

## **The complaint**

Miss E complains about the quality of the car she acquired through a hire purchase agreement with Blue Motor Finance Ltd (“Blue Motor”).

## **What happened**

Miss E entered into a hire purchase agreement with Blue Motor in October 2021 to acquire a used vehicle. The vehicle was around five years old and had travelled around 77,000 miles when supplied.

She began to have concerns almost immediately and reported to the dealership that the gearstick seemed to be rattling when she collected the car. They told her this was normal, but she took the car shortly after to an independent garage to be checked out. They found several faults, and when it was returned to the supplying dealership shortly afterwards, they carried out some repairs/replacements to the brakes and tyres. This was in early December 2021.

Later in December 2021, a warning message occurred in the car, and then on 24 December 2021, the car broke down on the motorway. In January 2022 Miss E complained to the supplying dealership as faults and the car going into Limp Mode were still happening. She also complained to Blue Motor at the same time.

Blue Motor said in February 2022 that they were instructing an independent report on the car, but before they got chance to arrange this, the car broke down again on 23 February 2022, and was recovered by the RAC who provided a diagnostics report to Miss E. On 2 March 2022 the dealer inspected the car again and confirmed a different fault, and then on 10 March 2022 an independent engineer carried out an inspection and produced a report.

This report confirmed that Miss E had reported multiple break downs, the rattling noise, and multiple warning lights. It also said that the third party garage who'd looked at the car had provided 11 pages of fault codes, and that the dealership advised they had carried out some minor repairs of the brakes and the rattling had been looked at.

It went on to say that the dealership told them when they arrived to inspect the car that there was a concern about the exhaust temperature sensor. The report says they did not find any significant concerns, and once the sensor had been replaced, which they deemed to be a wear and tear part, they didn't see any reason why the car wouldn't be fit for purpose.

On 13 March 2022, Miss E told Blue Motor she'd like to reject the car, and on 18 March 2022 Blue Motor sent their final response letter to the complaint, explaining that as the independent report had identified the same fault with the exhaust gas sensor as the dealership, and the dealership were repairing this, they were closing the complaint.

On 17 May 2022, the car broke down again and was recovered by the RAC. They again provided a report including fault codes to Miss E. Miss E referred her complaint to our service therefore on 18 May 2022 as Blue Motor said there was nothing more they could do.

The complaint was investigated by an Investigator here and an initial view was provided in August 2022 which did not uphold the complaint. The business accepted this but Miss E asked for an Ombudsman to make a final decision as she didn't agree.

Before an Ombudsman could make a final decision, Miss E sent in a recall notice sent to her by the manufacturer of the car, explaining it outlined some issues which she felt were linked to her complaint, and asked us to review the case.

The investigator therefore looked at the case again. They said that the recall notice did indicate some problems with the exhaust system, but they didn't say the recall notice was connected with the faults Miss E had been suffering with. They said the recall notice might indicate further issues with the car but focused more on the originally provided evidence.

The second RAC report was shared again with Blue Motor, as the investigator had concerns that it highlighted the same faults still present after the repairs had been completed. Blue Motor confirmed they had seen the report, but it didn't change their view.

The investigator then sent a new view on the case in March 2023, upholding the complaint. They felt that the same issues with the car going into limp mode were still being identified in May 2022, after the repairs had been carried out. As such, they concluded that either the repairs had failed, or there was a further issue which hadn't been identified or repaired with the car, causing it to go into limp mode and breakdown. As such, they felt it was fair for Miss E to be able to reject the car.

Miss E accepted this view, but Blue Motor didn't. They said that they didn't understand how the outcome had changed following a review of the case due to the recall notice, when the investigator had said it wasn't possible to say that the issue in the recall notice was connected with the faults. They also included testimony from the supplying dealership, which said that an RAC report isn't indicating faults, it's only showing tests that the diagnostic machine has run, and the report only carries out "suspected" diagnostics while the patrol person is with the car.

They also said a third party garage report could not be relied upon, as the garage may be hoping to benefit from any repairs they say are needed. The case has been passed to me to make a final decision on this basis.

### **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've reached the same overall conclusions as the investigator did in their last view, 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 what I consider was good industry practice at the time. Miss E was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we can look into complaints about it.

This complaint has been over complicated by the parties involved seemingly not getting to the bottom of the problems Miss E has raised. From December 2021 to May 2022, Miss E has suffered from repeated occasions when the car has gone into limp mode, and/or broken down.

Miss E has got an independent garage to look at the car in January 2022. They've identified concerns with the timing chain, the engine going into limp mode, the power steering having an intermittent problem, the headlamps having an intermittent problem, and issues with the exhaust system including the temperature sensor.

