

The complaint

Mr E complains that a used car he got with a hire purchase agreement (HPA) provided by Blue Motor Finance Limited (BMF) was of unsatisfactory quality. He feels misled by the supplying dealer and he's unhappy with the way that BMF responded to his complaint.

What happened

Mr E got the car in February 2019. It broke down in October the same year. Mr E was told the timing chain had failed and repairs were uneconomical so he paid off the finance and sold the car back to the supplying dealer. He was unhappy that repairs weren't covered under a warranty he got with the car and felt he had lost out financially, so he complained to BMF.

BMF says it's not responsible for the warranty - as that wasn't supplied under the HPA - and it's for Mr E to show the car was faulty at the point of supply, but he hasn't. BMF considers it shouldn't have to do anything further.

Our investigator isn't persuaded there's enough evidence to show that this car was of unsatisfactory quality when Mr E got it. He's not persuaded a misrepresentation was made. He's satisfied that BMF didn't provide a warranty under the HPA. And he recommends the complaint should not be upheld.

Mr E doesn't think that's a fair outcome so the matter was passed to an ombudsman for review. Mr E says (in summary)

- the HPA says the car cost £3,500, which he understood was made up of £3,000 for the car, £100 for a Bluetooth system and £400 for a 12 month warranty, so the warranty was paid for under the HPA and provided by BMF;
- the dealer told him the car came with a comprehensive third party warranty but failed to arrange that, and he would not have accepted a car of this age and mileage without a "bumper-to-bumper" warranty, so the car and the finance were mis-sold;
- he couldn't source a warranty after sale due to the car's age so he paid off the finance and sold the car back to the dealer, he's out of pocket for the balance of the finance and other costs and he wants BMF to provide a refund and pay compensation for stress and inconvenience.

my provisional decision

I issued a provisional decision to the parties dated 8 February 2021. I've summarised my provisional findings below.

Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. BMF supplied this car to Mr E under a HPA and I'm looking at BMF's obligations arising out of that finance agreement. I don't apply the law but I'm required to take relevant law into account.

I'm satisfied BMF was required to ensure (amongst other things) that this car was of satisfactory quality at the point of supply under the Consumer Rights Act 2015 (CRA).

satisfactory quality

What amounts to "satisfactory" quality varies depending on individual circumstances, but it's generally considered reasonable to take age, cost and mileage at the point of supply into account in the case of a used car. The car Mr E got here was approximately 12 years old, cost about £3,500 and had around 77,000 miles on the clock. I think a reasonable person would accept that a car like this would probably have some worn parts which would need replacing or repairing sooner or later – and that's reflected in the lower price paid compared to a brand new vehicle.

Mr E had the car for about eight months and travelled around 13,000 miles when it broke down. Based on what the parties have said, it appears to be common ground that the timing chain failed, at about 90,000 miles, but there's dispute about the cause of the failure. Mr E says the timing chain was defective whereas the dealer says there were signs of oil starvation when the car was checked after the breakdown and it wasn't maintained properly. I've seen no documentary evidence in support of either argument.

On balance, I think it's unlikely that Mr E would have been able to drive this car as far as he did after supply if it was faulty when he got it. I accept a timing chain can last longer but I think that depends of a variety of factors, including how a vehicle is serviced and maintained throughout. Given the age and mileage of this car at the point of supply, I think it's more likely than not the problem here was the result of wear and tear. I'm satisfied that BMF isn't responsible for issues that arise over time due to wear and tear. And I can't fairly find it supplied a car unsatisfactory quality, in this situation.

misrepresentation

Mr E says he paid for a warranty when he got this car using credit provided under the HPA so BMF supplied the warranty. For the reasons I've set out below, I am not persuaded that's right. But, I can consider any representations made during the course of pre-sale negotiations between Mr E and the dealer in this complaint against BMF – under section 56 of the Consumer Credit Act 1974.

