

The complaint

Miss B complains about the quality of a used car she acquired under a hire purchase agreement ("agreement") with Blue Motor Finance Ltd ("BMFL").

What happened

On 8 September 2020 the car was subject to an MOT test (recorded mileage 51,301). An MOT test certificate was refused for the following reason:

"exhaust hydrocarbon content after 2nd fast idle exceeds default limits"

On 9 September 2020 the car was subject to an MOT test (recorded mileage 51,306). The MOT test certificate noted the following advisory:

"Front Tyre worn close to legal limit/worn on edge both front n/s and o/s wearing on edges"

On 24 September 2021 the car was subject to an MOT test (recorded mileage 58,016). The MOT test certificate noted the following advisories:

"Tyre worn close to legal limit/worn on edge Offside Front (wearing on outer edges)"

"Tyre worn close to legal limit/worn on edge Nearside Front (wearing on outer edges)"

"Exhaust emits blue smoke during acceleration"

On 22 November 2021 Miss B acquired the car at a cost of £5,789.00 (recorded mileage 58,013) under an agreement with BMFL.

Under the terms of the agreement Miss B undertook – everything else being equal – to make 59 monthly payments of £145.24 followed by 1 monthly payment of £146.24 making a total repayable of £8,715.40 at an APR of 18.9%.

On 25 April 2022 Miss B paid a garage that I will call "P" £198.70 for diagnostics, a coil pack, a lead set and spark plugs (recorded mileage 59,103).

On 25 May 2022 Miss B paid P £70.20 for a new tyre (recorded mileage 59,597).

On 24 June 2022 Miss B paid P £45.72 for an oil check and top up (recorded mileage 59,811).

On 31 October 2022 the car was subject to an MOT test (recorded mileage 60,181). An MOT test certificate was refused for the following reasons:

"exhaust carbon monoxide content after 2nd fast idle exceeds manufacturer's specified limits"

"exhaust hydrocarbon content after 2nd fast idle exceeds default limits"

On 30 November 2022 Miss B obtained a report from P (recoded mileage 60,186). This report stated:

“Miss fire on No 2 cylinder, causing spark plug to oil up due to No 2 piston damage. Vehicle will not go through exhaust and emission test. When the vehicle was MOT last year, on the Advisory it had exhaust emits blue smoke during acceleration. In are opinion this vehicle should never been sold to the customer. Repairs will be a new engine.”

On 1 November 2022 Miss B complained to BMFL that she had been supplied with a car that was of unsatisfactory quality.

On 30 November 2022 BMFL issued Miss B with a final response letter (“FRL”). Under cover of this FRL BMFL advised Miss B it wasn’t upholding her complaint.

On 9 January 2023 BMFL emailed Miss B to say it was still not upholding her complaint.

On 11 January 2023 BMFL sent Miss B details of her agreement exit options (early settlement and voluntary termination). The cost of voluntary termination was noted as being £2,469.58 plus damage and repair charges and the early settlement figure was noted as being £5,098.27.

On 11 January 2023, and unhappy with BMFL’s FRL and email dated 9 January 2023, Miss B complained to our service.

Miss B’s complaint was considered by one of our investigators who concluded it should be upheld. He then went on to explain what he thought BMFL should have to do to fairly and reasonably compensate Miss B.

Miss B accepted the investigator’s view, but BMFL didn’t. And because of the latter Miss B’s complaint has been passed to me for review and 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.

Where the evidence is inconclusive, incomplete or contradictory, I’ve made my decision based on the balance of probabilities. That is, what I consider most likely to have happened given the evidence provided and the wider circumstances.

Miss B entered into a hire purchase agreement to acquire a used car. Under regulations, specifically the Consumer Rights Act 2015, BMFL can be held liable if the car supplied wasn’t of satisfactory quality at the point of supply. Satisfactory quality takes into account factors such as the age and mileage of the car and includes assessing whether the car was sufficiently durable.

In this case the car was approximately 8 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.

