

The complaint

Mr B complains that a car acquired with finance from Specialist Motor Finance Limited (SMF) wasn't of satisfactory quality.

What happened

In March 2022 Mr B was supplied with a car and entered into a hire purchase agreement with SMF. At the point of supply the car was around 6 years old and had covered around 36,262 miles.

In March 2023 Mr B experienced issues with the gearbox and a loss of power. He took the car to a garage and obtained a diagnostic which stated that there was a fault with the gearbox and that the gearbox needed to be replaced.

Mr B raised a complaint with SMF and asked it to cover the costs of repairs. Mr B later paid for the repairs himself on 14 March 2023 at a cost of £4,729.20.

In its final response, SMF said it wasn't upholding Mr B's complaint. It said it hadn't been able to arrange an inspection of the car to determine whether the fault with the gearbox was present or developing at the point of supply. SMF also said that because the car had covered around 15,000 miles since the point of supply before the gearbox fault occurred, it didn't think the fault was present or developing at the point of supply.

Mr B wasn't happy with the response and brought his complaint to this service.

Our investigator didn't uphold the complaint. He said that because there hadn't been an independent inspection of the car, there was very limited information available to determine whether the fault with the gearbox was likely to have been present or developing at the point of supply. The investigator said that if the fault with the gearbox had been present at the point of supply, he thought it was likely that Mr B would've experienced issues with the car sooner than he did. The investigator concluded that it was more likely that the problem was due to wear and tear.

Mr B didn't agree. He said he'd gone ahead and had the car repaired because he'd been told that an independent inspection would take two weeks to arrange, and he needed the car repaired as he used it to get to work. Mr B said he didn't think it was reasonable that a car he'd had for under a year needed a new gearbox.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of the

goods includes their general state and condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr B was around 5 years old and had covered around 36,262 miles. So it's reasonable to expect that the car would already have a degree of wear and tear and that it was likely to require repairs and maintenance sooner than a brand new car.

Under the Consumer Rights Act 2015, where a fault occurs with a car within the first six months of the point of supply, it's assumed that the fault was present or developing at the point of supply and it's generally up to the business to put things right.

Where a fault occurs outside of the first six months of the point of supply, the burden of proof is reversed and it's up to the consumer to prove that the fault was present or developing at the point of supply.

I've reviewed all the available information about the problems which Mr B experienced with the car. Based on what I've seen, I'm satisfied that the car had a fault. I say this because the diagnostic report and the repair invoice from the third party garage show that there was a fault with the gearbox which required the gearbox to be replaced.

I've gone on to consider whether the car was of satisfactory quality when supplied.

An independent inspection report can help to determine whether the fault was likely to have been present or developing at the point of supply. In this case, no inspection took place because Mr B had already arranged for repairs to be completed. So I have very limited information available to determine whether the fault was present at the point of supply.

Neither the diagnostic report nor the repair invoice from the third party garage say anything about what caused the fault, or whether the fault was likely to have been present or developing at the point of supply. So these documents aren't useful in trying to determine whether the fault was present at the point of supply.

The car was around 5 years old at the point of supply and had covered around 36,262 miles. It passed a MOT in February 2022 – a month before Mr B purchased it – with no advisories. I can see that Mr B covered around 15,000 miles in the car in the first year that he had it before the fault occurred. Taking all of this into account, I don't think it's likely that the fault with the gearbox was present or developing at the point of supply. I say this because if the fault had been present, I don't think Mr B would've been able to cover the mileage that he did.

The legislation places the burden of proof on Mr B to show that the fault was present or developing at the point of supply. I haven't seen any evidence which suggests that the fault was present at the point of supply, or that the car was of unsatisfactory quality when it was supplied. Therefore I'm unable to uphold the complaint and I won't be asking SMF to do anything further.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 November 2023.

Emma Davy

Ombudsman