

## The complaint

Mr B complains that a car that he acquired from a dealership that I will call “O”, under a hire purchase agreement (“HP agreement”) with Blue Motor Finance Ltd (“BMFL”), was of unsatisfactory quality. Mr B would like to be able to reject the car and to be appropriately compensated for doing so.

## What happened

On 18 August 2021 Mr B entered into a HP agreement for a used car costing £9,555. The car was six and half years old and had travelled 34,350 miles. The HP agreement came into effect on 20 August 2021.

Under the terms of the HP agreement, everything else being equal, Mr B undertook to pay a deposit of £2,000 (£500 cash plus £1,500 part exchange allowance) followed by 47 monthly payments of £196.35 and one final monthly payment of £197.35 – making a total repayable of £11,425.80 at an APR of 11.9%.

Shortly after taking delivery of the car Mr B says he noticed a “*knocking*” coming from one or more wheels which he got investigated by a local garage that I will call “N”.

On 2 September 2021 Mr B paid N £275.00 for the supply and fit of three replacement tyres (£225) and a number of wheel bolts (£50). Mr B says N said a number of wheel bolts needed to be supplied and fitted because they were missing, and it was these missing wheel bolts that were responsible for the knocking noise Mr B had noticed.

Shortly after the above work was undertaken Mr B says he noticed the car was losing coolant, an issue that Mr B says was repaired by O at no cost to him.

On 5 October 2021 Mr B says the stop/start system failure light came on and O said it would investigate and repair the issue if he could get the car to it.

On 6 October 2021 Mr B called out a company that I will call “R” to inspect the car. Following the inspection by R, which concluded that “[the car] *was flooded multiple fault codes* [were present] [and the] *engine light* [was] *on*”, the car was uplifted to one of R’s recommended repairers close to Mr B’s home. Mr B paid £149 for R’s services.

Mr B says R’s recommended repairer was unable to repair the car, so it was returned to him. Mr B says R’s recommended repairer didn’t charge him anything for looking at the car.

On 21 October 2021 Mr B took the car to O for inspection and repair.

The following week Mr B says O contacted him to say that it had carried out various “*works*” and his car could now be collected.

Mr B says he collected the car, but the stop/start failure light was still on and the EPC warning light was now on.

Mr B then he says he arranged for the car to be inspected by a manufacturer approved dealership that I will call C.

On 15 November 2021 Mr B says he collected the car from C (with both lights still on) and parked it up his drive.

On 16 November 2021 Mr B paid C £544.99 for what was its failed attempt to diagnose why the “EPC warning light [was] on”.

On 24 November 2021 Mr B complained to BMFL.

In late January 2022/early February 2022 Mr B took the decision to make no further payments against his HP agreement, having paid all that was required of him up to and including 20 January 2022.

On 3 May 2022 BMFL contacted Mr B to say that it would like to have the car inspected, at its cost, by a third party that I will call “S”.

On 13 May 2022 a report was produced by “S” following its inspection of the car. This report concluded that:

*“There was no suggestion that the vehicle’s overall physical condition was not in line with its age and mileage. In our opinion, this vehicle meets minimum MOT standards and is fully compliant with all the criteria laid out in section 75 of the Road Traffic Act to allow a vehicle to be used regularly on the public highway.*

*Our opinion is based on the fact that no warning lights were displayed on the drivers panel, and there was nothing to suggest that the vehicle would not have passed an MOT at the point of purchase.”*

On 15 June 2022 BMFL issued Mr B with a final response letter (“FRL”). Under cover of this FRL BMFL said it didn’t believe (having had sight of S’ inspection report) that the car was of unsatisfactory quality when Mr B first acquired it. But for the time taken to reach that conclusion it was prepared to pay Mr B £200 compensation.

Mr B’s complaint was considered by one of our investigators who came to the view that Mr B had indeed been provided with a car that was of unsatisfactory quality, and to fairly and reasonably compensate Mr B, BMFL should:

- unwind the HP agreement
- refund to Mr B the deposit he paid (together with interest).
- refund to Mr B the payments he made against his HP agreement liability since 1 October 2021 (together with interest)
- refund to Mr B the payments he made to N, R and C
- pay Mr B £150 for the distress and inconvenience he had been caused by this matter

BMFL didn’t agree with the investigator’s view so the complaint was passed to me for review and decision.

In October 2022 I issued a provisional decision. In summary I said:

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

First, I would like to point out 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.

I would also point out that where the information I've got is incomplete, unclear, or contradictory, I've to base my decision on the balance of probabilities.

Finally I would add that in considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulator's rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

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

The Consumer Rights Act 2015 ("CRA") 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 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. The CRA also explains the durability of goods is part of satisfactory quality.

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 car's history.

BMFL supplied Mr B with a used car that was six and a half years old. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car. But equally, I think it's fair to say that a reasonable person paying £9,555 for a car that had travelled only 34,350 miles would expect it to provide relatively 'trouble free' motoring for a 'good year' or so.

