

The complaint

Mrs Y complains about the quality of a car supplied to her by Blue Motor Finance Ltd ("BMF").

Mrs Y has been represented. For clarity, I've only referred to Mrs Y throughout this decision.

What happened

Mrs Y acquired a used car under a hire purchase agreement with BMF for £15,400 in July 2021. The car was around four years old and had covered around 58,500 miles when it was supplied to Mrs Y. Under the agreement, Mrs Y was required to make 60 payments of £355.14. The car was supplied by a dealership I'll refer to as "D".

Mrs Y says when she acquired the car, it had some scratches and chips. She says at the time, BMF agreed to repair these issues for her. Mrs Y took the car to D in August 2021, and it carried out repairs to the car. It repaired the window and carried out an alloy wheel refurb. It also said it mopped and polished the scratches to the car as best as possible. When the car was returned to Mrs Y, she says she let D know that the windscreen hadn't been repaired and the service was still showing as overdue.

Unhappy with this, Mrs Y complained to BMF. She said there were scratches and chips on the paint, the windscreen was scratched, the tyres had chips, the window wasn't working and there was no handle on the back door. She says that D agreed to book the car in to repair the issues, but later said they didn't advise they would carry out repairs.

Mrs Y also complained to D and said whilst some existing problems remained, further problems had occurred with the car. She said there was an issue with the drivetrain, the steering wheel shook heavily after 60mph, the windscreen scratches remained and the system stated a service hadn't been carried out, despite D telling her it had. She said there were other minor problems too that she hadn't mentioned.

BMF issued its response to Mrs Y's complaint in October 2021. It said D had confirmed they had carried out repairs to the car and addressed all the issues raised by Mrs Y. BMF said it requested that Mrs Y provide it with evidence to show the repairs had failed, but she hadn't done this. And so, it didn't uphold her complaint.

Following this, Mrs Y obtained diagnostic evidence in November 2021. She provided this to BMF. In December 2021, BMF asked Mrs Y what she would like as a resolution to her complaint. Mrs Y explained she wanted to reject the car and hand back the car to the dealer. BMF responded and said it would arrange an independent inspection. Because Mrs Y hadn't received any communication to arrange an independent inspection, later that month, she wrote to D and said she wanted to reject the car as she had provided it with three opportunities to repair the car, but it failed to do so. She asked to exercise her final right to reject.

BMF appointed an independent expert who I'll refer to as "M" in January 2022, to carry out an independent inspection. BMF issued a further response to Mrs Y after it received M's report. It said there was damage to the front bumper and the headlamp wasn't working. It said this may have been caused due to an accident and so it wasn't responsible for this repair. It said the windscreen scratch wasn't obscuring the driver's view and D had carried out a polish on the windscreen to make it more appealing. So it said it wasn't responsible for

the scratch. It said D carried out an oil and filter service and it could mean they didn't reset the light or a different service may be due. It suggested that Mrs Y contact D to resolve this matter. Finally it said the independent engineer couldn't replicate the shaking with the steering wheel, but noticed that a code in the ECU relating to an electrical issue. It said this issue wouldn't have been present at the point of supply and because it was a new issue which had been raised more than six months after Mrs Y was supplied her car, BMF weren't responsible for the fault.

Unhappy with this, Mrs Y referred her complaint to this service. She said when she initially inspected the car, it didn't have a handle and the left hand rear window couldn't be operated. She said when she went to collect the car the handle had been fixed, but the issue with the window remained. She also said she noted scratches on the windscreen and alloys. She said D agreed to change the alloys, but didn't agree to change the windscreen. Mrs Y said D should have serviced the car, but it didn't do this.

Our investigator looked into the complaint and he thought the car wasn't of satisfactory quality when it was supplied to Mrs Y. He said D had agreed to complete repairs on the car before it supplied it to Mrs Y and these hadn't been completed. He also said the car had fault codes present. So he recommended that BMF should allow Mrs Y to reject the car.

Mrs Y agreed. But BMF disagreed and provided a statement from D which said:

- At the time the car was sold, the cosmetic and aesthetic imperfections would have been present and Mrs Y was given the opportunity to inspect the car prior to agreeing to acquire it.
- Mrs Y continued with the sale on the understanding that D would carry out a mop and polish to make the exterior more appealing. D said this didn't guarantee that every scratch and mark would be removed, as a perfect finish could only be achieved from a complete respray.
- The car was returned to D on two occasions and on both occasions the exterior was polished. The customer care report clearly stated D's effort was to minimise the defect and it wouldn't disappear completely. D said Mrs Y accepted this upon collection of the car. It queried how many more scratches the car had been subject to since purchase.
- A further issue has developed which hasn't been reported back to D and M has said this fault wasn't present at the point of supply. D confirmed the service was completed and queried the mileage of the car at that time.

