

The complaint

Mrs S is unhappy with a car she acquired using a hire purchase agreement taken with Blue Motor Finance Ltd ('BMF').

What happened

In April 2023 Mrs S acquired a car using a hire purchase agreement taken with BMF. The car cost £13,198 and Mrs S paid a deposit of £1,000. She was due to pay £311.64 a month for five years. The car was around seven years old and had covered around 80,661 miles.

Shortly after getting the car, Mrs S says she heard a 'swishing sound' when driving and realised the car door was full of water, which was causing electrical issues. Mrs S says the door wouldn't lock and was difficult to operate.

Mrs S says she spoke to the dealer and asked to reject the car, but it told her it couldn't see the car for several weeks to confirm if she could do this. So Mrs S contacted BMF and also told it she wanted to reject the car. BMF told her to go to an independent garage to have the car looked at.

Mrs S says a garage confirmed the fault and drained the door, and also noted a bulge in one of the tyres. She sent this information to BMF and again asked to reject the car. But BMF told her the dealer needed to inspect it. The car was then returned to the dealer.

Mrs S complained to BMF and it issued a final response in June 2023. This said, in summary, that the dealer explained the water in the door had been caused by a build up of debris blocking a drain. It said this had been repaired. It also said the car needed an 'oil and filter replacement' and a replacement tyre. But BMF said Mrs S hadn't shown there was a 'mechanical fault' so she didn't have a right to reject the car. It told Mrs S if she didn't collect the car from the dealer within seven days, it may repossess it.

Mrs S then raised the complaint to our service. She said she'd had to use a car where one door wasn't operational. She said this had an impact on her family life, including causing additional stress when trying to take a close relative to hospital appointments. She said this had caused additional problems because of her own health. She said the situation had affected her credit rating. And she said she'd had to pay out to get another car.

Our investigator issued an opinion and explained he thought the complaint should be upheld. He said, in summary, that he thought the car wasn't of satisfactory quality when Mrs S acquired it. He said she had the right to reject the car when she asked to, and should now be allowed to do so. He said BMF could retain one month's payment for the car, but should reimburse her any other amount paid including the deposit. He also said BMF should reimburse her the cost of the health check and pay £200 for the distress and inconvenience caused.

Mrs S accepted the view. But she said she was worried about now driving a manual car as she needed an automatic.

BMF responded and said no electrical issues were found by the dealer and the bulge in the tyre could've been caused by Mrs S. Our investigator explained this didn't change his opinion. BMF then said it would offer to refund all repayments for the time Mrs S didn't have the car and repair it. But it said it didn't think she should be able to reject it.

Mrs S wasn't willing to accept this offer and still wanted to reject the car. BMF said it still thought rejection was unfair. The complaint was then passed for an Ombudsman's decision.

While awaiting this, BMF and Mrs S confirmed that a successful chargeback claim had gone through for Mrs S's deposit against the dealer. Our investigator explained this meant he didn't think BMF now needed to also reimburse Mrs S's deposit, as this would mean receiving it back twice.

The complaint has now been passed to me to decide.

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'd like to start by explaining to both parties that I might not comment on every individual point raised or every piece of evidence. While I have carefully considered all of the information on the case, I am going to focus on what I think are the key points and the crux of the complaint. This reflects the informal nature of our service.

When she referred her case to us, Mrs S raised a complaint point about credit broking and said that due to an issue with her ID, she believes she ended up with a higher interest rate than she should've. I can't see this point was raised to BMF and it is not addressed in its final response. So, my decision will make no findings about this nor comment further. If Mrs S wishes to pursue this matter, she will need to contact BMF and/or the credit broker separately.

Mrs S complains about a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mrs S's complaint about BMF.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – BMF here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. I'll consider that Mrs S's car was around seven years old and had covered over 80,000 miles. I don't think a reasonable person would expect it to be in the same condition as a newer, less road worn car. But, it cost over £13,000. So, I think a reasonable person would still expect it to be free from anything other than minor faults and to be at least road legal and safe.

The CRA explains, in summary, that Mrs S would have a short term right to reject the car, if it was of unsatisfactory quality when supplied and if she exercised this right within 30 days of acquiring it.

The credit agreement is dated 18 April 2023. I can see Mrs S told the dealer she wanted to return the car on 2 May 2023. So, I'm satisfied Mrs S exercised her short term right to reject

within 30 days of acquiring the car. What I need to decide is whether Mrs S had this right or not. In other words, I need to decide if the car was of satisfactory quality when Mrs S acquired it.