I've considered the timeline of events in this case and having done so I agree with our investigator that, on balance, the car wasn't of satisfactory quality at the point of supply. I say this because Mr B noticed and sought to have addressed a number of issues with the car very shortly after taking delivery of it, the evidence provided by Mr B in support of these issues (in particular the 'reports' provided by R and C) and given that O undertook, on at least two occasions, 'works' on the car. I would also add at this point, for the avoidance of doubt, that I haven't discounted the inspection report provided by BMFL (from S). But I'm not persuaded that this supports BMFL's view (that the car was of satisfactory quality at the point of supply) given when the inspection was undertaken, that the car wasn't road tested and that the report recommended *"that the battery [be] replaced, and the vehicle is then returned to service to **ascertain if there are any current issues present**"*. [my emphasis]

Given my finding above, I will now consider what BMFL should do to reasonably and fairly compensate Mr B.

I've considered whether it would be appropriate to allow BMFL to undertake further diagnostics on the car and carry out repairs. But given that on at least two occasions O have undertaken 'works' on the car and C's view on the EPC light issue, I'm not persuaded that this constitutes an appropriate or proportionate remedy in the particular circumstances of this case and BMFL should allow Mr B to reject the car.

In allowing rejection, I also think that to fairly and reasonably compensate Mr B, BMFL should also:

- End the hire purchase agreement and arrange for the car to be collected from Mr B – both at no cost to him.
- Refund to Mr B the deposit he paid for the car together with interest.
- Refund to Mr B the monthly payments he made against the hire agreement after 5 October 2021 – the date he stopped using the car – together with interest.

I will now turn to the additional costs Mr B has incurred and evidenced and whether BMFL should refund these.

#### £275.00 paid to N

Mr B hasn't been particularly consistent in his submissions to our service about the number of wheel bolts he believes were missing. But I'm satisfied, on the balance of probabilities, that N wouldn't have replaced any wheel bolts unnecessarily. Therefore, and regardless of whether wheel nuts were missing or simply damaged, given the date these were replaced I find that BMFL should meet this cost (£50).

However, I'm not persuaded that BMFL should have to meet the cost of the three new tyres purchased by Mr B from S. I say this given that the car was supplied to Mr B with a recent MOT test certificate (with no tyre advisories noted) and that S hasn't confirmed whether the tyres needed replacing (on the grounds of safety or legality) or whether Mr B simply chose to have them replaced.

#### £149 paid to R

I'm satisfied that it was entirely reasonable for Mr B to instruct R to inspect the car and for it to be taken to one of R's recommended repairers. I say this because I find Mr B's submission that he felt returning the car himself to O for inspection, given where O was located, wouldn't be safe to be both plausible and persuasive. I'm also of the view that had O picked the car up from Mr B, rather than asking Mr B to return it himself, then it would have resulted in similar costs being incurred.

#### £544.99 paid to C

I'm satisfied that it was entirely reasonable for Mr B to instruct C to inspect the car. I say this because I find Mr B's submission that O had returned the car to him with both the stop/start failure light and the EPC light on, causing him to lose faith in O, to be both plausible and persuasive. I'm also of the view that had O carried out further diagnostics itself, rather than the same being undertaken by C, then it would have resulted in similar costs being incurred.

Finally, I will turn to the distress and inconvenience Mr B says this matter has caused him.

Under cover of its FRL, BMFL offered Mr B £200. The investigator, on the other hand, recommended BMFL pay Mr B £150.

Bearing in mind the issues I've found Mr B had with the car and the time he has been without the use of it (it being parked on his drive with no road tax or insurance) I find that a fair and reasonable sum for BMFL to have to pay Mr B in this respect is £250.

Mr B responded to my provisional findings to say he accepted them.

BMFL, in response to my provisional findings, simply sent an email from O reiterating what O had previously had to say on the matter. In other words, BMFL provided nothing new for my consideration.

### **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.

Because Mr B responded to say he accepted my provisional findings and because BMFL provided nothing new for my consideration, I can confirm that I see no reason to depart from my provisional findings and I now confirm them as final.

### **My final decision**

My final decision is that Blue Motor Finance Ltd must:

- End the hire purchase agreement and arrange for the car to be collected from Mr B – both at no cost to him.
- Refund to Mr B the deposit he paid for the car together with interest at 8% simple a year from the date of payment of that deposit to the date of settlement\*
- Refund to Mr B the monthly payments he made against the hire agreement after 5 October 2021 – the date he stopped using the car – together with interest at 8% simple a year from the date Mr B made these payments to the date of settlement\*.
- Refund to Mr B the payments he made to N, R and C of £50, £149 and £544.99 respectively together with interest at 8% simple a year from the date Mr B made these payments to the date of settlement\*.
- Remove any adverse information about the HP agreement that its recorded on Mr B's credit file.
- Pay £250 to Mr B to compensate him for the distress and inconvenience that he's been caused less any sum already paid in this respect.

\*HM Revenue & Customs requires Blue Motor Finance Ltd to deduct tax from these interest payments. Blue Motor Finance Ltd must give Mr B a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 November 2022.

Peter Cook  
**Ombudsman**