

## The complaint

Mr B complains that a car he acquired via a hire purchase agreement with Blue Motor Finance Ltd wasn't of satisfactory quality. He says it would be fair for Blue Motor Finance Ltd to cover the costs of all the outstanding repairs as he wishes to keep the car.

## What happened

In July 2021 Mr B acquired a used car via a five-year hire purchase agreement with Blue Motor. The car was around five years old with a mileage of 59,475.

When Mr B went to collect the car, he requested that he be able to take it for a test drive first. During this test drive Mr B experienced the traction control light flashing and also noted there was a bulge in one of the tyres. The dealership says it offered Mr B two options, these were to leave the car at the dealership while it replaced the tyre with one matching those already on the car or alternatively it would replace the tyre with an unmatched one and Mr B would need to then replace that one when he got back home to one that did match. The dealership says Mr B agreed for it to replace the tyre on the day with an unmatched one.

Having taken the car, Mr B says he experienced further issues with the traction control light flashing and the car losing power within a short time. Mr B took the car to a manufacturer approved garage who inspected it.

The garage supplied a report and video which set out the work that was required on the car. This report said that there were the following issue; the anti-roll bar at the front of the vehicle needed replacing; there were defective brake pads at the front and rear; that the rear exhaust system needed replacing; that although the rear tyres were the same make they had different tread patterns and should be replaced with those that matched as this could affect the way the car drove; that the vehicle no longer conformed to production status and had been chip-tuned; that the traction control light flashed when cornering and straightening steering wheel again and when the light flashed power output was noticeably reduced. The report also stated that it was likely that the traction control issue *'is related to non-factory software in engine control unit – especially as no fault codes are logged'* and that there was a loud engine noise. Mr B was advised by the garage not to drive the car as the water pump pulley was faulty.

Mr B complained to Blue Motor about the condition of the car and it arranged for it to be independently inspected. This inspection took place around one month after the garage had provided its report to Mr B. The independent engineer concluded that although there was wearing of the brakes and to the antiroll bar and that there was a rattle from the exhaust, the car met the minimum MOT standards and was in a satisfactory condition for a car of its age and mileage. The engineer also noted that there were no warning lights illuminated on the dash and, following a scan of the ECU, no fault codes stored.

Mr B was unhappy at the findings of the independent engineer and decided to instruct his own independent engineer to inspect the car. This engineer reported that the car wasn't fault free as there was *'excessive engine noise coming from the engine bay area'*. They said they suspected this was a bearing noise from *'one of the pulleys from either the alternator,*

*compressor or the water pump but this would require further investigation*'. The independent engineer said the front brakes were in the early stages of deterioration.

The manufacturer approved garage confirmed there was an issue with the car's alternator pulley. As Mr B needed to use the car and found that in its current state this wasn't possible, he arranged with the manufacturer approved garage to have this fault repaired so that the car was again driveable. Mr B paid £764.64 for this repair.

Mr B complained again to Blue Motor about the quality of the car and asked it by Blue Motor reject it. Blue Motor said that the health-check video had listed both advisories and items that had been shown as requiring immediate action, but this health-check had not been supported by the two independent engineers who had inspected the car. However, it accepted the fault with the alternator pulley had arisen within the first two months since inception of the agreement. It said it would reimburse Mr B the cost of this repair but as this had been now been repaired then it wouldn't agree to Mr B rejecting the car and cancelling the agreement.

Mr B was unhappy at Blue Motor's response and complained to this service. Mr B said there were still outstanding issues with the car that needed to be repaired and that he didn't think Blue Motor had treated him fairly.

Our investigator said that looking at all the evidence he was satisfied that there were faults with the car and that these had either been present or developing at the point of supply of the car to Mr B. Our investigator said the car wasn't of satisfactory quality.

Mr B had asked that when considering a fair settlement that it was taken into consideration that he wished to keep the car but have the necessary repairs carried out by Blue Motor. He provided a quote from a manufacturer approved garage that listed the required works. This set out the total cost of fixing the car was £4,531.50.

However, Mr B also informed our investigator that he'd been unaware when he acquired the car that it had been remapped (Chip-tuned). This had been discovered during the health-check. Mr B said if he had known this, then he wouldn't have purchased the car. The remapping could have had an impact on the engine's performance and caused increased wear and tear on various components. The health-check had reported this may be the cause of the issue with the traction control.

