

The complaint

Miss I complains that the car she acquired under finance with Specialist Motor Finance Ltd (“Specialist Motor”) wasn’t of satisfactory quality. She wants to reject the car, cancel the finance agreement and asks for her credit file to be updated. She also wants compensation for the impact this has had on her.

What happened

Miss I entered a hire-purchase agreement in December 2019 for a used car. At the time of acquisition, the car was six years old and had been driven for 101,155 miles. Miss I says that the car had engine problems from the outset and she doesn’t think the car was of satisfactory quality at the point of sale. Miss I told us:

- The car broke down within 15 days of her acquiring it and had to be taken back to the garage for repairs. As the issue was related to the timing chain, a full engine rebuild was required and the garage took a month to complete this;
- she wanted to reject the vehicle at this stage, but was asked by Specialist Motor to drive the vehicle following the engine rebuild and she reluctantly agreed;
- the car subsequently suffered from engine over-heating the day after she collected it. Miss I says she collected the car from the garage following the engine rebuild and drove it the three miles to her house. But the following day the car broke down again when the engine over-heated and boiled and was ejected all over the engine bay leaving deposits of dried coolant everywhere;
- the overheating of the engine and the boiling of the coolant can only have been a result of the earlier engine repairs not having been completed properly, and she had to return the car back to the garage to be looked at again;
- it was at this time that the garage identified further issues - the brake lights didn’t work correctly and there was damage to the front alloy wheel and two of the tyres;
- she discussed rejecting the car with the garage and had discussions with it about paying for the damage to the alloy and replacing the car’s badge – she’d changed it for one she preferred;
- the garage accepted her rejection of the car and it retained the vehicle and completed the relevant DVLA paperwork.

Specialist Motor rejected this complaint. It said it had arranged for an independent third party to look at the car. It said the report showed the engine repairs had been completed satisfactorily and it also noted the damage to the alloys and tyres, together with the cosmetic changes made to the car subsequent to Miss I acquiring it.

Specialist Motor said it didn’t believe there were grounds for rejection of the car; it said Miss I had accepted vehicle repairs instead of vehicle rejection, and as these had been completed successfully, the vehicle was of satisfactory quality.

Miss I did not agree, and did not collect the car from the garage, making no further repayments towards the hire purchase agreement.

Our investigator looked at this complaint and said she thought it should be upheld. She said

the vehicle hadn't been of satisfactory quality at the point of sale and she was persuaded that Miss I had wanted to reject it when the car first broke down but was persuaded to wait until repairs had concluded.

She also said that the subsequent independent inspection report which said the car had been repaired satisfactorily wasn't credible; it simply didn't contain the necessary detail to confirm this, and it couldn't have done so, as the independent third party acknowledged that it hadn't actually turned on the engine or driven the car.

In addition to rejecting the car, our investigator also asked Specialist Motor to pay Miss I £300 in compensation for the for the trouble and upset caused by not having a car she could use for such a long period of time.

Specialist Motor disagrees so the complaint comes to me to decide. It says Miss I hadn't made it clear that she was exercising her right to reject the car. And she hadn't provided any evidence that there was an inherent fault with the car at the point of sale.

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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable. Having taken everything into consideration, I think this complaint should be upheld and Specialist Motor need to allow Miss I to reject the car and I'll explain why.

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 a specific point it's not because I've failed to take it into account it's because I don't think I need to comment on it here to reach what I think to be the right outcome. 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 – that is, what I think is *more likely* to be the case.

Miss I acquired a used car through a hire purchase agreement with Specialist Motor. Under the regulations, specifically the Consumer Rights Act 2015 (CRA 2015), Specialist Motor can be held liable if the car wasn't of satisfactory quality at the point of supply.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied "the quality of the goods is satisfactory". The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here, the car wasn't new being around six years old and with a mileage of 101,155. I've noted that Specialist Motor strongly disputes this and says the correct mileage at sale was 98,868, but I've simply not seen any persuasive argument that explains why the figure of 101,155 miles recorded at MOT was incorrect. And in any event, it doesn't make a difference to my findings – the car had been driven around 100,000 miles.