The supplying dealership and an independent engineer have identified the problem with an exhaust temperature sensor and replaced it. However, when the problems have continued after this, Blue Motor have said that by then it was more than six months since they supplied the car, so Miss E would need to prove the fault was present or developing at point of sale, and they couldn't help anymore.

This isn't correct. The faults Miss E has described and provided evidence for had been occurring from just a few weeks after she took delivery of the car. Due to delays with repairs and diagnosis, by the time she broke down again in May 2022, it was over six months since she had acquired the car.

But I'm not persuaded that this was likely to be an entirely different fault causing the breakdowns. It's much more likely that this was the same problem she had been suffering since the beginning of her agreement, which hasn't been resolved by replacing the temperature sensor in March 2022. There were several issues identified by the independent garage in January 2022. Many of these same issues were identified in the RAC report in February 2022. And after the repairs in March 2022, many of the same issues were identified by the RAC again in May 2022.

Blue Motor and the supplying dealership have said that the RAC reports don't indicate actual faults, and the independent garage might have been producing a report in the hope of getting repair business. But neither party have commented on the fact that Miss E's car still wasn't working properly, and what actually might have been causing this.

Miss E had been raising the same issues with Blue Motor and the supplying dealership for several months, and it's most likely that they have failed to diagnose the problem and repair the car adequately.

In March 2022, the independent report organised by Blue Motor had highlighted a fault with the exhaust temperature sensor, and at this stage, I feel it was reasonable for Blue Motor to have this repaired, rather than to allow Miss E to reject the car. Whilst the supplying dealership had tried to repair other issues previously, this was the first time concerns had been raised with Blue Motor, and I think it's fair therefore that they had their one chance to repair the car at this point.

But once they had taken this opportunity for their one attempt to repair the vehicle, and the problems continued, Miss E was within her rights under the Consumer Rights Act 2015 (CRA) to reject the vehicle if further faults occurred which made the car of unsatisfactory quality. It's clear to me from her description of the problems she suffered when breaking down in May 2022, alongside the RAC report produced, that she was still suffering the same issues that had by then been ongoing for approaching six months.

I still don't think it's clear what these issues with the car were/are, as there has been no successful diagnosis of the problems the car is having. But I am satisfied that a problem which is causing intermittent limp mode in the car and repeated breakdowns is one which indicates the car wasn't of satisfactory quality when it was supplied.

The problems have begun within two months of Miss E acquiring the car and have continued intermittently for the following five months. At this point in May 2022, and concerned for her safety after a further breakdown, Miss E has told us that she's stopped using the vehicle.

And Blue Motor have said that she needs to prove the faults were present or developing at point of sale.

I am satisfied that Miss E has proved the faults exist and given Blue Motor the chance to diagnose and repair them. I am also satisfied that the faults make the vehicle of unsatisfactory quality. As such, Miss E is within her rights under the CRA to reject the car.

I don't think that the argument presented by Blue Motor or the supplying dealership after the investigator her gave them an uphold view has any weight. They have focused on the recall notice, but the investigator has been clear in their view that the recall notice persuaded them to reconsider the case, but that it was the existing evidence which persuaded them that their original view needed to be changed, and they should uphold the case.

I agree with this assessment of the circumstances. Ideally, there would be a clear report showing what the faults were and what needed to be done to fix them. In this instance, there isn't such evidence. However, it's clear that there is a fault or faults causing repeated breakdowns and the car going into limp mode, and neither Blue Motor nor the supplying dealership have provided any plausible evidence about what is causing these. As such, I am upholding this complaint that the car is of unsatisfactory quality, and I am directing Blue Motor to process a rejection of the car as follows.

### **Putting things right**

I instruct Blue Motor Finance Ltd to carry out the following in relation to this agreement:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Miss E
- Refund Miss E's deposit paid of £1,200.
- Refund Miss E 10% of any monthly payments made on the agreement from the date the car was supplied to the 23 February 2022, and also 10% on any payments made between 23 March 2022 and 17 May 2022. This is to recognise the impaired use she was suffering with the car during these periods when still using it.
- Refund all monthly payments made by Miss E from 17 May 2022 onwards, as she was unable to use the car.
- Pay Miss E £200 to recognise the distress and inconvenience caused to her by the faulty car.
- Remove any adverse data caused by this agreement from Miss E's credit file.

For all the refunded payments above, Blue Motor should also add 8% simple interest from the date the payments were made until the date they are refunded.

If Blue Motor considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss E how much it's taken off. It should also give Miss E a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenues & Customs if appropriate.

### **My final decision**

I am upholding this complaint and Blue Motor Finance Ltd must put things right as described

above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 7 July 2023.

Paul Cronin  
**Ombudsman**