

The complaint

Mr C complains about the quality of a car that was supplied to him through a hire purchase agreement with Blue Motor Finance Ltd (BMF).

What happened

The circumstances surrounding this complaint and my initial findings were set out in my provisional decision which said:

On 29 December 2019 Mr C acquired a second-hand car through a hire purchase agreement with BMF. The car was registered on 25 July 2011, which means it was about eight years and five months old at the point of supply. The price of the car was £6,999 and it had travelled 81,563 miles. Mr C put down a deposit of £100 which meant that the credit agreement was for £6,899 payable over 61 months.

In April 2020 Mr C says he contacted the dealer to report an engine management light (EML) on the dashboard and issues with the gearbox of his car. He says it wasn't changing gear properly and felt sluggish.

Mr C brought the car into the dealer in June 2020 and again in July 2020. The car was with the dealer for over three weeks in total, however the dealer explained that they couldn't find any mechanical faults with the car despite carrying out extensive road tests. Mr C says the dealer also told him that they'd serviced the gear box and changed the oil, the filter and exhaust sensor.

Mr C says the problems persisted, so in July 2020 he raised a complaint to BMF. As the dealer hadn't identified any mechanical issues, BMF asked Mr C to obtain an independent inspection to assist with establishing liability.

In August 2020 Mr C confirmed that he had arranged for a mechanic to carry out an inspection of his car. The mechanic identified nine transmission related fault codes. The mechanic also found there to be a significant shortage of transmission fluid.

Having received the details from Mr C, BMF initially instructed the dealer to carry out a further inspection to look into the faults identified, however the dealer was reluctant to do so as it said it hadn't found any faults. And Mr C was reluctant to allow the dealer to carry out

another inspection on his car. So, BMF decided to arrange an independent inspection with a separate vehicle inspection specialist.

Prior to the independent inspection, Mr C arranged for the transmission fluid to be topped up by the mechanics who had looked at the car. Mr C explained that the independent inspector, arranged by BMF, had given his permission for the transmission fluid to be topped up prior to their check. Despite advising Mr C that the inspector was not in a position to authorise the fluid refill, BMF explained that should the second independent check confirm liability, BMF would cover the costs incurred.

On 15 September 2020 the second independent inspection report was provided. The report concluded that the car was not fit for purpose as the transmission was not operating anywhere close to the manufacturer's specifications. The report also advised that the problem with the transmission was progressive in-service age-related general wear and tear and so was unlikely to have been present at the point of supply.

On 28 September 2020 BMF provided their final response letter (FRL) to Mr C's complaint. based on the conclusions of the second report, BMF didn't uphold the complaint.

Unhappy with BMF's response, Mr C brought his complaint to us here. One of our investigators looked into his concerns and decided to uphold his complaint on the basis that the car provided was not reasonably durable and so wasn't of satisfactory quality when it was supplied to him.

BMF disputed the investigator's view. The supplying dealer provided evidence of an inspection carried out prior to supply which advised the operation of the gearbox was considered okay. The dealer also challenged the credibility of the inspection that Mr C arranged through a mechanic. So, BMF requested that the complaint is reviewed by an ombudsman for a final decision.

In August 2021 I issued a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering what is fair and reasonable, I've thought about all the evidence and information provided and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider having been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. BMF is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) applies to contracts which supply goods to a consumer and is relevant in this case. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory, fit for purpose and as described". To be considered as satisfactory, the CRA says the goods would need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

It isn't in dispute here that the car had a fault with it. But for clarity, from the information provided it's also clear to me that there is a fault with the transmission of the car. This is apparent from the information provided by the mechanic and the independent inspection report arranged by BMF. Having considered the car has a fault, I've had to consider whether it was of satisfactory quality at the time it was supplied to Mr C.

I've looked into the lifespan of automatic transmissions. From what I've seen, the life of automatic transmissions can vary, depending on different things, for example maintenance and driving styles; and it's not uncommon that they may need to be replaced throughout a car's life. And I don't think it's unreasonable that a transmission would need replacing on a car of similar age and mileage to Mr C's.

The dealer has provided sales documentation showing the checks that were carried out on the car before it was supplied to Mr C. The checks included an assured report from a vehicle inspection agency (VIA). The front cover of the report provided by the dealer has a VIA invoice detailing the car's make, model and registration along with the invoice date of December 2019. So, I'm satisfied that the report was in reference to the car that was supplied to Mr C. The report shows that the VIA checks, which included tests on gear selection, clutch, automatic take up and a drive test were recorded as 'ok' which suggests no issues were identified.

In addition to this the conclusion of the report, arranged by BMF, included the following comments:

- the symptoms are easily noticeable and, in our opinion, would have been easily detectable even to the layperson without any mechanical knowledge at the collection point of the vehicle, hence the reason we believe the current symptoms have developed after the point of sale; and*
- the symptoms manifested at the time of our inspection are attributable to in service wear & tear which would not be considered unusual or untoward for a vehicle of this age & reported mileage.*

The report arranged by BMF was carried out by a professional vehicle inspection company. So, having considered this I have no reason to challenge the credibility of the information or findings provided.

With that being the case, I'm minded to say that the comments in the second report together with the other evidence, like the VIA assured report and the age and mileage of the car, points towards the car being of satisfactory quality when it was supplied to Mr C.

I have considered that our investigator said the car wasn't reasonably durable when it was supplied. When Mr C entered into the agreement the car was supplied with 81,500 miles and at the point of the second report, he'd driven around 6,000 additional miles. So, at that point the car had a total of around 87,500 miles and was over nine years old.

Within its conclusion the second report also advised:

Progressive in-service age-related general wear and tear is the cause, and taking into account the vehicle's age and reported mileage in our opinion it would not be considered unusual to have a transmission repaired on a vehicle that has covered almost 90,000 miles and in our opinion the vehicle durability was not affected at the point of purchase.

On balance I don't think it's unreasonable that problems were starting to occur with the transmission. So, from the evidence provided I'm satisfied that the car was of satisfactory quality when it was supplied to Mr C. So, I won't be instructing BMF to do anything in relation to this complaint.

I invited both parties to make any further comments. However, neither party has responded to my provisional 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 still consider my provisional decision to be fair and reasonable in the circumstances. Neither party has added anything which gives me cause to change these. Therefore, for the reasons as set out above and in my provisional decision, I'm satisfied that the car was of satisfactory quality when it was supplied to Mr C. So, my final decision is the same.

My final decision

Having considered all the information, my final decision is that I don't uphold Mr C's complaint about Blue Motor Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 October 2021.

Benjamin John
Ombudsman