In broad terms, for me to find there was a misrepresentation, I would need to be satisfied that Mr E was told something untrue and he relied on that when he decided to acquire this particular car and take out the finance. Mr E says the dealer told him this warranty cost £400 and provided 12 months cover from a third party which was comprehensive enough to cover the timing chain here - and he wouldn't have accepted the car without such extensive cover. The dealer doesn't dispute that the car was sold with a warranty but says this was a £180 standard six month warranty with a claim limit of £500.

I can't be certain what was discussed exactly between Mr E and the salesperson. I think it's reasonable to look at the paperwork completed at the relevant time in this situation - as that's likely to contain the best evidence of what was agreed. I checked the finance documents Mr E signed and there's no mention of a warranty. The HPA says Mr E paid a deposit of just over £200 towards the £3,500 cost of the car and BMF provided credit totalling just under £3,300. Mr E doesn't appear to dispute the amount paid by way of deposit – if the HPA recorded this inaccurately, I'd expect him to have said so at the time. The sale invoice says Mr E paid the dealer £500 cash and a warranty was purchased at a cost of £180. From the evidence I have, I think it's likely that just over £200 of the £500 was paid to BMF for the finance deposit and the balance was paid to the dealer for Bluetooth and a £180 standard warranty.

The dealer seems to accept that this warranty was originally supposed to be provided by a

third party. For reasons I'm not clear on, a third party warranty wasn't put in place. But, Mr E has confirmed that the dealer undertook any repairs required over the first six months at no cost to him. I think it was probably an oversight that the third party warranty wasn't activated so the dealer stepped in, in effect, provided the same level of cover – as the standard £180 party warranty. I'm satisfied this means Mr E got the cover he paid for, in practical terms. And I've seen nothing to show he was placed at a disadvantage because this work wasn't carried out under a third party warranty.

I think most people usually take a number of different factors into account when deciding on a car – including price, age, model and specification. If the specific warranty provider and particularly comprehensive warranty cover were key factors in Mr E's decision to accept this car and take out the finance, I'd expect him to have checked that at the outset. I am not persuaded he did so, on the evidence I have at the moment. Mr E told us he didn't see any warranty paperwork when he got the car. I appreciate he says he asked the dealer for this and it wasn't supplied. But, I'm satisfied Mr E is familiar with vehicle warranties – he told us he had several in the past. I think he should have been reasonably aware that different warranty providers offer very different terms and conditions. And I can't reasonably find this was of particular importance to Mr E, when he was prepared to go ahead without checking the specific terms on offer beforehand.

For the reasons I've set out, I'm not persuaded the dealer misrepresented the warranty Mr E got here, in material terms. And, even if I'd reached a different view about that, I'm not satisfied that Mr E was induced to accept this particular car and take out the finance due to a misrepresentation. It follows I'm unable to reasonably require BMF to provide a refund on those grounds.

I realise Mr E is really unhappy with the service he got from the dealer after supply and he feels that BMF should have done more to help. I understand his frustration but I'm unable to hold BMF responsible for the dealer's after sales service. I have very little detail of the arrangement Mr E reached with the dealer when he returned the car. But I think it was his decision to end the finance early and accept the dealer's offer to buy the car back and help him into another vehicle. I understand he's unhappy that the car was apparently repaired later and sold on – but that's not something I can reasonably hold BMF responsible for.

I invited the parties to consider my provisional findings and let me have any further comments or information by the 8 March 2021. I explained that I would look at all of the available evidence and make my final decision after that date.

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.

The time set for the parties to respond to my provisional decision has now passed. BMF accepts my provisional findings and Mr E did not reply or make any further submissions. I see no reasonable grounds to depart from my provisional conclusions, in the circumstances.

For the reasons I've given, I am not persuaded that BMF did something wrong here and I am not satisfied that there are fair and reasonable grounds to uphold this complaint. I realise this decision is likely to come as a disappointment to Mr E but he doesn't have to accept what I've said – in which case it remains open to him to pursue the matter by any alternative means available.

My final decision

My decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 15 April 2021.

Claire Jackson
Ombudsman