Our investigator said he thought that notwithstanding Mr B's wish to keep the car and have the repairs undertaken, that a fair settlement for his complaint would be for him to now reject the car and unwind the agreement. He said there was no guarantee that the repairs set out in the invoice would fix the car.

Our investigator recommended that Blue Motor should collect the car, refund Mr B's deposit and any monthly payments made under the agreement by him when he had been unable to use the car. He said Blue Motor should also reimburse 5% of the rentals for the periods Mr B had been able to use the car as its use had been affected by the faults.

Our investigator said Blue Motor should also reimburse Mr B a total of £504.81 to cover the costs of the independent report he'd arranged and for a hire car he had needed for a period when the car wasn't driveable. He also said that it would be fair for it to pay Mr B a total of £150 as compensation for the distress and inconvenience caused by having to deal with the faulty car.

Mr B disagreed with our investigator's view as to the settlement. He said he wanted to keep the car and that he would accept a payment of £3,000 from Blue Motor to resolve the matter.

Blue Motor agreed with our investigator that the listed repairs wouldn't be a guarantee that the car would be fixed. It was concerned that issues with the car would be ongoing.

Mr B also asked that consideration be given for additional costs he'd incurred in replacing the tyres, purchasing a two-year warranty and changing the plate to a private one. Our investigator said that the two independent reports had both agreed the tyres didn't require changing and the warranty wasn't part of the credit agreement so he wouldn't alter the amount he recommended was to be repaid.

Mr B, having reflected on the recommendation, said that he thought it would be fairer to be fully reimbursed what he had paid under the agreement if he was to return the car as he had incurred various costs. He also said that returning the car would cause him additional difficulties as he would need to source and replace the car which would be inconvenient and stressful. He thought it unlikely he would be able to replace the car with one matching its make, model and specification. He said he would rather the car was repaired, and he was able to keep it.

Mr B later reported that since June the car became unusable again due to the deteriorating fault with the car's exhaust system and brakes. He said he has had to have some repairs carried out to the exhaust and brakes to continue to use the car.

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.

I don't think it's disputed by Blue Motor that the car wasn't of a satisfactory quality at its point of supply to Mr B. However, I don't think I can reasonably say that all the items set out in the quote provided by Mr B as to the outstanding issues that required repair had all been investigated and accepted by Blue Motor. This is because they weren't all originally raised in Mr B's complaint. I've also seen that the two independent engineers disagreed with some of the faults listed in the earlier health-check, in particular that the tyres all needed replacing and it was said that the brakes were in the early stages of deterioration rather than needed urgent repair. But the issues of the traction system, the remapping and the front brakes were identified.

I also need to take into account that as the car is five years old and had a mileage of 59,475 then some wear and tear to its components would be reasonably expected. This means issues with repair and maintenance would arise over time particularly to parts such as the brakes, tyres and the exhaust system which are all serviceable items. And these types of repairs wouldn't necessarily mean that Blue Motor would be responsible for the cost of fixing them.

The issue for me to resolve with this complaint is what would be a fair and reasonable settlement in the circumstances. Blue Motor says that it accepts the fairest resolution is for the car to be handed back and the agreement ended. Mr B says it would be fairer for Blue Motor to cover the cost of the repairs though he would accept a payment of £3,000 towards them or, if he is to return the car, for him to be reimbursed fully.

While I appreciate that returning the car will mean further inconvenience for Mr B, looking at the issues with the car I agree that the repairs listed are not a guarantee that the car will be fixed. I think to be fair to both parties that the car should now be rejected by Mr B and returned to Blue Motor with the agreement unwound. I'm sorry that Mr B will consider that

this places a bigger financial burden on him, but I think this matter needs to be settled with certainty for both parties. I can't reasonably say that if the repairs are undertaken Mr B can't later raise further matters with Blue Motor should he need to do so. It also might not be fair to Mr B to limit the repair costs paid by Blue Motor as it's possible other issues may be uncovered during those repairs and the costs then increase.

I've seen that due to Mr B's current personal circumstances, which I understand may be temporary, he hasn't been able to secure a similar credit agreement. But although I'm sorry Mr B may not be able to replace the car with something similar, I don't think that's something I can reasonably hold Blue Motor responsible for. So, I don't think I can fairly take that into account when deciding the best outcome for Mr B's complaint.

