

The complaint

Miss C complains about a car supplied to her using a hire purchase agreement taken out with Specialist Motor Finance Limited ("SMFL").

What happened

In March 2024, Miss C acquired a used car using a hire purchase agreement with SMFL. The car was around nine years old, the cash price of the car recorded on the agreement was £10,680, the agreement was for 60 months, made up of 59 regular, monthly repayments of £302.57, followed by a final payment of £312.57, which included a £10 option to purchase fee. The third-party credit intermediary to the agreement said the car's mileage was 54,523 miles at the point of supply.

After a few weeks of acquiring the car, Miss C said she experienced a rattle coming from the engine and she said she had to regularly top up the car's engine oil and coolant.

The supplying dealership said that the car was given back to them and a courtesy car was provided to Miss C while they inspected the car. The supplying dealership also said the car was collected by Miss C once repairs had been carried out.

Miss C referred her complaint to our service in June 2024 after initially complaining to the third-party credit intermediary. She said no repairs were carried out to the car and that it had always been in her possession. She explained the supplying dealership was around a three-hour drive away and that she hadn't given the car to them for repairs to be carried out.

An independent inspection was carried out to the car in August 2024, when the car had been driven 58,476 miles in total. The report concluded that all the symptoms identified were characteristics of a breach of the head gasket, but further investigation needed to be carried out under workshop conditions. It also said that as the car had only been driven around 3,000 miles since the point of supply, it led them to the conclusion that the symptoms were at the very least in the development stage at the point of supply.

Our investigator upheld Miss C's complaint. In summary, she explained that there was a fault with the cylinder head gasket and that it was likely present or developing at the point of supply. And so, she thought SMFL should arrange for the car to be repaired, among other things.

Miss C accepted the investigator's findings.

SMFL responded and said they would need the car to be returned to the supplying dealership to be inspected before they can confirm whether they accepted the investigator's findings. Our investigator thought this was fair and explained this to Miss C. The investigator also explained that if it was deemed any repairs carried out would be uneconomical, then a rejection may be considered a fairer remedy.

SMFL later said that they determined the costs involved were uneconomical and proposed a rejection and unwinding of the agreement.

Our investigator issued a further view where, among other things, she said Miss C should now be allowed to reject the car. SMFL accepted the investigator's further findings.

Miss C asked for the complaint to be referred to an ombudsman for a final decision as she preferred for SMFL to replace the car, rather than rejecting it and ending the agreement. And so, it was passed 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'm upholding this complaint, and I'll explain why below.

I'm aware I have summarised events and comments made by both parties very briefly, in less detail than has been provided, largely in my own words. No discourtesy is intended by this. In addition, if there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Miss C complains about a car supplied to her under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Miss C's complaint about SMFL.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – SMFL here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note that the car Miss C acquired was used, around nine years old, had been driven around 54,500 miles and cost £10,680. I think a reasonable person would accept that it would not be in the same condition as a new car and was likely to have some parts that are worn.

What I need to consider is whether the car was of satisfactory quality when it was supplied. And in order to do that, I first need to consider whether the car developed a fault.

Had the car developed a fault?

The car was inspected by an independent engineer in August 2024, around 3,950 miles after the point of supply. The report said:

"The vehicle was road tested over 3 miles and up to speeds of 70 miles an hour... the engine temperature was elevated, this in conjunction with the fact that the vehicle owner is having to top up the coolant regularly suggesting that the vehicle is in the very early stages of a breach of the cylinder head gasket..."

...Symptoms of all the characteristics of a breach of the head gasket however this will require confirmation under workshop conditions."

Considering the above, and what Miss C has said about the frequency of having to top up the car's engine oil and coolant, I'm persuaded by the findings of the independent report here. I accept that the engineer suggested that the conclusions reached would need to be confirmed under workshop conditions, but, in any event, I'm satisfied that there is likely a fault with the car in the early stages, which is likely in relation to the cylinder head gasket. I say this because if the fault could have been in relation to another issue, I think it would have been reasonable for the engineer to also explain this in the report.

Was the car of satisfactory quality at the point of supply?

I have noted that the independent inspection report said:

"... would lead us to the conclusion that the symptoms were at the very least in the development stage at the point of purchase...".

Considering the fault initially presented itself shortly after the car was acquired, and the inspection report says they believed the fault to be a pre-existing condition, I'm satisfied the fault was likely present or developing at the point of supply.

Remedies under the CRA

SMFL has already proposed and agreed to Miss C rejecting the car, but my understanding is that Miss C would prefer a replacement car and for her agreement to continue. There are a few remedies available to Miss C if a car is found to be of unsatisfactory quality under the CRA.

One of her options would be a repair. But given that the independent report couldn't confirm with certainty the specific fault with the car, and SMFL has said any likely repairs would be uneconomical, given the nature of the likely fault, I'm not satisfied that a repair would be fair in the circumstances. At this stage, if I was to make such a direction, it isn't clear what repairs would need to be carried out and the cost of those repairs. So I don't think this remedy would be appropriate in this instance, given the time that has also passed, and the car has continued to be used.

Similarly, I don't think an appropriate remedy would be a price reduction in this instance, given the nature of the fault and the costs involved haven't been quantified, to date.

Another option for Miss C would be a replacement of the car. However, in this instance, I don't think this remedy would be fair to SMFL. The car is now around ten years old and is used. I don't think it would be reasonable and practical for SMFL to be able to source a like for like replacement.

This means the available option for Miss C in this instance is rejection. I'm satisfied Miss C has the right to reject the car, given the car was of unsatisfactory quality. And I think this is fair because SMFL has already had the opportunity to investigate and repair the car and I don't think it is practical for SMFL to find a replacement.

Loss of use and impaired usage

Miss C has suffered from impaired usage of the car, as at times it was not performing as it should, considering how often she says she had to top up the car's engine oil and coolant levels, starting from a few weeks after acquiring the car.

Miss C covered around 4,000 miles in the car up until when it was inspected in August 2024. And she has likely covered more miles in the car since as she says she has needed it to travel to and from work. So she had reasonable use of it.

Thinking about this, I think pragmatically, a 5% refund on payments across the entire period the car wasn't working as it should is reasonable. So, from May 2024 up until when the agreement ends and the car is collected.

Distress and inconvenience

I think it must have been frustrating for Miss C to have to deal with the issues the car had. The fault meant that Miss C had to continue to monitor the car to ensure it was in a driveable state from May 2024 onwards, and she explained this was distressing to her as she was worried how she would get to work every day. I can see how this might have been distressing and worrying for Miss C. Thinking about all of this, SMFL should pay Miss C £250 to reflect what happened.

My final decision

For the reasons I've explained, I uphold this complaint and instruct Specialist Motor Finance Limited to put things right by doing the following:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Miss C at a time and date suitable for her.
- Reimburse Miss C 5% of repayments made towards the agreement from May 2024 up until when the car is collected. *
- Pay Miss C £250 to reflect the distress and inconvenience caused.
- Remove any negative information about this agreement from Miss C's credit file in relation to this complaint, if any.

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If SMFL considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Miss C how much it's taken off. It should also give Miss C a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 28 May 2025.

Ronesh Amin
Ombudsman