

The complaint

Mrs T's complaint is about problems she's had with a car supplied under a hire-purchase agreement by Specialist Motor Finance Limited ("SMFL"). She considers it supplied her with a car that wasn't of satisfactory quality.

What happened

Mrs T entered into a hire-purchase agreement with SMFL to get a car. At the time, the car was a little over five years old, with a cash price of £18,939. As I understand it, the car had covered around 41,000 miles. Mrs T needed to take the car back soon afterwards to fix issues with a previous windscreen chip repair and seal. This work appears to have been carried out successfully.

But after she'd had the car about a year, the car's engine management system flagged a problem with the diesel particulate filter ("DPF"). Mrs T's local dealership diagnosed that the filter was blocked and that this was preventing the car's usual regeneration system from operating. Mrs T contacted SMFL seeking to reject the car on the basis of a lack of satisfactory quality as required by the Consumer Rights Act 2015 ("CRA").

SMFL wasn't willing to accept rejection based on the dealership evidence, so Mrs T obtained an independent inspection from a third party "S". She submitted this to SMFL, but the lender's position remained unchanged. SMFL noted that S's report didn't identify the DPF blockage as attributable to a fault present or developing at the point the car was supplied. Mrs T wasn't satisfied with SMFL's response and complained to us, expressing the view that, among other things, the DPF issue was a known problem with her type of car and indicated a lack of durability based on the car's mileage.

Our investigator felt SMFL was entitled to take the position it had, and that it wasn't acting unreasonably in doing so. She noted that S's report had made reference to the general upkeep of the car and that a DPF blockage could occur for various reasons, including driving style. The report had also said that the DPF required cleaning as part of ongoing maintenance, rather than because of a material failure. With this in mind, the investigator didn't think there was enough evidence to support a finding of a lack of durability, or that the car was not of satisfactory quality for any other reason.

Mrs T didn't accept the investigator's conclusions, so the matter has been passed to me for review.

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.

In responding to the investigator's assessment, Mrs T has made detailed submissions covering matters such as the quality and content of S's report and conclusions reached by our service in other cases which she considers sufficiently similar to her own case.

I should make clear that my decision is based on the evidence and information pertaining to Mrs T's case, rather than any other complaint that might, on the face of it, appear to have similar features. Further, I'm satisfied that the engineer appointed by S to produce the report was suitably qualified to carry out the inspection and provide expert opinion. While I've noted Mrs T's comments, I see no reason why either SMFL or I should disregard the findings in S's report. It was carried out on the car in question and is in my opinion sufficiently reliable to accept as evidence as to matters such as the car's condition, possible causes and methods of rectification.

SMFL supplied the car to Mrs T, a consumer, under a hire-purchase agreement, a form of credit-related regulated activity. As such, a complaint relating to that activity is covered by our compulsory jurisdiction, to which SMFL is subject. Hire-purchase agreements entered into by consumers are covered by legislation including the Consumer Credit Act 1974 ("CCA") and the CRA, which incorporates certain terms into the contract to supply the car, including that it should be of satisfactory quality.

The CRA says that quality of goods includes aspects such as appearance and finish, freedom from minor defects, safety and durability. According to the CRA explanatory notes, *"the test of whether or not the quality of the goods is satisfactory is determined by what a reasonable person would consider satisfactory for the goods in question, taking into consideration all relevant circumstances including any description, the price and any public statements by the trader or producer or their representatives, such as statements made in advertisements or on the labels of goods."*

As is evident from the above, assessment of quality is an objective test. It isn't enough that a customer is dissatisfied with a car. It's undoubtedly the case that Mrs T is dissatisfied that the car is not currently performing at its best due to the DPF filter issue. But that isn't necessarily a fault in itself. It appears that the filter is blocked due to the level of soot that has built up within the filter, stopping effective operation of the regeneration process.

It doesn't appear to have been established why this build-up of soot has occurred. The reports from the dealership and from S offer a number of possible reasons, ranging from driving style and general maintenance to oxygen or temperature sensors. Even if I could discount the way in which Mrs T used and maintained the car as relevant factors – her stated use doesn't appear to be at odds with the manufacturer's recommendations – the question of the root cause of the problem remains open.

The internal correspondence at the dealership (dated 4 April 2024) says that there may be an underlying issue that can't be established without removal and replacement of the DPF, rather than a failure of the DPF itself. I don't consider the available evidence is currently sufficient to determine that the car wasn't of satisfactory quality. In my view, to make a successful claim Mrs T would need to provide more evidence to demonstrate – whether by reference to absolute proof or on the balance of probabilities – that the underlying reason for the failure is attributable to a part or parts of the DPF system being defective or insufficiently durable.

The initial issue with the car's windscreen and seal was rectified and so I can't say it speaks to the point at which Mrs T should be said to have raised any concerns over satisfactory quality based on the current problem. Mrs T notified SMFL of the current problem with the car in early 2024, around a year after it was supplied to her. Where issues are raised within the first six months there is a rebuttable presumption under the CRA that they were present at point of sale or supply. But that presumption doesn't apply at the point Mrs T raised her concerns. So it would fall to her to show both that the current problem amounts to a lack of satisfactory quality *and* that this was present or developing at the point the car was supplied.

I don't suggest she would be unable to do this, and SMDL should be alive to the possibility that if Mrs T does subsequently present further evidence to it in this regard, it might need to review its position. And I do sympathise with Mrs T, as the current circumstances suggest she is going to have to pay a not insignificant sum to rectify the problem with the car and to establish the root cause in order to pursue her claim. It's possible that she might be able to recover any reasonable outlay on this work, if it produced the evidence necessary to prove her claim. But as things currently stand, I can't reasonably expect SMFL to pay for the work or to agree that Mrs T be permitted to reject the vehicle.

After careful consideration I find that SMFL has not treated Mrs T unfairly by declining to accept her claim that the car it supplied to her was not of satisfactory quality. But I must add that nothing I've said here should be taken as preventing Mrs T in future from obtaining and providing additional evidence to SMFL that might ultimately lead to a successful claim.

My final decision

For the reasons I've set out here, my final decision is that Specialist Motor Finance Limited doesn't need to do anything further to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 1 August 2024.

Niall Taylor
Ombudsman