

## The complaint

Mr S complains about the quality of car supplied to him under a hire purchase agreement ("agreement") with Blue Motor Finance Ltd ("BMF").

## What happened

In July 2022 Mr S was supplied with a used car costing £8,795 under an agreement with BMF. The car was acquired with approximately 53,000 miles on the odometer.

Under the terms of the agreement, everything else being equal, Mr S undertook to make a deposit payment of £1,500 followed by 53 monthly payments of £182.71 and 1 final monthly payment of £183.71 making a total repayable of £11,367.34 at an APR of 14.9%.

On 12 December 2022 Mr S complained to BMF about a number of faults with the car including the 'auto hold' not working. (odometer reading approximately 58,000 miles)

On 30 December 2022, at BMF's request, Mr S obtained (at a cost of £45) a diagnostic report which identified 6 fault codes registered in the car's ECU.

On 13 January BMF issued Mr S with a final response letter ("FRL"). Under cover of this FRL BMF said that the supplying dealership had agreed to repair all the faults, an offer which it felt was fair and reasonable in all the circumstances.

On 18 January 2023 Mr S complained to BMF that there were further faults with the car.

On 26 February 2023 the supplying dealership confirmed repairs had been undertaken and confirmed in writing:

*"Carried out full checked on vehicle afterwards found all systems functioning as should and warnings extinguished". [sic] (odometer reading approximately 60,000 miles)*

On 7 March 2023 Mr S confirmed to our service that there were still faults with the car.

On 9 April 2023 Mr S confirmed to our service that the 'auto hold' was again not working, and hadn't been since 26 March 2023, providing evidence in support. (odometer reading approximately 62,000 miles)

Mr S' complaint was considered by one of our investigators who came to the view that it should be upheld. In summary, she said that Mr S was supplied with a car that was of unsatisfactory quality. She then went on to explain what BMF should have to do to fairly and reasonably compensate Mr S which included rejection of the car.

Mr S accepted the investigator's view, but BMF didn't. In summary BMF said that Mr S shouldn't be able to reject the car on the grounds that he accepted the return of his car fully repaired.

The investigator went back to BMF to say that although the car might have been returned to Mr S in late February 2023 fully repaired, the 'auto hold' fault had clearly returned in March 2023. She also added that it would appear that some of the other (repaired) faults had returned along with some new ones.

BMF still didn't agree, so Mr S' complaint has been passed to me for review and decision.

After Mr S' complaint was passed to me for review and decision, BMF confirmed to our service that Mr S had made all the monthly payments due under the agreement to date and Mr S provided evidence that the car had an odometer reading of approximately 66,000 miles.

### **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.

As the agreement entered into by Mr S is a regulated one this service is able to consider complaints relating to it. BMF are also the supplier of the goods under Mr S' agreement and it's responsible for a complaint about their quality.

The Consumer Rights Act 2015 ("CRA") covers agreements like the one Mr S entered into. The CRA implies a term into the agreement that the goods supplied under it are of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age, mileage and the price paid.

In Mr S' case, the car was approximately 9 years old and had covered approximately 53,000 miles when supplied. So, I'd have different expectations of it compared to a brand-new car. Having said that, and as I say above, the car's condition should have met the standard a reasonable person would consider satisfactory, given its age, mileage and the price paid.

Given the faults that occurred and when I can confirm that like the investigator I'm satisfied that Mr S was supplied with a car that wasn't of satisfactory quality. But this isn't the issue in dispute here.

What's in dispute here is whether Mr S should be able to reject the car and be compensated along the lines recommended by the investigator, with BMF saying that he shouldn't be able to reject the car on the grounds he accepted one or more repairs all of which proved to be successful.

Now BMF is correct that under the CRA it (or its agents) have one right to repair any faults identified with the car that made it of unsatisfactory quality when supplied. But the CRA also states that in the event a repair fails, a consumer has a final right to reject. And in this case, based on all the evidence that has been provided, I'm satisfied that the fault with the 'auto hold' that was repaired in February 2023 reoccurred post repair in March 2023.

Now in my view this is sufficient grounds on its own for Mr S to be able to reject the car. But in this case I'm also satisfied that some of the other repaired faults may have reoccurred post repair and some new faults have developed making the grounds for rejection of the car by Mr S even stronger.

So, in summary, I can confirm that I agree with the investigator that Mr S should be able to reject the car and the agreement should be treated as coming to an end. I also agree with the investigator that Mr S should have his deposit returned together with interest. And for the avoidance of doubt, I would like to make it clear that I'm satisfied that rejection doesn't constitute a disproportionate remedy in the particular circumstances of this case.

I'm also satisfied that this whole matter has caused Mr S a degree of distress and inconvenience for which he should be fairly and reasonably compensated for. And taking everything into account I can confirm that I agree with the investigator that £350 constitutes an appropriate sum for BMF to have to pay in this respect. I'm also of the view that given I'm satisfied the car wasn't of satisfactory quality when supplied to Mr S, he shouldn't have to bear the £45 cost of the diagnostic report he obtained and this sum, together with interest, should be refunded to him.

Finally, I can confirm that I'm satisfied that Mr S should be refunded any payments he made in respect of the five weeks 21 January to 26 February 2023 together with interest (on the grounds he wasn't in possession of the car during this time) and 10% of any payments he has made since 16 March 2023 together with interest (on the grounds that although Mr S has had use of the car since this date, this use has been impaired).

### **My final decision**

My final decision is that Blue Motor Finance Ltd must accept rejection of the car and:

- end the agreement with nothing further to pay
- collect the car at no cost to Mr S
- refund to Mr S his deposit of £1,500
- refund to Mr S £28.11 of his 28 December 2023 payment and his 27 January 2023 payment of £182.71 representing five weeks' worth of agreement payments for the period 21 January to 26 February 2023, this being the period the car was in for investigation and repair with the original supplying dealership
- refund to Mr S 10% of the agreement payments made since 16 March 2023, this being the date the 'auto hold' fault reoccurred, to reflect the fact that although Mr S has had use of the car since this date this use has been impaired
- refund to Mr S the £45 he paid for a diagnostic report
- pay Mr S 8% simple yearly interest on all the above refunded sums from the date of payment (by Mr S) to the date of settlement\*
- pay Mr S £350 for the distress and inconvenience he had been caused
- remove any adverse information it has reported, in respect of the agreement, with one or more third party credit reference agencies

\*If Blue Motor Finance Ltd considers it's necessary to deduct tax from these interest sums then it should provide Mr S with a certificate of tax deduction so he may claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 September 2023.

Peter Cook  
**Ombudsman**