

The complaint

Mr J and Mrs J complain that a car they acquired via a hire purchase agreement with Blue Motor Finance Ltd was misrepresented to them by the supplying dealer.

What happened

In November 2021 Mr and Mrs J wanted to acquire a used car. They had certain criteria that they wanted any potential car to match and which was important to them. This included that it should have a low mileage and no more than two previous owners.

Mr J saw an advert for a suitable car, and he spoke with the dealership over the telephone as it was some distance from his home. The dealership said the car was around five years old, had had two previous registered keepers and a mileage of around 36,000. Mr J says he was very clear that if the car had had more than two previous registered keepers it wouldn't be suitable for them.

In December 2021 Mr and Mrs J entered into a hire purchase agreement for 24 months with Blue Motor for the car. The car cost £13,800 and Mr and Mrs J paid a deposit of £3,800 leaving the remaining £10,000 to be paid via the credit agreement. The monthly payments under the agreement were £467.41.

Mr and Mrs J arranged for the car to be collected and delivered to them by a third-party company. The fee for this was £316 and paid for by them.

The car was delivered with its paperwork. A couple of days later Mr and Mrs J received the V5 (logbook). This document showed there had been three previous registered keepers and not two. Mr J verified this information with DVLA who confirmed with him that he was the fourth registered keeper for the car.

Mr J complained to the supplying dealer, but they didn't accept there had been a misrepresentation. Mr J then complained to Blue Motor and asked to return the car and cancel the agreement because it had been misrepresented to him.

Blue Motor didn't uphold Mr and Mrs J's complaint. It said the information provided to Mr and Mrs J had been correct as to the number of previous registered keepers. Blue Motor said there had been two previous registered keepers because the current keeper wouldn't show on the V5. And that it was only after the car had been sold to a new owner that the current keeper would then be recorded as a previous keeper on the V5.

Blue Motor said that the registered keepers would include the current owner of the vehicle but as only the previous keepers had been advertised by the dealership, it wasn't obliged to include the current registered keeper when it showed there had been two previous keepers.

Mr and Mrs J disagreed with the view taken by Blue Motor and complained to this service. Our investigator recommended that their complaint should be upheld. He said that the way the previous registered keepers had been counted was unfair and misleading. Our investigator said he was satisfied that the car had been misrepresented to Mr and Mrs J and

that this false statement had induced them to purchase the car.

Our investigator said it would be fair for the agreement with Mr and Mrs J to be cancelled and the car collected. He also said that Blue Motor should refund all the monthly payments made under the agreement since the car had hardly been used together with the deposit paid by Mr and Mrs J. Finally, our investigator said the delivery cost of £316 should be reimbursed to Mr and Mrs J.

Mr and Mrs J agreed with our investigator's view, but Blue Motor disagreed. It said that the way the previous registered keepers had been counted was correct. Blue Motor also said that refunding the delivery cost would be unfair since the supplying dealer had always been clear it wouldn't undertake any distance deliveries. It had been Mr and Mrs J's decision to employ a third-party company to undertake this role.

As the parties were unable to reach an agreement the complaint has been 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.

Under section 56 of the Consumer Credit Act 1975 a credit provider, here that's Blue Motor, can be held responsible for representations made about the car and credit agreement in pre-contract negotiations. For me to be satisfied that a misrepresentation has taken place I would need evidence that a false statement of fact had been made about the car and that this statement induced Mr and Mrs J to enter into the contract.

It isn't disputed that Mr and Mrs J were informed the car had two previous registered keepers by the dealership. I've also seen this is the information supplied in the advert for the car. Blue Motor says this information is correct because at the time Mr and Mrs J were making their enquiries there were two previous registered keepers and one current registered keeper for the car. It said Mr and Mrs J had asked about previous registered keepers and had been provided with accurate information.

