

The complaint

Ms H complains about a car she acquired through a hire purchase agreement with Blue Motor Finance Ltd (BMF). Ms H has referred to a number of issues and faults with the car and that she experienced problems immediately after acquiring the car. Ms H says that she has lost faith in the car and would like to return it to the dealer.

What happened

In May 2022 Ms H took out a hire purchase agreement with BMF to fund the cost of a used car. The amount of credit was £7,990 and the total amount repayable under the loan was £12,565.18. The loan was to be repaid by regular repayments of £232.67 over 54 months.

Ms H acquired a used car that was approximately 10 years and I understand had travelled over 80,000 miles (the mileage at the time of supply in May 2022 has not been disclosed). Ms H says that immediately after acquiring the car she believed there were faults with it and raised these with the dealership where she obtained the car. In particular, Ms H was concerned about the car showing a lack of power, a warning light on the dashboard and also reported concerns about the clutch slipping.

Ms H says that she raised these with the supplying dealership but was told there were no issues with the car. On 27 June 2022 Ms H complained to BMF and it investigated her concerns. In its final response letter of 4 August 2022 BMF referred to an inspection report it had commissioned and had found that, the clutch was slipping, the car was going into limp mode and the throttle body would benefit from further investigation.

BMF refers to a further inspection commissioned by the supplying dealer, which found that the throttle valve was only at 86%. BMF noted that the supplying dealer confirmed they would be willing to investigate the throttle issue at no cost to Ms H. BMF did not uphold Ms H's complaint and explained that she could refer her complaint to our service if she remained unhappy.

Ms H did refer her complaint to our service and it was considered by one of our investigators. The investigator ultimately concluded that they did not think the car supplied to Ms H was not of satisfactory quality and because of this they did not uphold the complaint. Ms H did not accept the investigator's conclusions and as the complaint could not be resolved informally it was passed to me to consider.

I issued my provisional decision and set out why I felt there were sufficient grounds to uphold Ms H's complaint. In summary, my provisional findings were:

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

It is important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. I'm very aware that I have summarised in much less detail what has been submitted by the parties in this complaint. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on

every issue or point made in turn. This isn't intended as a discourtesy to Ms H or BMF but reflects the informal nature of our service, its remit and my role in it.

Ms H acquired the used car through a hire purchase agreement with BMF. The hire purchase agreement is a regulated consumer credit agreement and because of that our service is able to consider complaints about the agreement. As the provider of the hire purchase agreement BMF is also the supplier of the car to Ms H. As the supplier of the car BMF is responsible for the quality of the car and the Consumer Rights Act implies terms into the hire purchase agreement requiring the car to be of satisfactory quality.

Exactly what is satisfactory quality will depend on the specific circumstances of any given case. In this instance, where the complaint relates to a car, I think it reasonable that when considering whether the car is of satisfactory quality the car's age and mileage at the time it was supplied are all key considerations. The requirement on BMF is to ensure the car was of satisfactory quality at the time it was supplied. So BMF would not be responsible for any wear and tear items that develop over time and might reasonably be expected on a used car with this age and mileage.

The car that Ms H acquired cost around £8,000, was around ten years old and I understand had travelled over 80,000 miles. When considering a car of this age and mileage it would in my view not be unreasonable to expect it to be showing signs of wear and tear and not be in the same 'as new' condition that it would have been in when first manufactured. This will be in relation to the mechanical components and its cosmetic appearance. The price Ms H paid for the car was considerably cheaper than the cost of the car new, and this is to take into account the general condition, mileage and wear and tear the car had experienced since first being manufactured.

Although I would expect a car of this age and mileage to show signs of wear and tear and require some general maintenance and upkeep, it would not however be reasonable to supply the car to Ms H with existing defects that go beyond fair wear and tear, unless these were clearly pointed out before agreeing to acquire the car.

The key considerations in my view here are around whether there is sufficient evidence to demonstrate the car is, or was, defective and if so, whether it was defective at the time it was supplied to Ms H. And then, if the car was defective, does that defect result in the car being not of satisfactory quality when considering the broader circumstances and condition of the car, and the Consumer Rights Act.

In cases when it is not clear what happened or where the evidence is incomplete or inconclusive, I base my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence.

