

## **The complaint**

Mr B is unhappy that a car supplied to him under a hire purchase agreement with Specialist Motor Finance Limited ('SMF') was of an unsatisfactory quality.

## **What happened**

In January 2023, Mr B was supplied with a used car through a hire purchase agreement with SMF. The agreement was for £6,595 over 60 months; with 59 monthly payments of £208.40 and a final payment of £218.40. At the time of supply, the car was just over nine years old, and had done 77,292 miles (according to the MOT record for 2 December 2022).

Mr B started to have problems with the car braking, the ABS, and the traction control. In March 2023 he took it to a garage for inspection and he was told that the MOT advisories (for worn suspension pins/bushes) hadn't been fully repaired.

Mr B complained to SMF on 21 March 2023, and, on 4 April 2023, the car was taken to the supplying dealership for repair. The car was returned to Mr B on 20 May 2023, after an ABS sensor and wheel bearing had been replaced. However, Mr B continued to have problems with the car. He had it inspected in July 2023. This inspection said the car didn't reach the minimum requirements of an MOT due to the tyres and suspension. A further inspection confirmed the tyres were out of alignment. As a result, Mr B stopped using the car.

SMF said that the car was still road legal and, given that he'd done around 5,500 miles since supply, they thought all the issues with the car were because of wear and tear. Mr B wasn't happy with what'd happened, and he brought his complaint to the Financial Ombudsman Service for investigation.

Despite having a regulatory obligation to do so, SMF didn't co-operate with our investigation - despite requests, and the opportunity to do so, they failed to provide a copy of their business file or any other evidence.

Our investigator said the evidence she'd seen showed there was a fault with the car that became evident within six months of the car being supplied to Mr B. And she thought this made the car of an unsatisfactory quality. Because the dealership had already attempted a repair, and the faults still persisted, the investigator said Mr B should now be allowed to reject the car.

So, the investigator said SMF should end the agreement and collect the car; refund all payments Mr B has made from 26 July 2023, plus an additional payment for when the car was off the road being repaired; reimburse his inspection and repair costs; and pay him an additional £250 compensation.

SMF failed to respond to the investigator's view.

Mr B said that he wanted to reject the car as soon as the faults occurred, but the Consumer Rights Act 2015 ('CRA') gave the dealership the chance of repair. He explained why he wasn't happy with how the dealership treated him, and that SMF gave him *"minimal"*

*assistance.*” He also said that he wanted to reject the car after the faults reoccurred, but SMF denied him his right to do so.

Mr B believes this all caused “a *massive delay*” which impacted him both financially and caused him stress and anxiety. He’s also concerned about how this will impact him going forwards, as he hasn’t been able to afford to maintain payments for SMF while paying for alternate transport costs.

Because of the above, this matter has been passed to me to make a final 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.

Having done so, I’ve reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven’t commented on any specific point, it’s because I don’t believe it’s affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I’ve reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I’ve had regard to the relevant law and regulations; any regulator’s rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr B was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we’re able to investigate complaints about it.

The CRA says, amongst other things, that the car should’ve been of a satisfactory quality when supplied. And if it wasn’t, as the supplier of goods, SMF are responsible. What’s satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle’s history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it’s assumed the fault was present when the car was supplied, unless SMF can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it’s for Mr B to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr B took possession of it, or that the car wasn’t sufficiently durable, and this made the car not of a satisfactory quality, it’d be fair and reasonable to ask SMF to put this right.

Before I explain why I’ve reached my decision, I think it’s extremely important for me to set out exactly what I’ve been able to consider here. I note Mr B is unhappy about how the dealership treated him. However, the dealership is a separate financial business to SMF and, while they had the right of repair, SMF aren’t responsible for what they said to Mr B about the causes of the faults with the car. As such, the actions of the dealership haven’t been considered as part of my decision.

Based on the evidence I’ve seen; I’m satisfied there’s an ongoing fault with the car. When it was supplied to Mr B, the MOT had advisories for worn suspension components. An invoice

dated 18 April 2023 shows that the dealership inspected the brakes and suspension, replacing an ABS sensor and wheel bearing.

However, an inspection invoice for £30 dated 25 July 2023 shows there was still an unacceptable amount of play in the suspension, as well as issues with the brakes and tyres. And these issues meant the car would fail an MOT.

I've also seen photographic evidence that shows tyres worn down to the cord on the inside edge, while the rest of the tyre shows very little sign of wear. This indicates an alignment issue, which is supported by a report showing the alignment of both rear tyres is outside of acceptable tolerance. Based on this report, Mr B paid £185.98 to replace the tyres.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for SMF – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

Given what I've seen, I'm satisfied the issues with the suspension were present when the car was supplied to Mr B, as confirmed by the MOT record, and the dealership had the single chance of repair in April 2023. I'm also satisfied that the inspection reports in July 2023 show this repair was unsuccessful.

The CRA is clear that, if the single chance at repair fails, as was the case here, then Mr B has the right of rejection. And this right should be applied in this instance.

### **Putting things right**

Mr B has had use of the car while it was in his possession, so it's only fair that he pays for this usage. However, once he was advised the car would fail an MOT due to the ongoing suspension issues, he stopped using it. This is supported by the car now having a SORN, and the existing MOT having expired without being renewed. Given the circumstances, I don't think this was an unreasonable course of action for Mr B to take. As such, SMF should refund all payments Mr B has made since 26 July 2023.

It's also not disputed that the car was with the dealership for repair for around two months in April and May 2023, during which time a courtesy car wasn't provided. It's my understanding that SMF have already refunded the April 2023 payment to Mr B. However, as the car was unavailable for two months, they should also refund the May 2023 payment.

Mr B has commented on his alternate transport costs, that were more than the payments he was making to SMF, and he thinks these should also be refunded. I don't agree. I say this because Mr B chose to pay the substantially higher rental car costs, when he could've mitigated his losses, repaired the suspension at the same time as the tyres, and asked for these repair costs to be paid by SMF/refunded to him. As such, I don't think it's fair that SMF refund the payments for when the car wasn't in use and cover the additional hire car costs.

Mr B has also provided evidence of the £215.98 costs he's incurred in having the car inspected and the tyres replaced. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that SMF reimburse these costs.

Finally, it's clear that Mr B has been inconvenienced by what's happened and I think SMF should compensate him for this. The investigator had recommended SMF pay him £250, which is in line with our approach on these matters and what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, SMF should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr B;
- remove any adverse entries relating to this agreement from Mr B's credit file;
- refund the May 2023 payment and all payments Mr B had made since 26 July 2023;
- reimburse Mr B the £215.98 inspection and repair costs he's incurred in July 2023;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Mr B made the payments to the date of the refund<sup>†</sup>; and
- pay Mr B an additional £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If HM Revenue & Customs requires SMF to take off tax from this interest. SMF must give Mr B a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr B's complaint about Specialist Motor Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 January 2024.

Andrew Burford  
**Ombudsman**