

## The complaint

Mr O complains about the quality of a car he has been financing through an agreement with Blue Motor Finance Limited ("BMF").

## What happened

I issued a provisional decision on this complaint in July of this year. An extract from that provisional decision is set out below.

*Mr O took receipt of a used car in March 2021. He financed the deal through a hire purchase agreement with BMF. At the point of supply the car was about 11 years old and had already completed about 53,000 miles.*

*He reported squeaking from the car to the supplying dealership later that month and a repair was arranged. The dealership referred Mr O to their preferred repairer, but a successful repair wasn't completed. Instead the dealership told Mr O that if he took the car to a garage of his choice they would refund the repair cost. Repairs were subsequently completed to the shock mounts and anti-roll bar in April 2021.*

*But during that repair Mr O says the garage noted some damage had been done to a wheel nut by the previous repairer. Mr O returned the car to the supplying dealership in May 2021. He emailed them on 22 May 2021 saying, "I look to return the car" and he explained he'd stopped driving it.*

*The dealership took the car back and repaired it in June 2021 but on 7 June 2021 Mr O emailed the broker telling them that the car had been repaired but a new sound and problem had arisen subsequently. He said he'd reached a decision to return the car to the dealership and explained he didn't want to keep it anymore.*

*The following day the broker emailed telling Mr O he couldn't return the vehicle. They subsequently explained that was because the dealership had the right to carry out a repair. A further repair was therefore completed and on 16 June 2021 BMF emailed Mr O explaining that the car was ready for collection. They said if he refused to collect it they would deem the car abandoned and would issue a default notice to him, collect the car, and sell it. Mr O didn't collect the car. He referred his complaint to this service and explained that the dealership still hadn't refunded the £220 it cost him to carry out the initial repairs.*

*Our investigator upheld Mr O's complaint. He thought the car had been of unsatisfactory quality, but he didn't think Mr O should be allowed to reject it and end his agreement as he thought there was evidence he'd sanctioned the most recent repairs. He thought BMF should refund the £220 repair cost, refund half a monthly finance instalment for the time the car was being repaired and pay Mr O £200 to compensate him for the distress and inconvenience caused.*

*Mr O didn't agree with the investigator and neither did BMF. So, the complaint has been referred to me, an ombudsman, to make a decision.*

## **What I've provisionally 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 know it will disappoint BMF, but whilst I agree with the investigator's view that this car was of unsatisfactory quality I don't think the repairs were sanctioned and I think BMF should now allow Mr O to reject the car. Please let me explain why.*

*Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.*

*I've read and considered the whole file, but I'll concentrate my comments 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.*

*Mr O acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.*

*The Consumer Rights Act (2015) is the relevant legislation. It says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then BMF, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.*

*The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply, when BMF were responsible for the car's quality, unless they can demonstrate otherwise.*

*BMF haven't tried to dispute that these faults were present at the point of supply. I understand that the car was quite old when it was supplied but it had only completed about 52,000 miles and I don't think a reasonable person would expect to have problems with the shock absorbers or anti-roll bar at that point.*

*The relevant legislation gives the business one opportunity to fix a problem that is present at the point of supply. So, I think the first repair to the shocks and roll bar bushes was BMF's responsibility.*

*If the repair fails the relevant legislation explains that a consumer should then be entitled to reject the goods. Mr O may therefore have been able to reject the car after the supplying dealer's choice of repairer failed to repair it in April 2021. But I think it's clear that at that point Mr O accepted that the car should be repaired. When he referred the car back to the dealership with the broken wheel nut issue I think that was part of the initial failed repair. Whilst it was the dealership's responsibility to rectify that I don't think it would be fair to say it was a further failed repair.*

*So, when Mr O asked to return (reject) the car in May 2021 I don't think BMF had to sanction that rejection.*

*But thereafter, when Mr O noted the problem persisted and returned the car for further repairs, I think BMF should have allowed him to reject the car.*

*On 7 June 2021 Mr O emailed to say that there was a "new sound and problem" after the car*

*had been repaired. He explained he was returning the car to the dealership as it had been too problematic and that he didn't want the car anymore.*

*On 8 June 2021 the broker told Mr O "you cannot return the vehicle". They subsequently explained that was because they "had the right to carry out repair (sic) on the car". I've explained that the relevant legislation doesn't give the business the right to complete further repairs and I think at this point Mr O's rights weren't properly explained to him and should have been.*

*Repairs were completed and an invoice dated 16 June 2021 explains that the brake pads were replaced, suspension linkage bushes were renewed, the locking nut was fixed, and some welding was completed to the exhaust. BMF emailed Mr O that day. They explained that the car was ready to collect and that if it wasn't, they would treat it as being abandoned and issue a default notice.*

