

## **The complaint**

Mr P complains about a car he acquired with credit provided by Specialist Motor Finance Limited ("SMF").

## **What happened**

In June 2023 Mr P entered into a regulated hire purchase agreement with SMF to finance his purchase of a used car. He paid a deposit of £100. The car was nine years old, and its cash price was £6,750. It had passed its MOT (with three advisories) four months earlier. There appears to be no record of what its mileage was at the point of sale or at that MOT test, but in December 2021 it had been 82,528 miles.

In September the same year, the car broke down, and smoke was observed to be coming from the engine. The mileage then was 90,728 miles. A local garage diagnosed problems with the gearbox and with some other parts (and charged Mr P £72). The dealer who had sold Mr P the car denied liability.

Mr P reported this to SMF, who arranged for the car to be inspected by an independent expert. The expert found that the clutch and some other parts had reached the end of their life, and that the dealer was responsible for this on the ground that they had not been durable enough. Based on that evidence (which has not been contested), SMF persuaded the dealer to repair the car, and SMF agreed to contribute to the cost; that resolution was reached in November. And in December, SMF refunded two of Mr P's monthly payments and also his insurance premiums for two months, by way of compensation (£849.64 in total).

However, by January 2024 the repair work had still not been done. Meanwhile, although Mr P had been provided with a courtesy car, SMF had still required him to pay for that car's insurance. Mr P therefore brought this complaint to our service. He asked to reject the car, and asked for a refund of his insurance payments for both cars. He is represented in this complaint by Mrs K.

A few days later, the car was repaired, and was inspected again by a different engineer. That second inspection revealed that there were still problems with the exhaust, the brake lights, the rear wiper, and the engine management light was still coming on.

Our investigator upheld this complaint. He pointed out that the first expert had recommended that further checks be carried out, but this had never been done, and so it hadn't been clear precisely what repair work had been needed, which was why the repairs hadn't been completed. He thought that by the time further repairs were arranged, Mr P had become entitled to reject the car. So he recommended that SMF end the agreement with nothing further to pay, collect the car (if Mr P has it), refund all of his monthly agreements except for the first three (to reflect usage), refund his deposit, refund the £72 diagnostic fee, refund the insurance Mr P paid for the courtesy car and the original car, refund £50.80 in road tax, and pay interest on all of those refunds at 8% a year. (But SMF could deduct from these refunds what it had paid Mr P in December.) The investigator also said that SMF should remove from Mr P's credit file any adverse information it had reported about the agreement.

At first, SMF accepted most of what the investigator said, but said it wanted to retain £1,895:80 in mileage charges and damage charges arising from an unauthorised repair carried out by Mr P. SMF also said that Mr P had had the car for five months, not three. The investigator agreed that SMF could keep five monthly payments, but he said that there was no evidence that Mr P had damaged the car.

Later, SMF revised its position. It said that the car had been collected in early December, and was repaired and ready to collect by 12 January, so considering the Christmas period, this had not taken an unreasonably long time. The garage had been understaffed, and they had had to wait for a replacement part.

SMF also said that there had been no legal obligation to provide a courtesy car, and it had only done so because Mr P had agreed that he would pay for the insurance himself. So SMF argued that it should not have to pay for insuring the courtesy car (the cost of which was £310).

Because agreement couldn't be reached, this case was referred for an ombudsman's 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 broadly agree with what our investigator said in his revised decision, with a couple of amendments.

First, I don't think that Mr P should be refunded the insurance premiums for both cars. If nothing had gone wrong, he would have been paying to insure one car or another. So ordering SMF to refund both sets of insurance premiums would be putting Mr P in a better position than he would have been in, which is not what our service would normally do in a complaint like this one. Since Mr P was driving the courtesy car, I think it is fair that he should bear the cost of insuring it. (If SMF had paid for that, then I would not have refunded the insurance on the original car.) So I will deduct that from the investigator's proposed compensation.

I have noted that there is a small dispute about when the car was taken to be repaired; SMF says it was at the start of December, and Mr P says it was 29 November. But I don't think I need to get to the bottom of that. I think that SMF has made a reasonable point about the repair being held up a bit by the festive period, given the staff shortages and the time it took to obtain parts from elsewhere. But the time it took to repair the car does not begin in either late November or early December; it starts on 27 September, when Mr P asked SMF to repair it. From then to 12 January is 15 weeks.

Not only that, but the repair in January did not resolve all of the issues, as I've said. The car failed its inspection by the second engineer. Under the Consumer Rights Act 2015, the trader only gets one chance to repair the car, after which the right to reject it becomes exercisable.

So for both of the above reasons, I think that Mr P was entitled to reject the car in January 2024. So I uphold this complaint.

I accept that Mr P had use of the car for five months, and I will take this into account. I will adapt the investigator's proposed remedy to fit the findings I have made above.

I cannot find anything in the terms and conditions of the hire purchase agreement to say that there was a maximum mileage up to which Mr P was entitled to drive, or that he would incur charges if he exceeded it. So SMF may not charge him anything for mileage, nor off-set any mileage charges against the compensation I have set out below.

There is a clause that allows SMF to charge him for damage (other than wear and tear), and I don't know what evidence there is about that, nor was this part of Mr P's original complaint. So I will not make any findings about that here. I will only say that SMF must not *offset* any damage charges against the compensation I have set out below, but if it wants to separately bill him for any damage, and if Mr P wishes to contest that bill as unwarranted or excessive, then he will need to raise a separate complaint about that.

### **Putting things right**

I will require SMF to:

- End the hire purchase agreement with nothing further to pay (other than to the extent that the agreement allows SMF to charge Mr P for damage other than wear and tear, but any such charges must not be set off against the sums I require SMF to pay to Mr P below);
- Collect the car from Mr P (if this has not been done already), at a mutually convenient time;
- Remove from Mr P's credit file any adverse information it has reported about the agreement;
- Refund Mr P's deposit of £100;
- Refund the diagnostic fee of £72 which Mr P paid to the original garage on 29 September 2023;
- Refund each of Mr P's monthly payments under the agreement, except for the first five;
- Refund the insurance premiums Mr P paid for the original car (*i.e.* not the courtesy car) from November 2023; and
- Pay Mr P simple interest on each of the above refunds at the rate of 8% a year from the respective dates of each refunded payment to the date of settlement.

If SMF considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if he is entitled to. (Mr A should refer back to SMF if he is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.)

SMF may treat the £849.64 it has already paid to Mr P in December 2023 as an advance payment towards what I have required it to pay to him above, but it must not set off anything else against that compensation.

### **My final decision**

My decision is that I uphold this complaint, and I order Specialist Motor Finance Limited to put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 December 2024.

Richard Wood  
**Ombudsman**