Our investigator reviewed the further comments provided. But he said his assessment remained unchanged. Our investigator said he thought it was unlikely that Mrs Y understood that a mop and polish would mean the scratches wouldn't be removed. He said M's report confirmed the car could benefit from rectification to improve the appearance and D had already been provided with two chances to repair the faults, at the time M carried out its report. He said M's report said it couldn't confirm whether the fault code was present or developing at the point of supply, but acknowledged that it occurred within six months of the car being supplied to Mrs Y. So overall, he thought it was fair that Mrs Y should be entitled to reject the car.

BMF disagreed. It said Mrs Y was aware that the work carried out to the car wouldn't rid it of the imperfections. It reiterated that when both repairs were carried out, the job sheets made it clear the work carried out was to minimise scratches. It said on both occasions Mrs Y was given the opportunity to say she was unhappy with the work, but she didn't do this.

As BMF remains unhappy, the complaint has been passed to me to decide.

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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mrs Y has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

What I need to decide in this case is whether the car supplied to Mrs Y was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. BMF is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mrs Y acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, durability, freedom from minor defects, safety, and – of particular relevance to this case - appearance and finish.

The CRA says goods are not of unsatisfactory quality if faults are specifically drawn to a consumer's attention before purchase. BMF has referred to the relevant provisions in the CRA. In this case, both Mrs Y and BMF appear to accept that the scratches were drawn to the attention of Mrs Y before she agreed to acquire the car. So I don't think the scratches simply being present on the car make the car of unsatisfactory quality.

However, the dispute in this case doesn't concern this point. This dispute centres around what was said about the extent to which D would rectify the scratches that were present with the car, before Mrs Y agreed to acquire it. So I've considered all the available evidence and circumstances to decide what I consider is most likely to have been said by D, about the repairs it would carry out to the appearance and finish of the car, before Mrs Y agreed to acquire it.

Around four weeks after the car was supplied to Mrs Y, she took it back to D for it to carry out repairs. The mileage at this point was recorded as 58,867. The job sheet from the time confirms that there is a near side rear window motor fault which was repaired, an oil and filter service was carried out and the service indicator on the dashboard was reset. The job sheet also confirms that a mop and polish was carried out to "*minimize [sic] scratch on body work*" and a polish to the windscreen was carried out to "*minimize [sic] scratch*". It said, "*scratch is still present unable to make cosmetically more appealing*". This job sheet is unsigned.

A further job sheet has been provided which is dated three days after the previous job sheet. The mileage on this job sheet is 58,870. This job sheet appears to be an extension of the previous repair, as the visit date is the same on both job sheets. This job sheet confirms that D carried out further work to the near side rear window and carried out a near side front alloy

wheel refurb. It also said, *"Scratches on vehicle mopped and polished as best as possible"*. The job sheet is unsigned.

BMF has said that on both occasions these repairs were carried out, Mrs Y didn't indicate that she was unhappy with the work carried out.

However, I've seen other versions of the same job sheets. These are signed with some comments made by Mrs Y. The comments for the first job sheet say that the windscreen scratch isn't sorted and the wheel scratch and chips aren't sorted. The comments on the second job sheet say, *"Windscreen lines/scratch not done. Servicing still shows overdue (not satisfied)"*. Mrs Y says these were handed to D when they delivered the car back to her. This is consistent with Mrs Y's complaint to BMF shortly after the second repair was carried out. In this email, she said, *"Dealerships have fixed a couple of issues, however still have not fixed the windscreen"*. She reiterated this to BMF a couple of days later.

Having carefully considered this, I'm satisfied that D more likely than not told Mrs Y that it would remove the scratch in the windscreen. I say this because I'm persuaded by Mrs Y's testimony and it has been consistent throughout her complaint. Her testimony is supported by her actions when she returned the car to D, the comments she made on the job sheets from August 2021 and her complaint to both D and BMF. All of this coupled together suggests that Mrs Y was unhappy with the repair work carried out by D, as it didn't rectify the damage in the way D likely led her to believe it was – which I think was to remove the scratch.