It's unfortunate that Miss I's car experienced a catastrophic failure and had to undergo substantive repairs to its engine so soon after she acquired it – within 15 days. And then the

car had further engine problems after she'd been told that repairs had been successfully carried out – the engine overheated and the car had to be returned to the garage.

The relevant legislation explains that if the fault occurs within the first thirty days the consumer can reject the car without the business having the option to repair the fault. The car's engine failed with 15 days of Miss I acquiring it, during which time she'd driven relatively few miles. So, there is an argument that at this point Miss I should've been able to reject the car.

I don't know whether Miss I was persuaded or pressured into allowing the garage to repair the car, but it seems she chose this route rather than to reject the car outright and by doing so she agreed to keep the car.

But the relevant legislation says that if repairs fail the consumer should be allowed to reject the car. It does not give a business one chance to repair each separate fault that may occur. Whether a vehicle is of satisfactory quality when supplied refers to the vehicle as a whole not each separate component. Indeed, the more separate faults - the more likely it is the vehicle isn't of satisfactory quality.

When the engine overheated just one day after engine repairs had supposedly been successfully completed and the car returned to Miss I, she returned the car to the garage and discussed the rejection of the vehicle. I don't think Miss I accepted further repairs at this point; she discussed rejection of the car with the garage, left it with them, and DVLA were notified of a change in ownership. And at this point I think Specialist Motor should've allowed the rejection as the car clearly wasn't of satisfactory quality.

I also have some concerns about Specialist Motor's independent report – the assessment that the third party undertook on Miss I's car. I consider it most unusual and quite unreasonable that the engine wasn't turned on and the car wasn't driven whilst it assessed the vehicle and prepared its report – especially given that Miss I's principal concerns with the car related to the engine malfunctioning and then overheating. And although I appreciate that the engine was observed externally, this in itself would not confirm that the engine was operating as expected once the car had been driven for a reasonable period of time.

The report did note damage to the tyres, which isn't in dispute, but I don't consider that the report has the level of detail necessary for it to be relied on as a reason to decline the vehicle rejection. While it does consider that the car is of a satisfactory quality following the checks done during inspection, I consider that those same checks were insufficient for the reasons I've already given.

I'm aware that there were some discussions regarding other damage / modifications to the vehicle when the rejection and return of the car were being negotiated between Miss I and the garage. I understand Miss I agreed to pay for wheel repairs that were likely caused when she hit a pot hole, but she says she's not responsible for additional damage to the tracking as the garage had alleged. The garage also wanted her to pay for a rear badge that Miss I had replaced, but she explained that the original badge was still in the car and could be switched at no cost.

Finally, Specialist Motor made some allegations regarding intentional damage – it suggests there was a criminal nature about them and says they were detailed in the independent report. But this isn't something that I can look at – I don't have the power to interview people; I can't cross-examine them or compel them to give evidence under oath. So, if this is something Specialist Motor wishes to pursue, it will need to approach the relevant authorities.

Summary

Taking everything into consideration, I think this complaint should be upheld and Miss I should be allowed to reject the car. I also appreciate that there were some disagreements with the garage on what needed to be paid for by Miss I prior to the car's return. I believe Miss I should pay for repairs to the wheels and tracking as this is likely due to the impact of the admitted pot-hole collision. In addition, as the original vehicle badge was removed, I think it fair for her to pay for the reinstallation of this as well.

Putting things right

Specialist Motor Finance Ltd must accept Mrs I's rejection of the vehicle; collecting the car at no cost to Miss I and ending the finance agreement. I'm also going to ask Specialist Motor Finance Ltd to pay Miss I some compensation in recognition of the inconvenience and distress it has caused her.

My final decision

My final decision is that I uphold this complaint. And I direct Specialist Motor Finance Ltd to:

- allow Miss I to reject the car and then collect the car at no cost to Miss I;
- end the finance agreement;
- remove any adverse reports they may have made to Miss I's credit file in relation to this issue and;
- pay Miss I £300 to compensate her for the distress and inconvenience she's experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 14 October 2021.

Andrew Macnamara
Ombudsman