

The complaint

Mr S is unhappy that a car supplied to him under a hire purchase agreement with Blue Motor Finance Ltd (Blue Motor) was of an unsatisfactory quality.

What happened

In October 2021, Mr S was supplied with a used car through a hire purchase agreement with Blue Motor. The agreement was for £16,848 with 60 monthly repayments of £280.79. At the time, the car was eight and a half years old and had done 86,500 miles.

Mr S said that in February 2022 there were faults and error messages in the engine management system, and there was a pool of water in the rear passenger footwell. He said he can't drive the car.

He said he contacted the dealer and they told him to submit a complaint. He said he also complained to Blue Motor but they didn't help him. He said he wanted to reject the car but Blue Motor refused. He said the dealer refused to repair the car because it thought he'd caused the issues by driving through a flood. He said he's a professional driver and would never drive through a flooded area.

Blue Motor said that Mr S provided photographs of the faults in February 2022. They said the dealer wasn't prepared to inspect the car so they organised an independent inspection. The report was received in April 2022. The inspection report confirmed the presence of faults. It said they appeared to be long standing issues, including water ingress and persistent system errors. The report said that normal operation of the car wasn't possible in the condition it was in at that time.

Blue Motor said the dealer initially agreed to repair the car but later said that Mr S would have to pay for parts and it couldn't complete the repair until July 2022.

Our investigator didn't think the car was of satisfactory quality when supplied. He based this on the findings from the independent report. He said that the electrical issues should be repaired as they weren't sufficiently durable, and the water ingress was likely to have been present or developing at the point of sale. He said Blue Motor should arrange for the faults to be repaired and refund the instalments Mr S had paid from the date the car went into the garage until it was repaired. He also said they should pay Mr S £100 for the distress and inconvenience he'd been caused.

Blue Motor said they accepted the investigator's view and would arrange for the car to be repaired and compensation to be paid to Mr S.

Mr S responded saying he'd had to spend £800 on another car so he could get to work. He said he'd also had to tax and insure this car in addition to the faulty car. He said his credit score had been affected as he couldn't afford to make the payments on the agreement whilst the car was in the garage. Our investigator issued a second view, explaining why Blue Motor should also refund the car insurance and road fund license Mr S had paid for the

replacement car. He also said they should amend any adverse credit data registered since February 2022 on Mr S's credit file.

Blue Motor initially agreed. But they then arranged for a further independent inspection to be done. They said this was because the dealer had said they couldn't locate a water leak.

The second inspection was completed in October 2022. The inspection was only for the damp issues. But the report did highlight the presence of a number of fault codes.

The second inspection reported no signs of water ingress. It did say the rear footwell carpet was slightly damp to touch. The report said that there was sand in the bottom of the wheel area and the side compartment of the boot, so it was possible that the car may have been driven through standing water at some point. It went on to say that this couldn't be confirmed. It concluded that the damp issue would not have been present or developing at the time of sale.

Our investigator considered the second report and confirmed it didn't change his opinion. He felt that the comments in the second report were speculative. He also noted that the report said that the electrical faults weren't related to any water ingress, and it was these problems that were preventing the car from being driven.

Blue Motor said they agreed to repair the electrical faults as a gesture of goodwill. They said they had not been aware of all the facts when they previously agreed to our investigator's first outcome. They said both reports together demonstrated they had no liability. So they said they didn't think it was fair for them to have to refund any instalments, tax, insurance or pay compensation to Mr S.

Because Blue Motor didn't agree with our investigator this matter has been passed to me to make a 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 done so, I have reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Blue Motor are responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description and other relevant circumstances.

Fault Codes

The first inspection confirmed the presence of faults, and that these faults prevented the '*normal operation*' of the car. The report also said that the car wouldn't pass an MOT with these faults, and because it had passed an MOT in November 2021, it suggested that the faults weren't present or developing at the time of sale.

The report is clear that these faults make the car undrivable.

The CRA says that the quality of goods includes their state and condition; and one element to consider is the durability of the goods – in this case that is the car that is the subject of the hire purchase agreement.

I wouldn't expect every component of a car to last forever – but in this case the faults have made the car undriveable. This car is less than nine years old, and has done less than 90,000 miles at the time of failure. It's also a premium brand. So I wouldn't expect it to fail at this point, or so soon after supply.

The error codes are related to key safety devices, including the braking system. So I'm satisfied that the presence of these faults mean the car wasn't of satisfactory quality, because it wasn't reasonably durable.

I'm pleased to note that Blue Motor have agreed to pay for the repairs required to fix these faults. I think that's the correct resolution to this part of Mr S's complaint.

Water ingress

There is no dispute that there's a problem that has caused or is causing dampness in the rear footwell. Mr S has provided photographs that clearly show a sodden carpet. And both reports confirm the presence of the damp.

But the independent reports are contradictory. The first says that the source of the water is not obvious but the footwell shows presence of long term damp. The second report suggests that the damp may have been caused by the car being driven through deep standing water.

I have to consider what is more likely to have happened. And I am more persuaded by the findings in the first report. I say that because I find the second report to be inconclusive, and the findings are no more than speculative. Given that this inspection was done eight months after Mr S reported the presence of the damp footwell, and that this time included the summer period, I would've expected the footwell to have dried out in this time if the cause was due to a single incident that happened more than eight months earlier.

And I would also have expected to see dampness in more than one area if it had been driven through a flood.

The first report supports my conclusion. It says that despite dry pre-inspection weather in July 2022, the footwell showed signs of long term dampness. And it also finds that it was likely that the dampness was present or developing at the point of purchase.

So I'm satisfied that this issue also means the car wasn't of satisfactory quality and Blue Motor should arrange and pay for any necessary inspection and repair.

Putting things right

I understand Mr S has lost faith in the car. But the correct remedy here is for Blue Motor to have the opportunity to repair the car. Blue Motor should:

- make arrangements with Mr S for the car to be inspected and repairs carried out to fix the electrical faults, and to fix the issue causing the damp in the rear footwell, at no cost to Mr S, and without him having to pay and claim back from Blue Motor.
- refund the extra insurance and road tax costs Mr S has paid for a second car to keep him mobile (on production of evidence of what he's paid), plus 8% simple interest per year from the date of each payment made to the date of settlement.
- refund any monthly payments he's paid from February 2022 when he was unable to use the car until the date it is repaired and returned to him, plus 8% simple interest per year from the date of each payment made to the date of settlement.
- remove any adverse data recorded for any missed payments since February 2022 when he had no use of the car.
- pay Mr S £100 for the distress and inconvenience he's had to endure to keep himself mobile whilst the car has been undriveable.

I think that is a fair and reasonable way to settle this matter.

My final decision

For the reasons explained, I uphold Mr S's complaint. Blue Motor Finance Ltd must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 April 2023.

Gordon Ramsay
Ombudsman