

The complaint

Mr S is unhappy that a car supplied to him under a hire purchase agreement with Blue Motor Finance Ltd ('BMF') was of an unsatisfactory quality.

What happened

In September 2022, Mr S was supplied with a used car through a hire purchase agreement with BMF. He paid a deposit of £500, and the agreement was for £7,295 over 48 months; with monthly payments of £189.58. At the time of supply, the car was almost six and a half years old and had done 58,000 miles (according to the MOT record for 14 September 2022).

Mr S complained to BMF on 16 October 2022 about issues he was having with the car – there was a severe bias in the steering that he thought might be related to a tyre that kept deflating; the parking sensors only worked sporadically; the air conditioning wasn't working properly; the car didn't have the advertised ApplePlay or rear camera; and stereo controls on the steering wheel didn't always work. He said the dealership had asked him to get the car repaired under warranty, but he asked to reject the car.

The car broke down on 30 October 2022 and Mr S had to call a breakdown company. However, the electrics continued to fail, so Mr S didn't think he could safely drive the car. The car was taken back to the dealership for repair on 24 November 2022 and returned to Mr S on 9 December 2022. The same day he complained to BMF that the steering problem remained. This was followed up by a further complaint in April 2023 that the parking sensors had failed again, the air conditioning was still not working correctly, and there was white smoke coming from the exhaust.

Repairs to the AdBlue system were carried out, which resolved the smoking exhaust, but Mr S again complained to BMF that the parking sensors weren't working. BMF arranged for the car to be inspected by an independent engineer. This inspection took place on 17 May 2023, and the engineer said the tyres displayed signs of wear that could be the cause of the steering issue (which was slightly off-centre when driving); and the climate control and parking sensors weren't working.

The engineer concluded *"it is impossible to state if the symptoms were present at the point of sale. Failure of the parking sensors could be the result of a sudden electrical fault and the air conditioning issue may be just that the air conditioning requires servicing as part of normal in-service maintenance and having to adjust the steering wheel is a minor issue and would not affect vehicle be considered fit for purpose even if present at point of sale."*

BMF had issued their response to Mr S's complaint before the independent engineer's report, and they didn't comment on this. So, Mr S brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator was satisfied there was a fault with the car that was present from when it was supplied to Mr S, and this made the car of an unsatisfactory quality. Because there had already been a failed repair to the car, the investigator said that Mr S should now have the right to reject. So, the investigator recommended that BMF take back the car, end the

agreement, refund the deposit Mr S paid, and refund him two weeks payments for the time he was without a car in late 2022.

Mr S agreed with the investigator, but BMF didn't. They said Mr S had travelled 10,000 miles in the car since he acquired it, and it had passed an MOT in October 2023. They also said the independent engineer had said it wasn't possible to say if the faults were present when the car was supplied to Mr M, and the steering issue didn't prevent the car from being fit for purpose. So, they didn't think Mr S should be able to reject the car.

Because BMF didn't agree, this matter has been passed to me to make a final 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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BMF are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMF can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr S to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr S took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMF to put this right.

I've seen a copy of the independent engineer's report, dated 17 May 2022. The key parts of this report have already been quoted above. However, I've also seen the breakdown report from 30 October 2022; the substantive correspondence between Mr S, BMF, and the dealership about the faults with the car, dating back to October 2022; and the photo evidence Mr S has provided which shows there's still faults with the car.

While the independent engineer has said it's not possible to confirm the faults with the car weren't present or developing when it was supplied to Mr S, the additional evidence confirms the faults were present from a few weeks after the car was supplied. Under the CRA, it's for

BMF to show these faults weren't present or developing at the point of supply, and they haven't done so. As such, and based on all the evidence I've seen, I'm satisfied it's more likely than not that the faults were present or developing when the car was supplied, and that these faults remain.

I've also noted the independent engineer has said the steering fault wouldn't mean the car wasn't fit for purpose, even if it was present when the car was supplied (which, as I've already said, I'm satisfied it was). However, the engineer doesn't make the same comments about the other faults. And I'm satisfied the electrical fault which means that the car occasionally loses power and means that the driver assist functions don't always work, would make the car of an unsatisfactory quality when supplied.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for BMF – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

It's clear from the evidence that the dealership attempted a repair in late 2022, and that this repair has failed – the faults they attempted to fix still remain. The CRA is also clear that, if the single chance at repair fails, then Mr S has the right of rejection. And, given the circumstances, I'm satisfied that he should now be allowed to reject the car.

Putting things right

From the evidence I've seen, I'm satisfied that the car was off the road and undrivable between 24 November and 8 December 2022, a period of 15 days. During this period, Mr S wasn't supplied with a courtesy car. As such, he was paying for goods he was unable to use.

As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as BMF failed to keep Mr S mobile; I'm satisfied they should refund the payments he made during this period. However, as Mr S has been able to use the car outside of these dates, he should pay for this, and no other monthly payments should be refunded.

Therefore, BMF should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr S;
- remove any adverse entries relating to this agreement from Mr S's credit file;
- refund the £500 deposit Mr S paid (if any part of this deposit is made up of funds paid through a dealer contribution, BMF is entitled to retain that proportion of the deposit);
- refund the equivalent to 15 days payments from the payment Mr S made in December 2022; and
- apply 8% simple yearly interest on the refunds, calculated from the date Mr S made the payment to the date of the refund[†].

[†]If HM Revenue & Customs requires BMF to take off tax from this interest. BMF must give Mr S a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr S's complaint about Blue Motor Finance Ltd. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 January 2024.

Andrew Burford
Ombudsman