

The complaint

Mr S complains that a car he acquired via a hire purchase agreement with Blue Motor Finance Ltd wasn't of satisfactory quality. He wants to reject the car and end the agreement.

What happened

In February 2020 Mr S entered into a five-year hire purchase agreement for a used car. The car was around five years old and had a mileage of 39,750.

In April 2020 Mr S returned the car to the supplying dealership for repairs to be carried out to the spark plugs. And in July 2020 the car broke down and had to be recovered by a roadside assistance company who took the car back to the supplying dealer. The roadside assistance engineer reported that there was an issue with the car's brakes and an oil leak from the off-side of the engine.

It was agreed between Mr S and the dealership that it would repair the brakes and Mr S would arrange for the oil leak to be fixed. The dealership replaced the brakes pump and Mr S took the car to a third-party garage for the leak to be investigated.

The third-party garage fixed the leak but also reported that the solenoid valve was choked with fibrous material which was cleaned. The garage also said that fault codes had been found for a carbon build up around the intake system and valve stems and that there was a possible issue with the timing belt that needed investigating, an oil filter required changing as well as an intake clean and the auxiliary belt cracking.

Mr S says he spoke with the dealership and was advised to arrange a carbon clean for the car via another company. This took place in August 2020 and cost Mr S £149.99. The mileage by then was 42,300. Mr S was also advised to have the car serviced.

Unfortunately, after the carbon clean, Mr S says the issues with the car continued and he took the car back to the third-party garage where an oil and filter clean were carried out. The garage also noted that fault codes linked to the knock detector were showing as well as two outstanding technical bulletins relating to the car. One bulletin was for a software update and one relating to carbon build up around inlet valves. The garage also noted the following; oil leaks, the camshaft timing solenoid was clogged with fibrous material, the timing belt was possibly decaying, and that the car may require a new oil pump.

Mr S complained to Blue Motor about the condition of the car. And in September 2020 it arranged for the car to be independently inspected. The independent engineer reported that there were no fault codes displaying but on taking the car for a test drive they had experienced the car having a loss of power when under acceleration and that the car was currently in limp mode. They said the issues with the car were consistent with a carbon build up which they believed was in an advanced state at the point of supply and required a clean.

The dealership agreed to pay for a carbon clean though Mr S was unhappy for the car to undergo a second clean since this had already been performed in August 2020 and hadn't fixed the issues he was having with the car. There then followed delays for various reasons

in arranging this second carbon clean and in the end, it did not take place.

In November 2020, as the car was due its MOT, Mr S took it back to the third-party garage for this to be carried out. The car passed but with advisories which included an oil leak being found. The garage also reported that it had noticed a noise from the engine which it considered to be due to the car's cambelt.

Mr S then took the car to a manufacturer's approved garage at the request of Blue Motor due to the outstanding technical bulletins that had been found by the third-party garage. This garage noted there was a heavy rattle noise from the engine, and it said that the engine needed to be stripped and possibly replaced.

Blue Motor sent Mr S two final response letters in regard to the issues he had raised about the car. The first letter was sent in October 2020 when Blue Motor said it wasn't upholding Mr S's complaint. It said this was because the independent inspection had found that the car required a carbon clean and, although Mr S had already had a clean carried out, this was a maintenance issue and not a fault as it was due to the vehicle not being driven much since Mr S had acquired it. Blue Motor said the supplying dealer had agreed as a gesture of goodwill to pay for the second carbon clean. It also said that Mr S would need to take the car to a manufacturer approved garage for the outstanding bulletins to be carried out.

The second final response letter was sent in January 2021 and Blue Motor said that Mr S had raised further faults that hadn't been identified by the independent engineer during their inspection. It said that as Mr S had by now acquired the car over six months ago, he would need to supply evidence that the timing belt issue had been present since the point of supply. And as Mr S hadn't been able to do so it wasn't upholding this second complaint.

Mr S complained to this service. Our investigator looked at all the issues Mr S had raised about the car and recommended that his complaint was upheld. She said she didn't think the car had been of satisfactory quality at the point of sale as it wasn't as durable as would be reasonably be expected.

Our investigator said it would be fair for Mr S to now reject the car and unwind the agreement with reimbursement of his deposit. She also said Blue Motor should reimburse any monthly payments made from July 2020 when the car became unusable together with the costs of insurance and road tax from that same date (subject to proof of cancellation and payment being provided by Mr S), reimburse the cost of the first carbon clean Mr S had paid for plus the repairs and investigations that he'd paid for in August 2021. Finally, she said Blue Motor should pay Mr S £300 compensation for the distress and inconvenience caused by dealing with the faulty car.

Mr S agreed with the view of our investigator. Blue Motor disagreed. It said that the issues with the car requiring a carbon clean was due to the way Mr S used the car and that the later noise fault hadn't been present from the point of sale as this hadn't been picked up until Mr S took the car to the manufacturer approved garage to have the bulletins checked.

As both parties hadn't agreed with the investigator's view the complaint was passed to me.

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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Mr S is a regulated consumer credit agreement this service is able to consider complaints relating to it. Blue Motor is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

Under the Consumer Rights Act 2015, there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here, the car wasn't new being around five years old and with a mileage of 39,750. And I think that, considering these things, a reasonable person would expect issues with maintenance and repair to arise after a reasonable period of time, since components of the car would have been subject to wear and tear through use. So, unlike a new car, there wouldn't be expectation that the car was fault free.