Ms H has raised a number of concerns about the car but in particular the car suffering a loss of power, the engine management warning light illuminating and a slipping clutch. Ms H has supplied photos of the car's dashboard and these do show a warning triangle and 'engine malfunction'. This is a general warning sign that then requires further investigation to identify the actual underlying problem. The car has had diagnostic tests and it was found that there was a fault with the air intake filter and the air filter had been fitted incorrectly.

It is clear from the independent inspections that there was, and I believe still is, a fault with the throttle valve, which is shown to be only at 86%. It is not clear if the report which BMF says it commissioned has been provided to our service and I would ask BMF to provide a copy of this report when it responds to this provisional decision. But BMF's final response letter refers to this report and that it found that the clutch was slipping, the car was going into limp mode and the throttle body would benefit from further investigation.

Ms H has complained about a lack of power with the car and while I have noted what has been said about this only being an issue when towing a caravan, Ms H said this issue was raised before the car did any towing. So while it might not be unreasonable to expect a drop in performance when towing a caravan and pulling the extra weight, I'm not persuaded any lack of power issues are solely related to towing. Having considered what has been presented in this case I think it more likely than not that there was and still is an issue with the car's performance, there's a lack or loss of power and this is likely caused by the fault with the throttle valve not performing or operating as it should. The evidence is clear that the throttle valve is not performing as it should and I consider this is quite likely what has led to or contributed towards the lack or loss of power Ms H has reported.

I also consider it quite possible that the loss of power issue was compounded further by the problem with the incorrectly fitted air filter. The mixture and balance of fuel and air in an engine is key to a smooth performance and power output. This is in my view also a fault that is likely to have impacted on the performance of the car before it was corrected.

Ms H is also concerned about the clutch slipping but the evidence is in my view less clear about the clutch. BMF has referred to the report it commissioned indicating the clutch was slipping. But I also note that the manufacturer branded dealer couldn't replicate the issue with the clutch slipping. Despite one inspection not identifying the clutch slipping, one other inspection did. And Ms H also noted the clutch was slipping on occasions too. On balance, I think it more likely that there was an issue with the clutch slipping. I appreciate a clutch, perhaps along with other elements of the car's transmission, might need replacing during the lifetime of the car. But as I'll refer to later, it would not be reasonable in my view to supply a car with a clutch that was actually defective to the point of slipping, rather than just being worn.

Having considered the submissions from all parties I'm satisfied that there is sufficient evidence to demonstrate that the car was and still is faulty, in particular in relation to the clutch and lack of power. Having found that the car is faulty I must next consider whether the car was faulty at the time it was supplied to Ms H.

Although the exact mileage of the car at the time it was supplied in May 2022 has not been disclosed, the various inspections do record the mileage at the time of each inspection. The mileage has not increased significantly between inspections and Ms H has said that she has not been using the car very much. So I think it unlikely that the mileage travelled since Ms H acquired the car is what has caused the faults. Ms H has been clear and consistent throughout about how quickly she raised concerns about the car with the supplying dealer and copies of her phone calls show that calls were made to the dealer at the end of May 2022 and early June 2022. This was after the car was acquired. I think this supports Ms H's assertions that she did contact the dealer very shortly after acquiring the car to talk about the problems she was experiencing. I see no other plausible reason why Ms H would have felt it necessary to contact the supplying dealer several times after acquiring the car. This demonstrates in my view that the faults were present at the time the car was supplied to Ms H and it was not her use, misuse or towing that caused the problems or faults with the car. Having found the car was faulty at the time it was supplied to Ms H, the next consideration is whether this demonstrates the car was not of satisfactory quality at the time it was supplied to Ms H. As already referred to above, Ms H's car was around 10 years old and had travelled more than 80,000 miles. So it again would not be unreasonable to expect it to show signs of wear and tear and not be in the same condition it was when first supplied from the production line. However, the evidence in this case demonstrates there was a fault with the performance of the car when it was supplied to Ms H. Ms H noticed this but didn't get the support that she should have, which I'll refer to again later. It is not reasonable in my view to

supply the car with this type of defect and this is not a serviceable item that Ms H might have expected to replace because of the car's age and mileage.

I appreciate that a clutch will wear out over time but considering how swiftly Ms H raised this with the supplying dealer I think it should have been clear when supplying the car that the clutch needed some work and likely replacement. I'm satisfied when considering the faults and the wider circumstances, such as the age and mileage of the car, and the requirements of the Consumer Rights Act, that the car was not of satisfactory quality when it was supplied to Ms H.

