

The complaint

Mr H 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 H was supplied with a used car through a hire purchase agreement with SMF. The agreement was for £3,887 over 41 months; with 40 monthly payments of £144.82 and a final payment of £154.82. At the time of supply, the car was around eleven and a half years old and had done 111,704 miles (according to the MOT record for 26 November 2022 and the publicly available adverts for 2 December 2022 and 6 January 2023).

Mr H has confirmed that he had a brief inspection on the interior of the car before he agreed to finance it, but on collection he found the interior of the car to be dirty and worn, with loose seats and broken trim. He says that, after collection, he had issues with the seatbelt warning lights and the airbag warning light.

In March 2023, Mr H had the car inspected, and was told there was an issue with the fuel injectors, the airbags, suspension wear, and general corrosion. He's provided an undated handwritten note on unheaded paper which lists these issues with the car, and he says this was provided to him at the time. It's my understanding that no work was carried out on the car following this inspection.

The car broke down on 4 May 2023, and the report from the attending breakdown company shows this was due to an issue with the fuel injectors. At the time of the breakdown the car had done 113,777 miles – around 2,000 miles since being supplied to Mr H. Mr H took the car back to the supplying dealership, and they undertook some repairs – refurbishing the fuel injectors and fixing the airbag fault - as a gesture of goodwill. However, Mr H wasn't happy that the repairs had fixed the faults with the car, and he complained to SMF.

SMF arranged for the car to be inspected by an independent engineer. This inspection took place on 25 October 2023, at which point the car had done 116,929 miles – around 3,000 more miles than when it broke down and was repaired. The engineer confirmed there was an issue with the fuel injectors but said that this was as a result of general in-service wear and tear, and not because of an issue that was present or developing at the point of supply.

Following this report, and after a review of the evidence Mr H had provided, SMF didn't uphold his complaint. Unhappy with this, Mr H brought the matter to the Financial Ombudsman Service for investigation.

Our investigator said there was a fault with the car, specifically with the fuel injectors. However, due to the age and mileage at the point of supply, and the mileage Mr H had been able to do in the car since it was supplied to him, they didn't think this meant the car was of an unsatisfactory quality at the point of supply – the lifespan of fuel injectors was around 100,000 miles, so the investigator considered the failure to be general wear and tear.

The investigator also said that, due to the age and mileage of the car, cosmetic issues, general corrosion, and sensors reaching the end of their natural life were to be expected. So, the investigator also didn't think this made the car of an unsatisfactory quality when it was supplied. As such, they didn't think SMF needed to do anything more.

Mr H didn't agree with the investigator. He said that the issues with the fuel injectors were flagged by the inspection in March 2023, and the breakdown company in May 2023; and that the airbag fault had been over-ridden by a resistor bypass being put in place. He thought this was sufficient evidence to show that the car wasn't of a satisfactory quality when supplied, and that the independent engineer's report wasn't needed. He also didn't believe the MOT had been done correctly as, if it had, *"they'd of noted the corrosion levels on the certificate."*

Mr H also said that, when he took possession of the car, he did so on the understanding that he was starting a family so needed a car that was safe and clean. And the issues with the back seat meant he wasn't able to secure a car seat.

Because Mr H didn't agree with the investigator's opinion, 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 H 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 Consumer Rights Act 2015 ('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 H to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr H 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.

Mr H was supplied with a used car that was over 11 years old at the point of supply, and which had done in excess of 100,000 miles. While I appreciate Mr H's comments about his expectations the car would be both clean and safe; I'm satisfied that any reasonable person would not expect the car to be 'as new', and for it to have wear and tear commensurate with its age, as well as accepting a greater risk that major components of the car would need to be repaired/replaced sooner than would be expected with a younger car of lower mileage.

Mr H has supplied evidence of the cosmetic issues with the car, as well as its general level on uncleanliness at the point of supply. I appreciate that he only briefly inspected the car, and in poor light conditions, so all these issues may not have been immediately obvious to him. However, this does not detract from the fact that any reasonable person would expect a relatively high level of interior/exterior cosmetic wear and tear given the age and mileage. As such, I'm not satisfied that the cosmetic issues Mr H has raised made the car of an unsatisfactory quality when supplied.

This also goes for the corrosion to the car, and I'm satisfied any reasonable person would expect a relatively high level of corrosion given the age and mileage. I've noted Mr H's comments about the MOT, but corrosion would only be detailed if it caused either a failure or an advisory. So, the absence of any reference to corrosion on the MOT certificate doesn't mean there is no corrosion.

However, if Mr H believes that the car wasn't of a standard where it should've passed an MOT, but a 'clean' certificate was issued nonetheless, then he's raising an accusation of fraud against the MOT tester. Not only do MOT testers fall outside of our jurisdiction to consider, but this is also a criminal matter so is something best dealt with by the courts. As such, it's for Mr H to take legal advice on this, and I won't comment further.

Turning now to the issues with the airbags and fuel injectors. I've seen a copy of the independent engineer's report dated 25 October 2023. The key findings from this report are detailed above, so I won't repeat them here. However, I have noted the engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

The independent engineer has confirmed the fault with the fuel injectors was as a result of general wear and tear, and that the fault wasn't present when the car was supplied to Mr H. While Mr H has provided the handwritten note which shows the fault with the fuel injectors, this doesn't say the fault was present when the car was supplied, nor has Mr H provided any other evidence i.e., a report from a different independent engineer, which says it was. As such, I see no reason not to accept the independent engineer's conclusions in this matter.

The handwritten report Mr H has provided also indicates an airbag fault, but again doesn't say it was present when the car was supplied. And he's provided a photograph of a resistor wire in a yellow plug, which he says has overridden the airbag sensor. However, the independent engineer hasn't said there is an ongoing airbag fault, nor has Mr H provided any evidence to show that the airbag is still faulty, and the sensor has been illegally overridden i.e., in such a way that would fail an MOT.

Given this, and while I appreciate it will come as a disappointment to Mr H, I'm satisfied the car wasn't of an unsatisfactory quality when it was supplied. As such, I won't be asking SMF to do anything more.

My final decision

For the reasons explained, I don't uphold Mr H's complaint about Specialist Motor Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 June 2024.

Andrew Burford
Ombudsman