While I appreciate the point Blue Motor is making is technically correct if accepting there is a difference between previous registered keepers and previous owners, I think the purpose of Mr and Mrs J's question was clear. It was important to them that any car they acquired hadn't had more than two previous owners. And I think it's reasonable to consider that when a dealership is being asked about previous registered keepers, they are being asked how many owners a vehicle has had including any current owner. I don't think consumers would expect to have add one to any number provided to them in order to work out the total number of registered keepers any car had.

Looking at any guidance that has been produced, I've seen that in 2010 The Office of Fair Trading issued "*Guidance for second hand car dealers, Compliance with the Consumer Protection from Unfair Trading Regulations 2008 and the Sale of Goods Act 1979 (as amended)*". This sets out that it would be an unfair practice, and breach of the CPRs to create a misleading impression about the previous usage of a vehicle. I'm satisfied on the evidence I've seen that this is what has happened here. Mr and Mrs J were given the impression this car had two previous owners when it was actually three. This was misleading.

Having decided that a false statement had been made I also need to be satisfied that it was this statement that induced Mr and Mrs J to enter into a contract to purchase the car. I've seen that the number of prior owners was an important consideration for them. And how

important a factor is will be a subjective matter, it therefore doesn't matter if someone else wouldn't have given much weight to the number of owners a car may have had when deciding whether it suited their needs.

I've seen that as soon as Mr and Mrs J were aware of the number of previous owners, they raised their complaint and asked about returning the car and cancelling the agreement. I've also seen that they have taken the decision not to use the car which has caused them some inconvenience.

I think Mr and Mrs J have been consistent about explaining the importance of the number of previous owners and that had they known the truth they wouldn't have taken this car. They have explained that they had located an alternative car but decided to take this one instead based on the information that was given to them about it. I think their decision would have been different had their question about previous registered keepers been answered in a way that hadn't been a misrepresentation of the facts.

So, taking this all into account I'm satisfied that the misleading statement about the number of owners the car had induced Mr and Mrs J to agree to enter into the credit agreement in order to purchase it. Blue Motor are therefore liable under section 56 for this misrepresentation and for putting this right.

Blue Motor has queried reimbursing the delivery cost to Mr and Mrs J as this was their choice to arrange. I accept the dealership didn't provide delivery due to the distance involved but I think it's fair to consider this as a consequential loss. Mr and Mrs J had to make arrangements to get the car they thought they had wanted to their home, they made arrangements for this to be undertaken that incurred a fee. However, it subsequently turned out that the car had been misrepresented to them and wasn't what they wanted. If they had known about the number of previous owners before entering into the credit agreement and agreeing to buy it then they wouldn't have needed to arrange for its delivery and incurred that cost. I think that it's fair they are repaid this sum.

For the reasons set out above I'm upholding Mr and Mrs J's complaint.

Putting things right

I'm asking Blue Motor to do the following:

- Arrange for the car to be collected at no cost to Mr J and Mrs J.
- Cancel the agreement with nothing further to pay.
- Reimburse all payments made by Mr J and Mrs J under the agreement as the car has only been used to drive around 50 miles. Yearly interest at the rate of 8% simple to be added to that figure from the date of payment until the date of settlement.
- Reimburse to Mr J and Mrs J their deposit of £3,800 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Reimburse to Mr J and Mrs J the delivery cost of £316 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Remove any information about this hire purchase agreement from Mr J's and Mrs J's credit file.

My final decision

As set out above I'm upholding Mr J's and Mrs J's complaint. I'm asking Blue Motor Finance Ltd to do the following:

- Arrange for the car to be collected at no cost to Mr J and Mrs J.
- Cancel the agreement with nothing further to pay.
- Reimburse all payments made by Mr J and Mrs J under the agreement as the car has only been used to drive around 50 miles. Yearly interest at the rate of 8% simple to be added to that figure from the date of payment until the date of settlement.
- Reimburse to Mr J and Mrs J their deposit of £3,800 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Reimburse to Mr J and Mrs J the delivery cost of £316 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Remove any information about this hire purchase agreement from Mr J's and Mrs J's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 6 May 2022.

Jocelyn Griffith
Ombudsman