*Our investigator said that it was clear Mr O had accepted repairs to the car in his email of 18 June 2021, but I don't think he was given any option as it's clear BMF would have defaulted the agreement otherwise.*

*I think the car had been of unsatisfactory quality and that repairs had failed by 7 June 2021 when Mr O asked to reject the car. So, I think BMF should allow rejection from that point and that they should end the finance agreement Mr O has with them.*

*I think it's fair Mr O pays for the use of the car he had up until 7 June 2022 when he asked to reject it. But thereafter BMF should refund any finance instalments he's paid towards it (or Mr O has been deprived of the money).*

*BMF should also refund the £1,000 deposit and the £220 Mr O spent getting the initial fault repaired.*

*Mr O has explained that he has been inconvenienced by these issues. He's had to pay for taxis for his family and to cancel his insurance. It's also clear he had to arrange to return his car to the dealership on several occasions and that he had to arrange repairs himself when the dealership's failed. He's also had to escalate his complaint to this service when I think it could have been resolved earlier by BMF. I don't think it would be fair to refund all Mr O's taxi expenses as I think some of those costs could fairly have been mitigated by him e.g. by using buses or getting lifts. But I do think there is evidence of distress and inconvenience and some consequential costs, that would merit an award of £350 so I'm expecting to tell BMF to pay that.*

### ***My provisional decision***

*For the reasons I've given above I'm expecting to uphold this complaint and to tell Blue Motor Finance Limited to:*

- Allow Mr O to reject the car and end his finance agreement with them.*
- Collect the car at no cost to Mr O if this hasn't already been done.*
- Refund Mr O's deposit and add 8% simple interest per year from the date of payment to the date of settlement.*
- Refund any finance instalments Mr O has paid since 7 June 2021 when they should have accepted rejection of the car. Waive them if they were due but haven't been paid. Add 8% simple interest per year from the date of payment to the date of settlement to any refund.*
- Pay Mr O £350 compensation in respect of the distress and inconvenience caused*

- *and the costs he incurred as a consequence of the problems with the car.*
- *Remove any adverse reports they may have made to Mr O's credit file in relation to this issue.*

I subsequently provided an addendum to that decision explaining that I was also expecting to tell BMF to refund the £220 Mr O paid to have the initial fault repaired and add 8% simple interest per year from the date of payment to the date of settlement.

### **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.

Mr O accepted my provisional decision and so did BMF. They explained that the car had already been collected but that they'd received a report that suggested there was damage on the car beyond what would be considered acceptable wear and tear. They said they reserved the right to charge Mr O for that damage.

### **Putting things right**

I thank Mr O and BMF for getting back to me promptly and, as neither party disagree with my provisional decision, that will now become my final decision on this complaint.

With regard to BMF considering damage charges, the finance agreement explains that:

*"You must keep the Vehicle in good working order and condition at your expense and you must have the Vehicle serviced in accordance with the manufacturer's recommendations and any applicable warranty. You are responsible for all loss of, or damage to, the Vehicle even if caused by events beyond your control. However, you are not responsible for any accepted reduction in the value of the Vehicle where this reduction is as a result of fair wear and tear in normal usage."*

So, if there is damage beyond what would be considered normal wear and tear BMF may be able to charge Mr O for the refurbishment of that damage. They'll need to bear in mind that this car was eleven years old when supplied and I think a reasonable person would expect quite a bit of wear and tear to be present on a car of that age before it was supplied.

If refurbishment charges are pursued by BMF, and if Mr O doesn't agree with them, he'll need in the first instance to complain to BMF about them. But if Mr O remains dissatisfied with BMF's response they will provide referral rights so he can escalate that part of his complaint to this service. I'm not able to consider that now as i) BMF haven't as yet made any charges, and ii) BMF have a right to consider any complaint from a consumer, and try to put things right for them, before the complaint is escalated to this service.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell Blue Motor Finance Limited to:

- Allow Mr O to reject the car and end his finance agreement with them.
- Collect the car at no cost to Mr O if this hasn't already been done.
- Refund Mr O's deposit and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund the £220 Mr O paid to have the initial fault repaired and add 8% simple interest per year from the date of payment to the date of settlement.

- Refund any finance instalments Mr O has paid since 7 June 2021 when they should have accepted rejection of the car. Waive them if they were due but haven't been paid. Add 8% simple interest per year from the date of payment to the date of settlement to any refund.
- Pay Mr O £350 compensation in respect of the distress and inconvenience caused and the costs he incurred as a consequence of the problems with the car.
- Remove any adverse reports they may have made to Mr O's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 31 August 2022.

Phillip McMahon  
**Ombudsman**