seen, Mr H covered around 5,626 miles between 27 April 2023 and 3 January 2024. So, while there were problems with the car, I can see Mr H was able to drive the car regularly. For that reason, I'd normally say it's fair for SMFL to keep most of the monthly rentals Mr H paid. But it's clear that the car wasn't performing in the way it should have, and this affected Mr H's driving experience – and so I'd propose a refund of 20% of the monthly rental. In this case, it also appears that Mr H didn't use the car for around three weeks in November 2023 in anticipation of the car being returned to SMFL. I'd normally be inclined to say that SMFL should return the entire rental for that month.

That said, I don't propose to direct SMFL to do more in respect of the monthly payments. I say this because I think the refund they've already made goes further than the refund I'd propose, as set out above. To explain, SMFL initially said they'd charge Mr H £0.45 per mile, but later reduced this to £0.25 per mile. Mr H had covered around 5,626 miles so the total deduction came to £1,406.50, and SMFL refunded £1,613.23 to Mr H.

The finance agreement Mr H entered into required him to make monthly payments of

£431.39. He's made seven regular payments before the car was taken back. So, even if I were to suggest that SMFL's refund should include the November 2023 monthly rental (or, indeed, the cost of renting a car during that period), my usual approach would leave Mr H worse off than the deduction he was able to agree with SMFL.

Mr H said he'd planned to take the car abroad for a family holiday. Because of the problems with the car Mr H couldn't do so. He said because of that he had to pay for flights and car hire at his destination. I'd note here that the agreement Mr H entered into with SMFL sets out that he isn't permitted to take the car abroad unless SMFL agree to this. I haven't seen anything to suggest Mr H asked SMFL for consent prior to his holiday.

I can't be sure what SMFL would have done had Mr H asked them for permission to take the car abroad. It's possible they'd have declined – in which case Mr H would have had to make alternative arrangements. It's equally possible SMFL would have agreed to Mr H's request. But in that case, Mr H would have incurred costs including the cost of crossing into mainland Europe, petrol and wear and tear on the car. Simply put, Mr H would always have incurred costs for travelling abroad, be that by car or by plane. It follows that I can't fairly say that these are additional costs Mr H incurred solely because of the problems with the car. And so, I don't think SMFL should reimburse Mr H for the flight and car hire abroad.

Once Mr H had handed the car back on 3 January 2024 SMFL needed to unwind the agreement. But Mr H told the investigator in March 2024 that SMFL was still asking him for payments and were reporting adverse information on his credit file. I'd have expected SMFL to close Mr H's account shortly after they recovered the car. If they haven't already done so, they should process the account closure now. This should include removing any adverse information from Mr H's credit file SMFL recorded in relation to the agreement since they agreed rejection of the vehicle in November 2023.

Mr H has told us how upsetting he's found the whole experience. He's spent significant time trying to resolve the matter, and when the car was collected it appears that SMFL didn't unwind the agreement in good time. Mr H said they continued to chase for payments after the car had been returned. This caused Mr H further distress. All things considered, I don't think the £200 SMFL offered goes far enough. Instead, I think SMFL should pay Mr H £300 to compensate him for the upset caused.

Finally, Mr H said he sought legal advice in relation to this complaint. I haven't seen what that advice entailed, but in any event, legal advice wasn't a prerequisite to bringing a complaint – it was Mr H's choice to do so. I can't reasonably direct SMFL to cover the cost Mr H incurred here."

SMFL said they had nothing further to add, other than to say that the agreement was closed in February 2024 and so the information reported to the CRA should have been removed for some time. They added that Mr H should contact them with a copy of his credit file if any amendments were still outstanding.

Mr H also replied. He said the legal cost wasn't in relation to bringing the complaint to our service, but rather to find out about his rights regarding the problems with the car. He said it was a consequential loss of SMFL's refusal to help him.

Mr H also asked me to include a 50% refund of the car rental cost for November 2023. He said SMFL had previously agreed to pay this but despite sending them the bill they haven't done so.

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 carefully considered what Mr H said about the car rental cost. I appreciate Mr H stopped using the car because rejection had been agreed. And he was reliant on a car due to work. In my provisional decision I explained this service's usual approach. In the circumstances of Mr H's complaint, I'd say a deduction of 20% of the monthly rental of £431.39 fairly compensates Mr H for the impaired use of the car. Mr H had the car for around eight months, although he didn't use the car for one month. So, the deduction would see Mr H receiving a refund of £603.96.

He should then get a full refund for the month he didn't use the car - £431.39. If I was then to award the 50% of the car rental as Mr H has asked, the total refund due would come to £1,492.85 (£603.96 plus £431.39 plus £457.50). SMFL have already refunded Mr H more than this – a total of £1,613.23. In other words, the refund Mr H was able to agree with SMFL prior to the complaint being referred to our service leaves Mr H in a better position than the approach I'd usually be taking (and including the 50% refund Mr H is asking for).

I do understand Mr H's point – SMFL had agreed to consider a contribution of up to 50% of the car hire in addition to the refund. Although I won't include a partial refund of the car hire cost in my redress, SMFL is free to consider the invoice Mr H provided in line with their original offer.

Mr H clarified that the legal costs he incurred were to establish his rights in relation to the problems with the car rather than making the complaint. But I don't think that means the legal costs were a consequential loss as Mr H asserts. The legal costs result from Mr H's decision to seek legal advice rather than from SMFL's actions. I appreciate Mr H wanted to understand what his rights were, but there were other ways he could have gone about that, including free-to-use services. So, I can't fairly say SMFL should now refund Mr H.

In summary, for the reasons set out above my decision remains unchanged.

Putting things right

Having decided to uphold this complaint, I direct SMFL to:

- end the agreement with nothing further to pay (if that hasn't already been done),
- pay 8% simple yearly interest on the deposit/part-exchange of £1,510.58 from the date of payment until the date it was returned to Mr H*;
- pay a further amount of £300 for any distress and inconvenience;
- remove any adverse information in relation to this agreement reported since November 2023 from Mr H's credit file.

* If SMFL considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much they've taken off. They should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold Mr H's complaint in part and direct Specialist Motor Finance Limited to take the steps outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 February 2025.

Anja Gill
Ombudsman