But even if I'm wrong about this and accept that D said that it only agreed to *"mop and polish to make the exterior somewhat appealing"* in discussions around the time Mrs Y agreed to acquire the car, I don't think that D has carried out what would be considered a reasonable mop and polish of the windscreen scratch. I say this because M's report carried out following two opportunities to repair the scratch by D states that, whilst the car meets MOT standards as the scratch isn't obstructing the driver's view, the scratch is around 20cm long and the scratch on the windscreen would benefit from rectification to improve the appearance of the car. D said further polishing of the windscreen could result in distortion of the glass. But M, who is an independent party, has confirmed that further work is required to improve the appearance.

Having considered this carefully, I don't think D completed a mop and polish or carried out repairs in the way they reasonably led Mrs Y to believe they would, as M has also said the windscreen requires a professional repair. As D has had two opportunities to repair the windscreen scratch but it still remains visible, I'm satisfied that Mrs Y is entitled to reject the car at this point.

There have also been a number of other issues with the car such as damage to the bodywork, the service light being overdue, a drive train fault and fault codes being stored on the car. I'll briefly comment on these.

Mrs Y says as part of her agreement to acquire the car, she was told that D would service the car. There isn't an invoice or advert for the car, but Mrs Y has maintained that D told her it would service the car. She also commented on the August 2021 job sheet to confirm this. D confirmed it carried out an oil and filter reset service. But Mrs Y received notification from the manufacturer in October 2021, that a service was due on her car. The mileage at the time Mrs Y acquired the car was 58,455. When M carried out the independent inspection, the mileage was 61,051. This meant Mrs Y had travelled 2,596 miles in the car at the time of M's report. However, M's report confirmed that the oil service was overdue by 7,000 miles. This means the service fell due before Mrs Y acquired the car. And given M's report was conducted after D said it carried out the service, it suggests that an oil service wasn't carried out by D and this remained outstanding.

In November 2021, Mrs Y had a diagnostic carried out. This showed a number of issues with the exhaust, the paddle operation, the electrical heater and the rear window defroster. The

diagnostic test highlighted four fault codes relating to the engine, the transmission and the air conditioning. M's report in January 2022 confirmed that the fault code relating to the paddle operation was present but the engine and transmission appeared to be performing as intended. M said the fault code required further investigation under workshop conditions and it couldn't say it was present or developing at the point the car was supplied to Mrs Y. Since then, Mrs Y says a drivetrain fault appears intermittently.

Having considered all these issues, whilst M's report suggests that most of these weren't an issue, it does confirm the issue with the windscreen remains outstanding. And it suggests the fault code requires further investigation. A further investigation doesn't appear to have been carried out. Given I'm satisfied that Mrs Y is entitled to reject the car because of the windscreen scratch, I see no reason to further comment on these additional issues.

I've gone on to think about what BMF needs to do to put things right.

As I'm satisfied Mrs Y is entitled to reject the car, BMF should collect the car from her and end the agreement with nothing further to pay by Mrs Y. It should also refund her deposit contribution of £1,500. BMF should pay Mrs Y 8% simple interest on this amount from the date of payment until the date of settlement.

I've also considered the impact of these issues occurring with the car on Mrs Y. I can see that Mrs Y has been going back and forth with D and BMF since shortly after acquiring the car. She has provided evidence to BMF and D and I can see at times this wasn't acknowledged and it was re-requested by BMF, despite Mrs Y sending this to it. Mrs Y has also described that it has been stressful driving the car with the intermittent lights appearing on the dashboard which she says state that it is dangerous to continue driving it.

Having considered this, I'm persuaded Mrs Y was caused distress and inconvenience as a result of the issues with the car and because I think the service BMF provided to Mrs Y fell short on some occasions. So, I think BMF should pay Mrs Y £200 to reflect the distress and inconvenience caused.

My final decision

My final decision is that I uphold Mrs Y's complaint. I direct Blue Motor Finance Ltd to:

- Collect the car at no further cost to Mrs Y;
- End the agreement with nothing further to pay;
- Refund Mrs Y's deposit of £1,500*;
- Pay Mrs Y 8% simple interest on this amount from the date of payment until the date of settlement;**
- Pay Mrs Y £200 for the distress and inconvenience caused; and
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement.

*If any of the deposit is made up of funds paid through a dealer contribution, then Blue Motor Finance Ltd is entitled to retain the proportion of the deposit that is made up of the dealer contribution.

**If Blue Motor Finance Ltd considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs Y how much it's taken off. It should also give Mrs Y a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y to accept or reject my decision before 9 February 2023.

Sonia Ahmed
Ombudsman