Mrs S made the dealer aware of the issue with water in the door shortly after getting the car. I've then seen a copy of the 'vehicle health check' from another garage. This isn't dated, but I believe this is from around the end of May 2023. This notes in relation to a tyre:

"bulge on sidewall"

And under notes:

"O/S/R Door Full of WATER"

I'm satisfied this health check backs up what Mrs S had told both the dealer and BMF. It follows I'm satisfied Mrs S's car had the issues she complained about when it was supplied.

I've thought about what BMF said about the lack of a 'mechanical fault'. But I'm not sure I understand its argument here. The CRA doesn't mention goods would need to have a 'mechanical fault' to be of unsatisfactory quality. And I think it's absolutely clear that where a car that cost over £13,000 was supplied with a door full of water, a reasonable person would not consider this of satisfactory quality.

I have thought about the fact it appears the garage Mrs S took the car to did drain the door – although I believe Mrs S said she didn't ask for this to be done. Given this could've caused electrical and/or safety issues, I can understand why the garage did this. I think Mrs S acted reasonably here. And she had already explained at this point she wanted to reject the car. So, in this particular case, I don't think this 'repair' should remove Mrs S's short term right to reject under the CRA.

Either way, I'm also satisfied having reviewed a photo that the bulge in the tyre – which I think would very likely be an MOT fail and a potential safety issue – also meant the car was of unsatisfactory quality when Mrs S acquired it.

To summarise, Mrs S acquired a car which was not of satisfactory quality, exercised her short term right to reject and then provided evidence to BMF that the issues were present. I'm satisfied BMF should've allowed her to reject the car at that point.

What I next need to consider is what now would be fair and reasonable to put things right. Given Mrs S had a right to reject the car, and as far as I'm aware it has been left at the dealer and not driven since it was returned, I think it's fair this should still be the case.

It isn't in dispute that Mrs S has now received the deposit back under the chargeback scheme. I agree with our investigator that BMF now doesn't need to reimburse this as it wouldn't be reasonable to receive this amount twice.

I've considered Mrs S's use of the car. Our investigator thought as Mrs S covered around 900 miles in it, this reflected around a month's use. So, he said BMF could retain one month's repayment to reflect this use. My logic here is slightly different, but I still think this is a fair way of dealing with the situation. I'll explain why.

I believe Mrs S had the car for longer than a month. So it might then seem fair for BMF to retain more than one repayment. But, thinking about the use of the car during this period, I'm satisfied it wasn't performing as it should. So, while Mrs S did appear to use the car for a

longer period than our investigator explained, I'm still satisfied one month's repayment is a fair amount to reflect the longer, impaired, period Mrs S used the car for.

I agree with our investigator that Mrs S has suffered distress and inconvenience because of what happened. She has explained this situation has caused her worry and has affected her family life. I've also considered her recent comments that this ongoing issue has left her being unable to drive as she requires an automatic car. But, as far as I can see, BMF aren't responsible for the specification of the car Mrs S got as a replacement. Thinking about all of this, I agree BMF should pay £200 to reflect the distress and inconvenience caused.

I also agree Mrs S wouldn't have had to pay out for the vehicle health check if nothing went wrong. So, it's fair and reasonable that this is reimbursed, if it hasn't been already.

My final decision

My final decision is that I uphold this complaint. I instruct Blue Motor Finance Ltd to put things right by doing the following:

- End the agreement with nothing further to pay
- Collect the car at no cost to Mrs S
- Reimburse all payments made to the agreement*, apart from the first monthly payment which BMF can retain**
- Reimburse Mrs S the cost of the vehicle health check ** ***
- Pay Mrs S £200 to reflect the distress and inconvenience caused
- Remove any adverse information from Mrs S's credit file in relation to the agreement

* To be clear, this does *not* include the deposit Mrs S paid.

**These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If BMF considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mrs S how much it's taken off. It should also give Mrs S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

*** I have limited information about this payment. If BMF have already reimbursed this to Mrs S, or if BMF covered the cost of this upfront, it doesn't need to take any action here. And BMF only needs to reimburse this if Mrs S provides it with proof of payment, such as a receipt or invoice.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 22 November 2023.

John Bower
Ombudsman