

The complaint

Mr A complains about the quality of a car he has been financing through an agreement with Blue Motor Finance Ltd, who I'll call BMF.

What happened

I issued a couple of provisional decisions on this complaint earlier this year. An extract from the most recent provisional decision is set out below.

I know it will disappoint BMF, but I'm expecting to uphold this complaint. 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.

Mr A acquired his car under a hire purchase agreement. This is 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 BMF, 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 Mr A. The car here was already about nine years old and had completed 75,124 miles. So, I think a reasonable person wouldn't expect it to be fault free, as would perhaps be the case with a brand new car.

The relevant legislation gave Mr A a right to reject the car within 30 days if there was something wrong with it. The 30 days run from the date of delivery and if, as was the case here, the consumer agrees to a repair, a waiting period starts on the day of request and ends on the day the consumer gets the car back.

Mr A has provided copies of WhatsApp messages with the dealer. On 24 March 2022, 3 days after Mr A took receipt of the car, he complained that the dealer had only fixed one problem of the four he had referred to him. Mr A attached a photograph to that WhatsApp, showing a scratch over the back door/wheel arch.

On 3 April 2022 a further WhatsApp message to the dealer says "How long to check the car problem? It's been three days. I am struggling without car, fix it for me everything or give me my deposit back {sic}". The WhatsApp message trail shows an image of the front grill of the car. It's not possible from that image to see what's wrong with the grill but other photographs

provided by Mr A suggest he was concerned the grill was cracked; I note the independent inspector identified that issue too.

So, I think Mr A had reported faults with the car within the first thirty days and it seems that the dealership did try to repair the issues but didn't repair all of them. In those circumstances the relevant legislation would allow Mr A to reject the car.

And, even if I'm wrong about that, when we consider whether a car has been of satisfactory quality, the relevant legislation asks us to consider whether it has been durable. Mr A says he was concerned about a clutch problem with the car from the beginning. I've not seen evidence he referred the problem to the dealer initially, but he says he did, and the WhatsApp messages suggest they were looking at other issues. I think that's likely as the report from the RAC on 24 May 2022 after Mr A had only completed 1,400 miles in the car, confirms the presence of a "judder in 1st and reverse" and a "suspected clutch fault" that was corroborated by a third party garage in July 2022, and also seems to have been corroborated by another third party garage on 25 March 2022 (although the report is difficult to read, and the provenance of the report is perhaps questionable).

On balance, I'm persuaded the clutch failed on this car at least within the first 1,500 miles. That's resulted in a repair bill of about £1,200 on a car that cost a little less than £8,000 and I don't think a reasonable person would consider the car had therefore been durable.

So, I'm not persuaded this car has been of satisfactory quality.

I'm expecting to tell BMF to collect the car at no cost to Mr A and to end the finance agreement.

They'll need to refund Mr A's deposit and to add interest to that refund as Mr A has been deprived of the money.

I think it's fair that Mr A should pay for the use he's had from the car. It appears that despite the problems with the clutch, he had reasonable use of the vehicle until at least 15 July 2022 when the clutch fault was diagnosed by a third party garage. At that point the car had completed 80,272 miles, or 5,148 miles in Mr A's possession, which is more than average use. Mr A hasn't been able to use the car since then, however; so BMF should refund any finance instalments he's paid since that date or waive any that were due and haven't been paid. They will need to add interest to any refund.

Mr A wouldn't have had to pay for diagnostic reports if the car was of satisfactory quality. So, if Mr A has had to pay for any of the diagnostics that have been carried out, BMF will need to refund those costs if Mr A can provide receipts.

Mr A has described the distress and inconvenience these issues have caused him. He's explained that he's had to borrow his father's car to complete deliveries for work, and he's had to escalate his complaint to this service when I think it could have been resolved earlier. In the circumstances, I think BMF should pay him £250 in compensation.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and tell Blue Motor Finance Ltd to:

- *Allow Mr A to reject the car and end the finance agreement.*
- *Collect the car at no cost to Mr A.*
- *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 that have been paid since 15 July 2022 and waive any that were due from this time and haven't been paid, in respect of loss of use. Add 8% simple interest per year from the date of payment to the date of settlement.*
- *Refund the cost of any diagnostics Mr A has had to pay for and that he can evidence. Add 8% simple interest per year from the date of payment to the date of settlement.*
- *Pay Mr A £250 to compensate him for the distress and inconvenience he's experienced.*
- *Remove any adverse reports they may have made to Mr A'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.*

Additional comments or evidence

BMF had nothing further to add but Mr A did provide some further evidence. He said he was happy for the car to be returned but wanted to explain that he hadn't had the clutch repaired and had been driving the car, carefully, since. The mileage had increased to 99,000, although the problem with the clutch persisted. Mr A said the compensation I had suggested wasn't enough and he explained that he'd changed the battery, fitted new tyres, had the car serviced, and MOT'd, and had "sacrificed a lot financially due to the condition of the car".

What I've provisionally 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 wasn't aware that Mr A had continued to use the car and that the mileage had therefore increased significantly. I was also unaware that he hadn't had the clutch repaired. I think that new evidence changes the redress I suggested in my original provisional decision.

In that decision I explained that I thought Mr A should pay for the use he'd had from the car. He's now explained that he's driven about 24,000 miles since he took receipt of it in March 2022. That's much higher than the average mileage in the UK and I therefore think Mr A has had fair use of the car for the period he's been in charge of it and that BMF should be allowed to retain all the finance instalments paid. That usage may have been impaired by clutch problems, but I'm not currently persuaded to tell BMF to refund any finance instalments in respect of impaired use either as I think Mr A is likely to have damaged the car further by using it when it was broken. I think the impaired use Mr A has had from the car is therefore likely to be offset by the damage he's likely to have done to it.

That doesn't, however, change my view that BMF should have allowed him to reject the car as he'd asked to reject it within 30 days and the issues he reported weren't all repaired.

I've thought about what Mr A has had to say about the distress and inconvenience he's experienced. Whilst he may have replaced some items on his car, the items he's referred to are those that I would expect the consumer to perhaps need to replace through normal wear and tear. They are not therefore the responsibility of BMF. It was Mr A's responsibility to have the car MOT'd and serviced and as he's continued to use the car, and has had fair use from it, I don't think those expenses should be refunded by BMF or that they would lead me to consider a higher payment for distress and inconvenience.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and tell Blue Motor Finance Ltd to:

- *Allow Mr A to reject the car and end the finance agreement.*
- *Collect the car at no cost to Mr A.*
- *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 the cost of any diagnostics Mr A has had to pay for and that he can evidence. Add 8% simple interest per year from the date of payment to the date of settlement.*
- *Pay Mr A £250 to compensate him for the distress and inconvenience he's experienced.*
- *Remove any adverse reports they may have made to Mr A'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.*

Further additional comments or evidence

Mr A accepted my further provisional decision and BMF didn't provide any additional comments for me to consider.

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've not been provided with any additional information that would lead me to change my provisional decision on this complaint.

Putting things right

That most recent provisional decision therefore becomes my final decision on this complaint.

My final decision

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

- Allow Mr A to reject the car and end the finance agreement.
- Collect the car at no cost to Mr A.
- 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 the cost of any diagnostics Mr A has had to pay for and that he can evidence. Add 8% simple interest per year from the date of payment to the date of settlement.
- Pay Mr A £250 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse reports they may have made to Mr A'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 Mr A to accept or reject my decision before 31 July 2023.

Phillip McMahon
Ombudsman