

The complaint

Miss G complains about the quality of a car she has been financing through an agreement with Specialist Motor Finance Limited (who I'll call SMF).

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I agree with the investigator's opinion. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Miss G acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then SMF, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Miss G. The car here was almost eight years old and had already completed 102,000 miles.

An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.

In his April 2023 report the independent engineer noted the engine was misfiring and that fault codes, relating to that issue, and an engine management warning light were present. He was persuaded by evidence Miss G was able to supply, that the fault was likely to have occurred when the car had covered about 4,000 miles and when it had been in Miss G's possession for about four months. On balance, it was the independent expert's view that the car was probably failing when it was supplied to Miss G. The independent engineer's have

subsequently provided further comments in which they have explained that even if that mileage was wrong, and the car had covered about 10,000 miles, as the odometer reading may have suggested, the car was still, in their opinion, not durable and was not, therefore, of satisfactory quality.

I'm persuaded by those expert opinions and by the lack of evidence to the contrary, that this car wasn't of satisfactory quality. At best the engine had failed on the vehicle after six months and I think a reasonable person would expect, even a car of this age and mileage, to have provided longer service than that before the engine failed.

I would agree that, in those circumstances, SMF need to take some action.

Putting things right

The relevant legislation allows the business one opportunity to repair a fault that was present when the car was supplied. I don't think that's practical here as it seems the cost of repair is significant. Text messages from a third party garage suggest that is in the region of £5,000 to £10,000 depending on what is found when the engine is stripped down. Miss G has also been waiting a long time to have this issue resolved. I think the fairest remedy would be for SMF to allow Miss G to reject the car.

It seems that SMF have already recovered the car from Miss G. They'll need to end the finance agreement, and refund any deposit Miss G has paid, with interest.

They should remove any adverse reports they may have made to Miss G's credit file in respect of this issue.

Miss G has explained that she's been unable to drive the car since 7 February 2023. It's not fair for her to pay for a car she hasn't been able to use, so SMF should refund any finance instalments Miss G has paid them since 7 February 2023. They'll need to add interest to that refund as Miss G has been deprived of the money.

It is, however, only fair that Miss G pays for the use she's had from the car. She was able to complete more than average mileage in the months up to 7 February 2023. So, I'm not asking SMF to refund any finance instalments she paid before that date.

Miss G has explained that she's incurred storage and towing charges as a consequence of the car breaking down. I don't think these costs would have been incurred if the car was of satisfactory quality and I think SMF should therefore, refund them if Miss G can provide receipts. Miss G was required to keep the car insured: I'm not persuaded to ask SMF to refund her insurance costs.

Miss G has been inconvenienced by these issues. She's had to take her car to several garages to be diagnosed; she hasn't been provided with a courtesy car and has had to use public transport; and she's had to escalate her complaint to this Service when I think it could have been resolved earlier. In those circumstances, I think SMF should pay her £400 in compensation.

My final decision

For the reasons I've given above I uphold this complaint and tell Specialist Motor Finance Limited to:

- Allow Miss G to reject the car and end the finance agreement.

- Collect the car at no cost to Miss G if they haven't already done so.
- Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund any finance instalments Miss G has paid since 7 February 2023 inclusive. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund the cost of storage and towing on provision of receipts from Miss G. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Pay Miss G £400 to compensate her for the distress and inconvenience she's experienced.
- Remove any adverse reports they may have made to Miss G's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 8 January 2024.

Phillip McMahon
Ombudsman