I've seen that Mr S has had a number of problems with the car since he acquired it and that these started within a few weeks from the point of supply. The car broke down in July 2020 requiring recovery by a roadside assistance company. The car was taken back to the supplying dealer who agreed to repair the brakes but as it was unable to investigate the oil leak for a two-week period, so Mr S took the car to a third-party garage.

The third-party garage identified the source of the oil leak and made a number of repairs to the car. It also reported that the car's solenoid valve was choked up and that there was a possible issue with the timing belt which it said needed further investigation. Mr S arranged and paid for the car to have a carbon clean.

Despite these repairs being carried out as well as the carbon clean Mr S says he continued to have problems with the car so took it back to the third-party garage in August 2020. The third-party garage identified the two outstanding bulletins, the solenoid valve being blocked and also said the timing belt was decaying. At this point Mr S had had the car for just under six months and driven around 2,500 miles.

The independent engineer inspected the car in September 2020, and they reported the issues were "consistent" with the car requiring a carbon clean and that the car was currently in limp mode. They also said the car would have been in an advanced stage of carbon build up at the point of sale and that the clean should be at the cost of the selling agent as the *"vehicle was not considered durable at the point of purchase with regards to the carbon build up"*.

I think Mr S's concern that a second carbon clean wouldn't cure the car's faults was reasonable and I've seen this clean was delayed and then not carried out in the end. Mr S took the car to a manufacturer approved garage as recommended by Blue Motor to have the outstanding bulletins carried out. It was this garage who reported the heavy rattle from the engine and said the car may require a new engine. Mr S had only driven the car for a further 200 miles by then.

Blue Motor has said that the carbon cleaning was a maintenance issue and not a fault, so it wasn't responsible for that. It also says that the noise from the engine wasn't present when the car was inspected by the independent engineer and so is a new matter which, if it is due to the timing chain, isn't related to the carbon clean.

However, the independent engineer said that the carbon build up wasn't due to Mr S's use of the car and had built up before he acquired it meaning that the car was supplied to Mr S with a fault because a reasonable person wouldn't have reasonably expected the car to have required this type of maintenance so soon after the point of supply. I think it's reasonable to say the car wasn't durable.

I also think that, looking at the evidence, the car has had a number of other faults that required repairs such as the oil leak and brakes when it was supplied. And I've seen that not all the issues identified were then the subject of repairs. The third-party garage raised a possible issue with the timing belt on the two occasions it saw the car, but this wasn't then further investigated. So, although the car may not have been making the noise that was reported by the manufacturer approved garage in December 2020, I think it's reasonable to say that it's more likely than not that this fault was developing over time and that it's likely to have been developing since the point of supply. I also think it's fair to say the car wasn't as durable as would be reasonably expected for a car of this age and mileage due to the number of faults Mr S has experienced in the time since he acquired it.

The car has had a number of repairs carried out including a carbon clean, but it hasn't been fixed and remains faulty. In these circumstances I think it's fair to say Blue Motor has had an opportunity to fix the car and that the ongoing issues with it means it is fair for Mr S to now reject it and have the agreement unwound and his deposit returned.

I've seen that, due to the condition of the car, Mr S hasn't been able to use it since the end of July 2020. I think it's fair that he is reimbursed any monthly instalments paid from that date as he hasn't had any benefit from it. I also think it's fair for him to be reimbursed the insurance and road tax costs from the same date.

I've seen that Mr S has been put to considerable inconvenience dealing with this faulty car, he has had to pay for a carbon clean, investigations and other repairs as well as not being able to make full use of the car. I think it's fair that he is reimbursed for the two repair invoices he has provided as well as compensation. I think an amount of £300 as compensation is fair to reflect the impact this has had on him. He has had to make numerous visits to garages, deal with the car breaking down and then not being able to use it as he had planned.

So, for the reasons given above I'm upholding Mr S's complaint.

Putting things right

I'm asking Blue Motor to do the following:

- End the agreement with nothing further to pay
- Collect the car at no cost to Mr S
- Reimburse Mr S the deposit he paid under the agreement together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.

- Reimburse Mr S any monthly payments made under the agreement from the end of July 2020 to date, together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Refund insurance and road tax costs for the car that were incurred from the end of July 2020 once Mr S has provided proof of payment and cancellation.
- Reimburse Mr S the £149.99 cost for the carbon clean carried out in August 2020 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement
- Reimburse Mr S the £320.45 cost for the investigation repairs carried out in August 2020 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement
- Pay Mr S £300 for the distress and inconvenience caused by having to deal with the faulty car.
- Remove any adverse information about this agreement from Mr S's credit file.

My final decision

For the reasons set out above I'm upholding Mr S's complaint. I'm asking Blue Motor Finance Ltd to do the following:

- End the agreement with nothing further to pay
- Collect the car at no cost to Mr S
- Reimburse Mr S the deposit he paid under the agreement together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Reimburse Mr S any monthly payments made under the agreement from the end of July 2020 to date, together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Refund insurance and road tax costs for the car that were incurred from the end of July 2020 once Mr S has provided proof of payment and cancellation.
- Reimburse Mr S the £149.99 cost for the carbon clean carried out in August 2020 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement
- Reimburse Mr S the £320.45 cost for the investigation repairs carried out in August 2020 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement
- Pay Mr S £300 for the distress and inconvenience caused by having to deal with the faulty car.
- Remove any adverse information about this agreement from Mr S's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 June 2021.

Jocelyn Griffith
Ombudsman