

The complaint

Mr S complains that a car acquired with finance from Blue Motor Finance Ltd (BM) wasn't of satisfactory quality.

What happened

In January 2022 Mr S was supplied with a car and entered into a hire purchase agreement with BM. At the point of supply the car was around 11 years old and had covered 93,000 miles.

Mr S experienced issues with the car soon after the point of supply. He had to jump start the car every time he wanted to use it.

Mr S reported the issues to the dealership who advised that it was a battery issue and that replacing the battery would resolve the issue. Repairs were attempted but the issue continued.

Mr S complained to BM. BM didn't uphold the complaint. It said there wasn't enough evidence to confirm that the fault was present or developing at the point of supply.

Mr S remained unhappy and brought his complaint to this service. He wants to reject the car.

Our investigator upheld the complaint. She said the evidence showed that there was a fault with the car which was present at the point of supply and that the car wasn't of satisfactory quality. The investigator said that because repairs hadn't been successful, Mr S should be allowed to reject the car.

BM didn't agree. It said the dealership recalled helping Mr S with a battery issue in April 2022 and had discussed Mr S's use of the car with him and how this might impact on the battery. BM said the low mileage should be taken into consideration as a factor affecting the performance of the battery.

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.

The Consumer Rights Act 2015 is relevant to this complaint. It says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of goods includes their general state and condition, as well as other things including fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

I would expect a second hand car – such as that supplied to Mr S – to have a degree of wear and tear and to require more repairs and maintenance than, say, a brand new car. So, in order to uphold this complaint, I would need to be satisfied that there's a fault with the car which was present or developing at the point of supply as opposed to a fault which occurred

due to general wear and tear.

Under the relevant legislation, where a car has a fault which makes it of unsatisfactory quality in the first 6 months, it's assumed that the car wasn't of satisfactory quality at the point of supply. After 6 months, the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality at the point of supply.

I've reviewed all of the available evidence about the issues with the car. Based on what I've seen, I'm satisfied that there's a fault with the car. This is based on Mr S's testimony that there have been issues with the battery from the outset. I've seen correspondence between Mr S and the dealership which shows that the car went in for repairs for battery issues shortly after the point of supply.

I've also seen a report from a mechanic which states that the battery had zero volts and wasn't charging. The report states that a new battery was required and that the fuse box and starter motor needed to be cleaned or replaced.

I can see that the supplying dealer agreed to replace the battery in April 2022, around 3 months after the point of supply.

Mr S experienced issues with the battery again in October 2022, I've seen an invoice dated October 2022 which states that a control unit error is causing the battery to drain. The diagnostic notes state that a new battery is required.

I've also seen a diagnostic report dated December 2022. This states that the ECU has nonstandard software. The report advises that the software should be put back to standard and that this could be the cause of the issues with the car not starting.

Based on all the evidence I've seen I'm satisfied that the car has a fault.

I've taken into account what BM has said about Mr S's limited mileage and how this might impact the battery. Whilst I accept that a car needs to be used in order to maintain battery charge, I'm not persuaded that the issues here have been caused by Mr S's use of the car. The weight of evidence suggests that there is a fault with the battery not holding charge and/or an issue caused by non-standard software in the ECU.

I've gone on to consider whether the car was of satisfactory quality when it was supplied. The issue with the battery was referred to the dealer in April 2022. Mr S has provided clear and consistent testimony that there were battery issues from the outset. There's no evidence that Mr S was responsible for the issues with the battery, or the non-standard software installed in the ECU. Therefore, I think it's likely that the car had a fault at the point of supply. Because of this, I don't think the car was of satisfactory quality when it was supplied.

Putting things right

Under the relevant legislation, the business is allowed one opportunity to repair the fault. In this case, the information suggests that the dealership replaced the battery in April 2022. This attempt at repair wasn't successful because the same issue had presented again in October 2022. I'm satisfied that the business has been given reasonable opportunity to repair the fault and that Mr S should be allowed to reject the car.

Mr S has told this service that he used the car from January 2022 until October 2022 but that he had to jump start it every time he used it. This has impacted on Mr S's use of the car. I think it's fair to ask BM to refund 50% of all payments made by Mr S during this period.

Mr S hasn't used the car since October 2022. I think it's reasonable that Mr S stopped using the car at this point. Because Mr S hasn't used the car, I think it's fair to ask BM to refund all payments made since October 2022.

Mr S has provided this service with evidence of other costs he's incurred, including a diagnostic report. I think it's fair to ask BM to refund these costs.

It's clear that Mr S has been caused a significant degree of distress and inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. He's had to jump start the car every time he wanted to use it and has had to arrange alternative transport since October 2022. I think BM should pay compensation of £200 to reflect the impact this has had on Mr S.

My final decision

My final decision is that I uphold the complaint. Blue Motor Finance Limited must:

End the agreement with nothing further for Mr S to pay

Arrange for the car to be collected at no cost to Mr S

Refund the deposit of £2000

Refund 50% of payments made from inception of the agreement to October 2022 to reflect impaired use

Refund all payments made from October 2022 to the date of settlement

Refund £211 for costs incurred by Mr S

Pay 8% simple interest per year on all amounts refunded payable from the date of payment to the date of settlement

Pay £200 compensation for distress and inconvenience

Remove any adverse information from Mr S's credit file in connection with this agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 April 2023.

Emma Davy
Ombudsman