

The complaint

Mr M complains about a car he acquired under a hire purchase agreement with Blue Motor Finance Ltd.

What happened

In March 2023 Mr M entered into a regulated hire purchase agreement with Blue Motor Finance in relation to a used car. The car was six years old, its mileage was 52,070 miles, and its cash price was £10,870.

After three weeks, Mr M noticed a problem with the clutch, which would judder and sometimes fail to work. The dealership did not respond to him, so he approached the warranty provider, who advised him to take the car to a third party garage to be diagnosed. He did this in May, and the garage diagnosed a problem with the flywheel. The garage quoted £1,256 to replace it. But the warranty company declined to cover this, saying that the problem was most likely to be fair wear and tear. So Mr M paid for the repair himself. During the repair, in June, the garage fitted a new crankshaft oil seal. However, this repair did not solve the problem, and four days later Mr M took the car back to the garage.

Mr M then complained to Blue Motor Finance, who arranged for an inspection by another engineer; this was done in July. The engineer reported that the fault lay with the new oil seal, which was leaking, and this had caused the flywheel and clutch to fail. As that seal had recently been replaced by a third party same garage without the dealership's authority, Blue Motor Finance denied that it was liable for it, and said that this was the responsibility of the garage. Mr M then brought this complaint to our service, asking to reject the car. Meanwhile, as the car was undriveable, he bought another car

Our investigator upheld this complaint. He pointed out that the engineer instructed by Blue Motor Finance had not said whether the fault had been present or developing at the point of sale. Since the oil leak had occurred within six weeks, and Mr M had only driven the car for about 2,000 miles, he thought it was more likely than not that the fault had been present at the point of sale. Therefore Blue Motor Finance had supplied Mr M with a car that was not of satisfactory quality, and in particular that it had not been sufficiently durable. He said that Mr M should be allowed to reject the car. As the garage had recommended that Mr M stop driving the car on 16 May, the investigator said that Mr M's monthly payments since then should be refunded. And he recommended that Blue Motor Finance refund the money Mr M had spent on repairing the car, refund his deposit, pay interest on the refunds, and also pay him £150 for his trouble.

Blue Motor Finance did not accept that opinion. It reiterated that the part which had failed was the part which the garage had refitted, and neither it nor the dealership had authorised that garage to repair the car. It asked the investigator to reconsider. But the investigator pointed out that the dealership had failed to respond to Mr M, leaving him with no choice but to ask a third party to repair the car. He said an oil leak occurring within six weeks of the point of sale strongly suggested that the fault had been present or developing at the point of sale. And the report had also said there may be further issues with the main engine block. He referred this case for an ombudsman's 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.

I have also had regard to the provisions of the Consumer Rights Act 2015 ("the Act"), and in particular to sections 19(14) and (15), section 23(2), and section 24(5).

Having done so, I uphold this complaint. I will explain why.

I accept the third party garage's evidence in its quote (dated 6 June 2023) to the effect that the flywheel was not operating properly and needed replacing. As Mr M reported this within a month of acquiring the car, I think it is more likely than not that this fault was present or developing when it was supplied to him. (In coming to that conclusion, I have taken into account section 19 of the Act, which says that when a fault is discovered within six months of the point of sale, then it shall be presumed to have been present at the point of sale unless the contrary is proved.)

It is not in dispute that when Mr M contacted the original dealership, they did not reply to him. And I can see from Blue Motor Finance's internal notes that it was difficult to get information from them. So I have no reason to doubt what Mr M has told us about this, and I am satisfied that he acted reasonably by instructing a third party garage to carry out the repair. Indeed, he had a duty to try and mitigate his loss, so he could even have been criticised had he *not* done so.

Normally, the Act allows a trader (*i.e.* the dealership) one attempt at repairing faulty goods before a consumer (Mr M) has the right to reject the goods. But there is an exception to this rule. Section 23(2)(a) of the Act requires a trader to repair faulty goods "within a reasonable time and without significant inconvenience to the consumer." The dealership didn't do that, so I am satisfied that Mr M is entitled to reject the car, under section 24(5)(c), irrespective of what the third party garage did or didn't do.

I therefore do not need to make any findings about why the replacement oil seal, which was fitted by the third party garage in July, failed. I think I can fairly resolve this case by focusing on what happened before that repair was carried out.

Putting things right

I agree with the investigator's proposed redress. I require Blue Motor Finance Ltd to:

- End the hire purchase agreement with nothing further to pay, and collect the car (if this hasn't been done already) at no cost to Mr M;
- Arrange to remove from Mr M's credit file any adverse information about the agreement;
- Refund Mr M's deposit and all monthly payments made by him after 16 May 2023;
- Refund to Mr M the £1,256.08 he paid for the repair;
- Pay interest on those refunds at the rate of 8% a year simple;
- Pay Mr M £150 for his inconvenience.

My final decision

My decision is that I uphold this complaint. I order Blue Motor Finance Ltd to put things right in the manner I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 May 2024.

Richard Wood
Ombudsman