

The complaint

Mr A complains about the way Blue Motor Finance Limited (BM) handled the rejection of a car he acquired through a hire purchase agreement, when he complained about its quality.

What happened

In September 2022 Mr A acquired a used car through a hire purchase agreement with BM. He experienced problems with the rear parking assist and an engine management light around two weeks after acquiring the car, and had a diagnostic completed at the beginning of October 2022 which identified faults with the car. Mr A received an estimate for repairs to replace the alternator, glow plug with pressure sensor and exhaust temperature sensor at a cost of £917.

Mr A complained to BM about the quality of the car in October 2022 and told them he wanted to exercise his right to reject it within the first 30 days. Mr A subsequently returned the car to the dealership, and they informed him it had been repaired and asked him to collect it in mid-October 2022. Mr A said they'd repaired the car without his permission as he'd wanted to reject it.

The car broke down at the end of October 2022, and Mr A paid for it to be recovered for a garage. BM agreed to the rejection of the vehicle, and they sent Mr A their final response to his complaint in November 2022 confirming that they would arrange for the car to be collected and would calculate the refund due to Mr A once this had been done.

There was some confusion over the location of the car, which meant it wasn't collected until mid-December 2022. BM told Mr A that they'd refund his £1,500 deposit, pay £100 compensation for the delays, and refund £65.18 of the monthly payments he'd made which was after a deduction of 25 pence per mile for the miles he'd driven in the car.

Unhappy with this, Mr A brought his complaint to this service for investigation. He said BM should refund all of the payments he'd made under the agreement. He also asked for compensation for the higher interest rate he's paying on his new car, as it was previously 10% and his new agreement was 18%.

Our investigator gave her view that it was accepted that the car was of unsatisfactory quality. She thought that BM should add 8% interest to the deposit refund, refund Mr A £100 for the recovery of the vehicle plus interest, refund Mr A's diagnostic costs if he could provide evidence of these, remove any adverse information from Mr A's credit file, refund any of the payments Mr A made after 26 October 2022 plus interest, as this was when he'd been unable to use the car from, and that they could keep the payments Mr A made before this date to reflect fair usage for the use Mr A had of the vehicle. She didn't think Mr A's use of the vehicle had been excessive, and there was no allowance in the agreement for an excess mileage charge, so she didn't think it was fair for BM to charge for use at a pence per mile amount.

Our investigator said she couldn't consider Mr A's complaint about the new agreement as it was a separate agreement, and she couldn't see that Mr A had raised this complaint with BM.

Mr A accepted our investigators recommendations.

BM accepted the majority of our investigator's recommendations, but they didn't agree with her view on the charge for fair usage. They said Mr A had driven the vehicle 2,365 miles between entering the agreement on 10 September 2022 and 26 October 2022 when the car was recovered. BM said this was more than average, and so it was fair for them to charge a pence per mile for fair usage rather than the monthly payments being fair.

As an agreement can't be reached, the case has been passed to me for a 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.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. BM as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

It's not disputed that BM supplied Mr A with a car that was of unsatisfactory quality, and they've agreed that Mr A is entitled to his right to reject the car. It has been collected, and Mr A's deposit has been refunded. So, I haven't considered this further.

I've considered whether BM have done enough to put things right.

Mr A had the vehicle recovered after it broke down on 26 October 2022 and was unable to use it again afterwards prior to its collection in December 2022. As Mr A had no use of the vehicle past this date, I find it fair that BM refund any payments Mr A made toward the agreement from 26 October 2022 onwards, plus interest.

BM have charged Mr A 25 pence per mile for the 2,365 miles that he'd driven the car. They say his use of the car was above average, and so this charge is fair.

The Consumer Rights Act 2015 sets out that where the right to reject is exercised, the business is entitled to make a deduction for fair usage from any refund due to the consumer.

When Mr A and BM entered the agreement, they agreed that a fair charge for the use of the vehicle was £218.81 a month. The agreement doesn't contain a mileage allowance, and there is no provision for BM to charge for any excess miles covered.

So, I think the monthly payment is a fair starting point when considering what is fair for BM to deduct for use of the car.

Mr A covered 2,365 miles in around a month and a half. Whilst this is above average, I don't think it's excessive usage. There's a possibility that Mr A's use of the car may have evened out to average if he'd had it for the full duration of the agreement. So, I find that the monthly payments under the agreement reflect a fair amount for the use Mr A had of the car, and so BM can keep the payments that Mr A made up until 26 October 2022, rather than a charge per mile driven.

Mr A was unable to use the vehicle for around a week whilst it was in the dealership, and he was unable to use it whilst diagnostics were taking place. BM have refunded £65.18 of Mr A's monthly payments already, and I think this fairly compensates Mr A for these times he was without the vehicle.

BM have refunded Mr A's £1,500 deposit but have not paid interest on this amount. Mr A was deprived of the use of these funds and so I find that BM should pay Mr A 8% simple interest on this from the date of payment to the date of the refund.

Mr A paid £100 to have the vehicle recovered when it broke down. He wouldn't have needed to pay this but for BM supplying him with a vehicle that was unsatisfactory quality, and so I find that BM should refund this amount, plus interest.

Mr A has said that he paid to have diagnostics completed on the vehicle. I haven't seen any evidence of the cost of these. But Mr A wouldn't have needed to pay for diagnostics but for BM supplying him with a vehicle that was unsatisfactory quality. So, if Mr A can provide evidence of the cost he paid for the diagnostics, BM should refund these costs, plus interest.

Mr A has been put to distress and inconvenience in having to complete diagnostics on the car, visit a garage a number of times, and in the delay in collecting the vehicle once rejection was agreed. BM have paid Mr A £100 compensation for this.

All things considered, I'm satisfied that £100 fairly reflects the distress and inconvenience caused to Mr A.

Mr A has asked to be compensated for an increased interest rate on a new agreement. If Mr A remains unhappy with the new agreement, he may wish to raise a complaint about this with BM. If he's unhappy with their response he may be able to ask this service to consider it.

My final decision

My final decision is that I uphold this complaint, and Blue Motor Finance Limited must:

- Refund Mr A's monthly payments from 26 October 2022 onwards
- Refund Mr A £100 for the recovery of the vehicle
- Refund Mr A's diagnostic costs if Mr A is able to provide evidence of these.
- Pay 8% simple interest on all refunded amounts, including Mr A's deposit, from the date of payment to the date of refund.
- Remove any adverse information from Mr A's credit file

If BM considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 August 2023.

Zoe Merriman
Ombudsman