

The complaint

Ms S has complained that she is unhappy with the quality of a car she acquired in September 2021 using a hire purchase agreement with Blue Motor Finance Ltd ("Blue Motor").

What happened

Ms S acquired a used Nissan Qashqai in September 2021, using a hire purchase agreement. The cost of the car was £13,299, and of this, Ms S borrowed £10,299 over 48 months. The monthly cost was £267.67. The car was just over five and a half years old and the mileage was recorded as 54,320 at the point of supply.

Ms S said that within three months, problems began to occur. The car made loud screeching noises when applying the brakes. The brake discs and pads were repaired at a local garage in January 2022, and a further MOT test carried out, at a cost of £300.19. Ms S sent in a copy of the invoice and I can see that it also notes that there was fluid leaking from the rear left suspension. Ms S also said that the battery died twice, unexpectedly, and she was advised to replace the battery, and the electronic locking system wasn't working as normal.

The most serious issue was that the car was shaking when idle, and was struggling to accelerate. Ms S said she took the car to a local garage, but was advised to take it to a Nissan garage for a full diagnostic test. This she did, in February 2022, at a cost of £342. The Nissan report states "*Engine is running rough due to low compressions, advise to replace engine*" and also advises that the car shouldn't be driven.

After receiving this report, Ms S complained to Blue Motor, saying she wanted to reject the car. It commissioned an independent report on the car, which was carried out in March 2022, and the examiner concluded that in his opinion, whilst the car was, at that point, not fit for regular use, the symptoms had developed after the point of supply, and the most likely cause was in-service wear and tear to the fuel pump. Because of this, Blue Motor said that it didn't think the current problems were there at the point of supply, and therefore it didn't consider itself responsible for it. So it didn't uphold Ms S's complaint.

After this, in early April, Ms S said she was driving on a narrow country lane, smoke started coming out of the bonnet and the car lost complete power. The engine had caught fire and the fire brigade had to attend. This was very frightening, especially as Ms S's young daughter was a passenger that day.

Ms S then brought her complaint to this service. Our investigator looked into this complaint, but didn't think Ms S's complaint should be upheld. Ms S disagreed, and asked that it be reviewed by an ombudsman. In October 2022 I issued my provisional decision, in which I explained why I was minded to uphold Ms S's complaint. As both parties have responded, I can now issue my final decision. Ms S told us she had nothing further to add. Blue Motor sent in further comments which I have considered below.

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've decided to uphold Ms S's complaint. I'll explain why.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

Because Blue Motor supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case of course, the car was just over five and a half years old. And the price was lower than that of a new car. So it's reasonable to expect that parts of the car would have suffered a degree of wear and tear, and that a car of this age would likely need repair and maintenance sooner than a newer car.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

I set out above the information that Ms S provided about the sequence of events. The first faults occurred after the first 30 days, so I am not considering the short term right to reject under the CRA here.

I've carefully considered all of the evidence provided by both parties. Blue Motor has provided copies of the hire purchase agreement, independent report, its contact notes relating to the complaint, and documentation sent by Ms S as part of her complaint. Ms S has provided a detailed sequence of events, the maintenance record for the car, and copies of all of the invoices and other documentation from the garages she has consulted about the car. Whilst the complaint has been with this service, Ms S has had the engine replaced so as to bring the car back into use, and she has sent in copies of the diagnostic report and invoices.

The maintenance record for the car shows a full service having been carried out on 23 September 2021 – a few days before Ms S acquired the car. I would expect a full service to include a check on the brakes. I accept that the expected life of brake pads can vary greatly, but it seems unusual for them to be worn to the extent that they were affecting the brake discs within four months of Ms S taking possession of the car. Ms S said she was not told that the brake pads would need replacement in the short term, and I've no reason to doubt that.

Ms S took the car to a garage where an MOT test (which the car passed) and repairs to the brakes costing £300.19 were carried out in January 2022 (and I understand that the selling dealership later made a contribution of £63 to these repairs). I note that on the invoice the mechanic noted fluid leaking from the rear left suspension. At the same time issues had

arisen with the battery, and Ms S was advised by another garage to replace it. Ms S also said that noises were occurring at the front of the vehicle, and an engine warning sign was appearing. She was advised to take the car to a Nissan garage for a full diagnostic test, which she did at the beginning of February 2022 (at a cost of £342). I have a copy of the report which noted the fuel pressure was abnormal, and also following a compression test, that the *"Engine is running rough due to low compressions, advise to replace engine"*. Ms S was advised not to drive the car.

Blue Motor commissioned an independent report on the car, which was completed in March 2022. The report said that the car was *"not presently fit for regular use due to the poor engine performance, and because of the issue with the brakes while the vehicle is reversing. The fault codes suggest the vehicle is suffering from low fuel pressure, which would impede the engine performance and could account for the symptoms that were noted at the time of our inspection. The most likely cause is that the vehicle is either suffering from an issue with the fuel pump, or there is a blockage in the fuel system. There is a strong possibility that the current symptoms are affecting the braking performance. It's inconceivable that the poor engine performance, and the issues with the brakes, were present at the point of purchase as the symptoms are easily noticeable and would have been identified, if present, at the collection point. Our opinion is that the symptoms have developed after the point of sale, and the most likely cause was in-service wear and tear to the fuel pump."*

It went on to say that *"Our opinion is that this car was fit for purpose and in a road legal condition at the point of sale, and the current issue with the low fuel pressure has developed after this as the result of normal, in-service, age-related, general, wear and tear, with the most likely cause being in-service wear to the fuel pump. The issues with the brakes are almost certainly linked to this. The need to replace a fuel pump on a vehicle that is approaching 60,000 miles would not be considered unusual and would not be considered premature wear, therefore, it is our considered opinion that the sales agent bears no responsibility for the repair cost"*.