Looking at all the circumstances I agree that the fairest solution is that the car is handed back, and the agreement ended with nothing further to pay.

As the agreement is to be ended then any deposit paid by Mr B should be reimbursed with interest. However, I disagree that Mr B should be reimbursed all the money he has paid under the agreement towards the car. That is because Mr B has been able to use the car although I accept there have been interruptions in that use and that its use has been affected by the faults. But I still think it's fair that he pays for the usage he has had.

I've seen Mr B was able to use the car for a month between July and August 2021, but then wasn't able to use it until the end of September 2021. I've also seen there were periods the car couldn't be used from June 2022 though Mr B had some repairs carried out and I think it's reasonable to say he has had use of the car to date. I think it's fair to ask Blue Motor to reimburse Mr B for the payments made during the period from mid-August to end of September 2021 and also for the month of June 2022.

I'm not going to ask Blue Motor to reimburse all the repair costs Mr B has incurred from June 2022 onwards as these relate to the brakes and exhaust and I can't be satisfied on the evidence I've seen that some of these costs didn't arise from wear and tear. However, I accept the overall condition of the car has impacted on Mr B's ability to use it so I think the repayment of the instalment for June 2022 would fairly reflect a period Mr B couldn't use the car during this year.

I also agree with our investigator that the issues with the car would have spoilt Mr B's enjoyment of it. He says this is a model of car he had always wanted. To reflect this, I think reimbursement of 5% of the rentals paid by Mr B should be made by Blue Motor.

I also agree that Mr B should be reimbursed for arranging his own independent engineer to inspect the car and for the period he had to hire a car. Blue Motor should reimburse him the amount of £504.81.

In regard to replacing the tyres I'm afraid I disagree these should be reimbursed by Blue Motor. The evidence from the two independent inspections including the one arranged by Mr B does not support that the tyres needed to be changed at that time. Tyres as set out above are a serviceable item and so over time will become worn. I'm satisfied on the evidence I've seen that the tyres were suitably durable at the point of supply of the car to Mr B.

In regard to the warranty, this was not purchased via the credit agreement with Blue Motor and therefore I can't hold it liable for this cost now the agreement is being unwound. This would also apply to the payment made to change the number plate.

However, I accept that Mr B has suffered distress and inconvenience having to deal with the faulty car, arranging repairs and inspections and needing to hire a car. I think compensation

is fair in these circumstances and I'm asking Blue Motor to pay Mr B £150 to reflect the impact this has had on him.

So, for the reasons given I'm upholding Mr B's complaint, though I appreciate my decision that the car should be rejected, and the agreement ended without a full reimbursement of the money paid by Mr B, will be a disappointment. I think the settlement I have set out above is the fairest in the circumstances.

### **Putting things right**

I'm asking Blue Motor to do the following:

- End the agreement with nothing further to pay.
- Arrange for the car to be collected at no cost to Mr B.
- Refund Mr B's deposit/part exchange contribution of £2,090 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Refund the instalment covering from mid-August until the end of September 2021 and June 2022 to cover any loss of use. Interest is to be added to that amount at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Refund Mr B £504.81 for the additional expenses incurred in respect of the independent engineer's report and hiring a car. Interest is to be added to that amount at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Pay £150 to Mr B as compensation for any distress or inconvenience that's been caused dealing with the faulty goods.

### **My final decision**

For the reasons set out above I'm upholding Mr B's complaint, however I have not agreed with his suggested resolution. As set out above I'm asking Blue Motor Finance Ltd to do the following:

- End the agreement with nothing further to pay.
- Arrange for the car to be collected at no cost to Mr B.
- Refund Mr B's deposit/part exchange contribution of £2,090 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Refund the instalment covering from mid-August until the end of September 2021 and June 2022 to cover any loss of use. Interest is to be added to that amount at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Refund Mr B £504.81 for the additional expenses incurred in respect of the independent engineer's report and hiring a car. Interest is to be added to that amount at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Pay £150 to Mr B as compensation for any distress or inconvenience that's been caused dealing with the faulty goods.

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

Jocelyn Griffith  
**Ombudsman**