

The complaint

Mr B complains about the quality of a car he acquired under a hire purchase agreement with Blue Motor Finance Ltd (BMF).

When I refer to what Mr B has said, and BMF have said, it should also be taken to include things said on their behalf.

What happened

In November 2021, Mr B entered into a hire purchase agreement with BMF to acquire a used car first registered in 2016. The total cash price of the car was approximately £9,950. The total amount payable under the finance agreement was approximately £14,868. The agreement consisted of 60 monthly instalments of £247.79, plus a £1 option purchase fee, payable at the same time as the final instalment.

Around 10 days after acquiring the car, Mr B contacted the supplying dealership and told them that the engine fault lights had appeared on the car's dashboard. At that time, he also raised an issue with the windscreen crack. The supplying dealership agreed to investigate the issues Mr B was experiencing with the car. So, in the first week of December 2021, Mr B contacted the supplying dealership to book the car in. At this time, he also told the dealership that he was experiencing a potential electrical fault. The supplying dealership agreed to get the windscreen repaired for him. Later in December 2021, Mr B contacted the supplying dealership as the windscreen repair was unsuccessful and the crack was getting worse. The dealership told him that they would replace the windscreen in the new year.

Also, the supplying dealership advised that refilling the AdBlue will resolve the issue with the warning lights appearing on the dashboard. At the beginning of January 2022, Mr B again contacted the dealership because even though the AdBlue was topped up the fault warning lights were still present on the car's dashboard. So, Mr B was unhappy because, even though the supplying dealership's garage of choice looked at the car and topped up the AdBlue, this didn't solve the problem. And on 18 January 2022, Mr B had a health check done at a manufacturing dealership for his car model. There, the service department found that, in addition to AdBlue faults, the car also needed a new tyre and there was an oil leak in the engine.

As Mr B was unhappy with the quality of the car, he tried to come to an agreement with the dealership to switch to a different one. But, he said, that the alternative car he was offered was not a suitable replacement. Since he couldn't come to an agreement with the dealership, he complained to BMF and said he would like to reject the car.

Towards the end of June 2022, BMF wrote to Mr B. In this correspondence they said that, because the finance agreement was over six months old, they would require Mr B to provide further evidence of the alleged faults in the form of a diagnostic report.

In September 2022 an independent inspection was carried out which highlighted several faults, concluding that the car was of unsatisfactory quality and not fit for purpose. But BMF

still didn't uphold Mr B's complaint because they said that the independent report didn't mention if the faults were present at the point of sale.

Mr B was unhappy with this, so he brought his complaint to this service.

Our investigator thought the complaint should be upheld because, most likely, the car was not of satisfactory quality when it was supplied. He also thought that it was fair for Mr B to reject the car as the dealership's attempt at a repair had failed.

BMF disagreed with the investigator. So, the complaint has been passed to me to decide.

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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr B acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. BMF is the supplier of the goods under this type of agreement and is responsible for dealing with complaints about their quality. Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr B entered into. Under the agreement there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mr B's case the car was used, with a cash price of around £9,950. It had covered around 70,500 miles and was approximately five years old when he acquired it. So, the car had travelled a reasonable distance and it's reasonable to expect presence of some wear to it as a result of its usage, and I'd have different expectations of it compared to a brand-new car. As with any car, there's an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time and it's reasonable to expect that these may need to be replaced. And with second-hand cars, it's more likely that parts will need to be replaced sooner or be worn faster than with a brand-new car. So BMF would not be responsible for anything that was due to normal wear and tear whilst the car was in Mr B's possession. But given the age, mileage and price paid, I think it's fair to say that a reasonable person wouldn't expect anything significant to be wrong shortly after it was acquired.

First, I considered if there was a fault with the car.

Within 10 days after acquiring the car, Mr B contacted the supplying dealership and told them that the engine fault lights had appeared on the car's dashboard. Within two months of Mr B reporting this, the supplying dealership had their garage of choice look at the car and they confirmed that they topped up the AdBlue fluid. At the beginning of January 2022, Mr B

again contacted the dealership because, even though the AdBlue was topped up, the warning lights were still lit on the dashboard of the car. And on 18 January 2022, Mr B had a health check done at a manufacturing dealership for his car model. That service department found that in addition to AdBlue issues, there was an oil leak in the engine. The supplying dealership also had their garage look at the car once again in July 2022 and they have indicated that the car's AdBlue tank was leaking badly. And in September 2022 an independent inspection was carried out which highlighted several faults.

This independent report mentioned that there was an oil leak from around the turbo pipe area, there was an oil leak in the front engine area which was leaking onto the exhaust system, and a leak was evident on the lower engine area in the front of the engine compartment. The report mentioned that the car was not idling properly and that the oil leaking onto the exhaust system was a potential fire risk. It also specified that the grey smoke coming from the exhaust may indicate excessive engine internal wear. The report didn't specifically indicate what was wrong with the car, as it said that further investigation would be needed because the engineer was unable to road test the car due to the potential fire risk. But the report did conclude that the car was of unsatisfactory quality and not fit for purpose. Based on all of the above, I think most likely at the time of the independent report there was a fault with the car. So, I've gone on to consider if the car was of satisfactory quality when it was supplied to Mr B.

BMF say that the car would not have passed the MOT or the predelivery inspection if it was not fit to drive, so I've considered this evidence.