Ms S told us that, although the car wasn't deemed fit for regular use, the independent report didn't suggest it was unsafe to drive. As I noted above, Ms S said that in early April, smoke started coming out of the bonnet and the car lost complete power. The engine had caught fire and the fire brigade had to attend. Ms S sent in video evidence of the fire brigade in attendance.

Clearly there is an inconsistency between the Nissan garage report and the independent report. Ms S said that the engine problems developed gradually, so it doesn't seem to be in dispute that they were not evident at the point of supply. And Ms S had completed 2,689 miles between the date of purchase and the date of the report, and the car passed an MOT test in January 2022. But I have to consider the durability of the components of the car – that is whether they last a reasonable amount of time.

After seeing the independent report, Ms S asked for a further diagnostic report from another garage, and this was carried out in early June at a cost of £132. This found the same issue as the Nissan garage, that is low compression, and again recommended replacement of the engine. This garage suggested that the fuel pump had recently been replaced and that the installation of a new fuel pressure pump would have increased fuel pressure and improved the engine performance for limited time. Ms S suggested that this could explain why the engine problems were not evident at the point of supply. The report also suggested the cause of low compression as *"bad engine service maintenance or rough driving in wintertime"*.

In August 2022, Ms S had the engine replaced so as to bring the car back into use, and she sent in a copy of the report and invoices (totalling £5,035.17). I note that Ms S had asked the

Nissan garage to check the diagnostic codes relating to the fuel pump, and the report notes no stored codes relating to the fuel pump at the time of the test. As before, the report included a diagnostic test and it referred to 'internal failure of engine'.

The evidence regarding the replacement of the fuel pump isn't conclusive, although I accept it's possible. I note one possible cause of low compression as rough driving in wintertime, and of course Ms S's period of ownership coincided with last winter. But I note that the independent report includes comments on the car's overall condition as follows " ...*after doing a general condition check which showed the vehicle was in a good general condition*" and "*I went on to examine the specific faults and found the following: After confirming the vehicle's general condition, which included an under-bonnet level check that revealed no cause for concern.....*".

Those comments don't seem to me to indicate a recent period of rough driving, as I think it likely that that would have affected the general condition of the car.

Taking all this into account, I don't consider that the reasonable person would expect to have to replace the engine in the car after less than 60,000 miles overall and a few months after they took possession. I've no evidence to suggest that Ms S has caused or contributed to the faults that occurred. The independent report suggested the fuel pump as the likely cause, but was not definitive. And this wasn't borne out by the work actually done on the car when the engine was replaced. I've also kept in mind the initial issue with the brakes. Overall I consider it most likely that the car was not of satisfactory quality at the point of supply.

Ms S initially wanted to reject the car, but I understand she now wishes to keep it as the repairs have been done. So I consider it fair that Blue Motor should refund the cost of the repairs and diagnostic reports that Ms S has had to arrange. I also think it fair that Blue Motor should refund the hire purchase payment for the months that Ms S was unable to drive the car, and an additional £150 in recognition of the inconvenience caused by the faults.

As I noted above, I issued a provisional decision in October 2022, explaining why I proposed to uphold Ms S's complaint. Ms S had nothing further to add in response to my provisional decision. Blue Motor responded to say that it had spoken with the dealer and there was no new evidence. It also said that the dealer had reiterated that it had asked Ms S to bring in the vehicle to get repaired. It also offered to collect the vehicle, repair it, and drop it back to Ms S, but the vehicle was not taken back, and it had never seen the car.

I've considered Blue Motor's comments. During the course of the complaint, Ms S explained that she had lost faith in the dealership after the initial discussions about the brakes. And given the copious information from the other parties who have examined the car, as I've described above, I see no reason to alter my findings.

Having considered the responses to my provisional decision, there is no new information or evidence that leads me to change my conclusions, and therefore I am upholding Ms S's complaint.

Putting things right

Blue Motor should:

- Refund all monthly payments Ms S made under the hire purchase agreement from 1 February 2022 to 31 August 2022.
- Refund £474 in relating to the two diagnostic reports Ms S obtained, and £237.19 for

the repairs to the brakes (this accounts for the amount already refunded by the selling dealership).

- Refund £5035.17 in relation to the repairs carried out in August 2022.
- pay 8% simple interest* on all refunded amounts from the date Ms S paid them to the date compensation is paid.
- Pay £150 for the inconvenience Ms S experienced due to the faults with the car.
- Remove any adverse information from Ms S's credit file (if any has been added).

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

My final decision

For the reasons given above, I have decided to uphold Ms S's complaint. Blue Motor Finance Ltd should pay Ms S the compensation I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 29 December 2022.

Jan Ferrari
Ombudsman