BMFL submits that Miss B has provided insufficient evidence that the car was of unsatisfactory quality when supplied to her, especially given that she didn’t complain about the car’s quality for nearly a year.

I appreciate that Miss B hasn't supplied an independent inspection report of the type BMFL asked for. But having provided comment from P about the car, the car's MOT history and the miles on the odometer in November 2021 and then October 2022, I'm satisfied that Miss B provided enough evidence to support her submission that the car was of unsatisfactory quality when supplied to her. I certainly think that she provided enough evidence for the onus to switch from her (to establish the car was of unsatisfactory quality when supplied) to BMFL (to establish that the car was of satisfactory quality when supplied). And for the avoidance of doubt, I'm not persuaded that BMFL should be given the opportunity to establish the car was of satisfactory quality when supplied now given how long this complaint has been going on.

BMFL also submits that the car passed its MOT test in September 2021 (albeit with advisories) meaning *"the car was fit for purpose at the point of supply. If it wasn't, it would not have passed..."* It also submits that a car's MOT history is a matter of public record and therefore Miss B should have reasonably known about its history.

First, as I'm sure BMFL will be aware, just because a car passes an MOT test doesn't mean it's of satisfactory quality. Secondly, although I accept that Miss B could have checked the car's MOT history it could be said that given that the car passed its MOT test only 2 months prior to it being sold by the dealership it could and should have carried out an investigation into the noted advisories and carried out repairs as necessary.

In this case although the car was approximately 8 years old when Miss B acquired it, it had done only 58,000 miles. Furthermore, when the car failed its MOT test (in October 2022) and P diagnosed a new engine was required (in November 2022), Miss B had added only 3,000 further miles to the odometer.

I've also seen nothing to suggest that Miss B, between acquiring the car and it failing its September 2021 MOT test, failed to take reasonable care of it with evidence having been supplied of routine maintenance work being undertaken. And for the avoidance of doubt I, like the investigator, am not persuaded that Miss B could and should have had the advisories noted on the September 2021 MOT test certificate investigated, or that she should have thought to bring any concerns about the car's quality to BMFL's attention before she did so.

So having had regard to everything the parties have said and submitted, and what I say above, I'm satisfied that Miss B was supplied with a car that had historical issues with the exhaust and engine that either went unrepaired or were subject to unsatisfactory repairs. And these issues meant the car was of unsatisfactory quality when supplied to Miss B and resulted in what now appears to be a complete engine failure that is simply uneconomical to repair. I'm also satisfied that Miss B has taken reasonable care of the car whilst it has been in her possession.

As I've found that the car wasn't of satisfactory quality, I find it fair that Miss B is allowed to exit her agreement with nothing further owing and that any payments she has made since the car failed its MOT test on 31 October 2002 are refunded due to the car not being usable from that date.

This issue has caused Miss B distress and inconvenience as she has been left with a car that she has been paying for but unable to use. She has also been trying to resolve matters since November 2022. Given this, I find our investigator's recommendation of £250 compensation to be appropriate.

My final decision

My final decision is I uphold this complaint and find that Blue Motor Finance Ltd must

- end the agreement with nothing further for Miss B to have to pay
- collect the car from Miss B at no cost to her and at a time that is mutually convenient
- refund Miss B any payments she has made against the agreement since 31 October 2022
- pay Miss B interest on the above refunds at the rate of 8% simple per year from the date of payment to the date of settlement*
- pay Miss B £250.00 for the distress and inconvenience this whole matter has caused her
- ask credit reference agencies to mark the agreement as settled in full and to remove any recorded adverse information

Blue Motor Finance Ltd must pay the total compensation within 28 days of the date on which Miss B accepts this final decision. If it pays later than this it must also pay interest on the £250.00 from the date of this final decision to the date of payment at the rate of 8% simple per year.*

**HM Revenue & Customs requires Blue Motor Finance Ltd to deduct tax from these interest payments. If Miss B asks for a certificate showing how much tax has been taken off this should be provided.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 15 August 2023.

Peter Cook
Ombudsman