The car passed its MOT on 17 November 2021 right before Mr B took delivery of the car. But a valid MOT doesn't automatically mean that a car is free from faults. Sometimes developing faults that have not fully materialised may not be spotted during an MOT. And as the fault lights were not yet present on the car's dashboard at the time of the MOT, they wouldn't have signalled a potential fault with the car, triggering further investigation at that point. I've also considered that the predelivery inspection was completed on 13 November 2021 and some of the tick marks show that the joint and boots have been checked, but only three days later the car failed the MOT because one of the boots was split or was insecure. So even though the predelivery inspection shows tick marks to indicate that numerous areas of the car have been checked, it doesn't provide any detail of how the checks were carried out or how detailed the inspection was. I think, most likely, the predelivery inspection wasn't detailed enough to spot some of the faults surrounding the oil leaks and problems with the AdBlue system. So, I've also considered what other evidence was available on the file.

BMF said that the garage of choice for the supplying dealership, had a look at the car in July 2022. That garage made a statement in January 2023 and said that, when they inspected the car in July 2022, they quickly found that the AdBlue tank was leaking badly. They said it had grazes as if it had been in a collision with a high kerb or post and that it was not able to hold any of the fluid due to its bad condition. I've considered this but our service has not been provided with any job cards detailing this damage or any picture evidence of it. Also, I've not seen any evidence of the damage around the areas where the AdBlue tank is located, which, I think, would've most likely been present had there been some sort of an impact. And I considered that the garage of choice for the supplying dealership, examined the car in January 2022, so had there been impact damage present, I think it's most likely they would've spotted it at that time. In addition, this was also not mentioned at all in the very detailed independent inspection done in September 2022. Overall, I can't say that most likely the AdBlue tank was damaged due to impact caused by Mr B.

I've gone on to consider the independent inspection which was carried out in September 2022. This report goes into great detail regarding the engine oil leaks. But BMF questioned this inspection report because they said it didn't specifically mention that the faults were

present at the point of sale. I've considered their argument, but Mr B reported the engine fault lights appearing on the car's dashboard within 10 days after acquiring the car. And within a further two months he had a health check done at a manufacturing dealership. This check found issues with the AdBlue and the issues with an engine oil leak. So, I think the faults mentioned in the independent inspection, carried out in September 2022, were most likely the same faults as the ones mentioned by Mr B within the first two months after acquiring the car. Considering the age, mileage, and the cash price of the car, I think that a reasonable person wouldn't consider such significant faults to be present shortly after it was acquired.

I think most likely the car was of unsatisfactory quality at the point of sale. Mr B exercised his right to have the car fixed by allowing the supplying dealership's garage of choice to try and fix the car. But all they did was added AdBlue and said that this would fix the problem. As they had an unsuccessful attempt at trying to resolve this issue, CRA allows Mr B to reject the car. I think in this case, it is fair and reasonable that Mr B is allowed to exercise his right to reject the car, considering the circumstances of this case. As such, the hire purchase agreement should be cancelled with nothing further to pay.

BMF should remove any adverse information from Mr B's credit file. The credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

Mr B has been able to use the car until the end of August 2022. The independent inspection was completed on 1 September 2022 and the car had travelled at that time a total of about 77,529 miles. Mr B said that he was hiring cars and using his friends' cars after the independent inspection was completed as the report deemed the car to be a fire risk. So, I think it is fair and reasonable that BMF refund Mr B all payments he had made towards the agreement from September 2022 onwards. Considering I'm directing BMF to refund him the monthly payments, it wouldn't be fair to ask them to also refund Mr B the costs he incurred for hiring or using his friend's cars during that same time.

On 26 August 2022, Mr B paid £299 for the independent car inspection. I think Mr B has lost out because the car supplied wasn't of satisfactory quality, so I think it's fair that BMF refund him this payment.

BMF should also add interest to the refunded amounts from the date of each payment until the date of settlement. Interest should be calculated at 8% simple per year.

Mr B also mentioned that on another occasion he paid £126 to one of the manufacturing dealerships for his car model to have a look at the car after it broke down. But our service has not been provided with evidence of this inspection or details what this cost covered. So, I don't think it would be fair or reasonable to ask BMF to refund this amount to Mr B.

Also, I know that Mr B has mentioned that this situation had an impact on his wife, but in this decision, I can only consider the impact this situation had on Mr B. Based on all the available evidence, I think that this matter caused Mr B a lot of distress and inconvenience when trying to resolve it. He had to take the car back to the supplying dealership a number of times and he had to correspond extensively with the dealership and BMF. He also had to pay for the costs of recovery after the car broke down, which I don't think would've happened if BMF supplied him with a car that was of a satisfactory quality. So, I think BMF should pay him £200 in compensation to reflect the distress and inconvenience caused.

My final decision

For the reasons given above, I uphold this complaint and direct Blue Motor Finance Ltd to:

1. Cancel the hire purchase agreement with nothing further to pay;
2. Collect the car at no cost to Mr B;
3. Refund the £299 Mr B paid for the independent inspection on 26 August 2022;
4. Refund all hire purchase repayments Mr B made from September 2022 onwards;
5. Add 8% simple interest per year to points 3 and 4 above, from the date of each payment to the date of settlement;
6. Pay Mr B £200 for the distress and inconvenience caused;
7. Remove any adverse information recorded on Mr B's credit file in relation to this credit agreement, and mark it as settled.

If Blue Motor Finance Ltd considers tax should be deducted from the interest element of my award, they should provide Mr B with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

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

Mike Kozbial
Ombudsman