Having found the car was not of satisfactory quality I now need to consider what, if anything, needs to be done to put things right. BMF has referred to the supplying dealer offering to investigate the issue with the throttle valve. In recent correspondence with our service BMF has referred to the 'first right of repair' and by this it is referring to the Consumer Rights Act and the ability for the supplier to have one chance at repairing a fault, before the consumer has the choice to reject the goods. BMF is correct and the Consumer Rights Act does allow the chance of repair where goods are found not to have been of satisfactory quality. However, the Consumer Rights Act also allows a consumer the right to reject the goods within the first 30 days, where the goods have been found to have not been of satisfactory quality. I'm satisfied that Ms H did raise these issues with the dealer within the first 30 days, but it is not however clear if Ms H actually sought to reject the car within this period. But Ms H is clear that she did take the car back to the supplying dealer to investigate the problems with the clutch and lack of power. There has therefore already been more than one attempt at repairing the faults with the car, but these were not done. While it may now be perhaps clearer what the faults are and what therefore needs to be done to repair or replace them, I can understand why Ms H has said that she has lost faith in the car and the dealership.

Considering the car was returned several times without the faults being rectified, the possibility of further attempts at repair also not being successful, I think it would now be fair and reasonable for Ms H to be allowed to reject the car and end the agreement with BMF. In the unlikely event that BMF has recorded any adverse information on Ms H's credit file, it should ensure this is removed. BMF should therefore now end Ms H's agreement and write off any further sums that would have been due. It should arrange for the car to be collected from Ms H, at no cost to her.

Ms H has not had the trouble free use of the car that she expected and which I think she was entitled to expect. Her use of the car has been impacted by the problems and faults and I think it would be reasonable for BMF to refund 20% of the monthly repayments Ms H has made towards the finance agreement. Interest at 8% simple per year should be added to each of the refunded amounts from the date of payment until the date of settlement.

I don't believe Ms H paid a deposit or initial payment when taking out the finance agreement but if I am mistaken I would ask the parties clarify this and providing supporting evidence when responding to my provisional decision.

Ms H has also incurred costs when getting the car inspected and I understand these were £66 and £150 respectively. These are costs that Ms H would not have incurred had the car been of satisfactory quality when it was supplied and I think it reasonable that Ms H is refunded these sums. Interest, again at 8% simple per year from the date of each payment until the date of settlement should also be added to these sums. If these amounts have already been refunded, I would ask the parties to clarify this and providing supporting evidence when responding to my provisional decision.

Finally, I'm satisfied that in addition to the above, Ms H has suffered trouble and upset by

being supplied with a faulty car that was not of satisfactory quality. She has had multiple trips to the supplying dealer and other garages for inspections. In recognition of this BMF should also pay Ms H £250.

Ms H responded to my provisional decision and said that she was pleased with the outcome and felt it was fair. Ms H also clarified that she paid no deposit when acquiring the car, she has received a refund for the £66 but has not received the £150.

BMF responded to say that it has nothing further to add.

So, I now have to make my final decision.

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.

Having considered the complaint afresh, along with the further submissions from Ms H and BMF, I have come to the same overall conclusions as set out in my provisional decision. I'm satisfied that, for the reasons set out above and in my provisional decision, the car was not of satisfactory quality when supplied to Ms H.

Ms H has confirmed that she has received a refund of the £66 inspection cost, but not the £150 charge. BMF has not responded to my request to clarify whether these were paid and in the absence of anything to the contrary, I'm satisfied that Ms H should be reimbursed for the £150 inspection charge, along with the other elements of my proposed redress.

Putting things right

To settle this complaint BMF should now:

1. Cancel the hire purchase agreement and write off any further sums due.
2. Ensure no adverse information is recorded on Ms H's credit file.
3. Arrange, without cost to Ms H, a suitable time to collect the car.
4. Refund 20% of the monthly repayments.
5. Pay Ms H £150 for the cost of the inspection report.
6. Pay Ms H £250 for the trouble and upset she has been caused.

Interest at the rate of 8% simple per year should be added to 4 and 5 above. Interest should be calculated from the date of each payment until the date of settlement. If settlement is not made within 28 days of Ms H accepting my final decision, interest at the same rate as set out here should also be added to the £250 payment, listed at 6.

If BMF considers it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms H. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold Ms H's complaint against Blue Motor Finance Ltd and direct it to settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 31 January 2023.

Mark Hollands
Ombudsman