

## **The complaint**

Mr C complains that a car he acquired with credit from Blue Motor Finance Ltd (BMF) wasn't of satisfactory quality.

## **What happened**

Mr C entered into a credit agreement with BMF on 20 April 2022 to acquire a used car. The credit to buy the car was granted by BMF under a hire purchase agreement. This meant BMF was the owner of the car and Mr C was, in essence, paying for the use of it. As owner, BMF was responsible for the quality of the car.

The cash price of the car was £7,149 and the total amount owed under the agreement including interest came to £8,811. This was to be repaid in 33 monthly instalments of £267 (figures rounded). The car was an 11 year old Audi and had covered 71,683 miles when supplied to Mr C.

Mr C experienced issues with the car in June 2022 relating to the engine, the suspension and the transmission and complained to BMF. He described the car as unsteady and said he experienced noise on start-up, noise from the engine and difficulty when changing gears after driving for a time. A scheduled service had noted issues with the suspension and that a sealant had been used to repair the area around the water pump. A later inspection at an Audi garage found faults with the suspension and the tyres but didn't diagnose the issues Mr C had experienced with the transmission. It said this would require stripping the gearbox and investigating the synchroniser.

Mr C obtained quotes for repairs for the suspension, but not for the transmission which remained undiagnosed. The quotes I've seen didn't mention the cooling system. The selling dealership offered to pay for half the costs as a goodwill gesture but said that the issues were due to wear and tear. BMF told Mr C it would look to cover the remainder. In November, BMF commissioned an independent report to look into the transmission issues. The inspection couldn't replicate Mr C's concerns with the car and found that it had been road legal and fit for purpose when it was supplied. BMF therefore concluded it wasn't liable for the cost of any repairs and didn't uphold Mr C's complaint.

Mr C referred his complaint to us and one of our investigators looked into it. They concluded it should be upheld in part because the car wasn't of satisfactory condition when supplied in relation to the suspension. As the transmission issue remained undiagnosed they didn't find that this issue was present when the car was supplied. They recommended that BMF covers the cost of repairs to the suspension and the cost of replacement tyres. They also recommended that BMF pays Mr C £150 to reflect the distress and inconvenience to him of being provided with a faulty car.

BMF said it was happy to compensate Mr C for the inconvenience but it wasn't willing to cover the cost of any repairs because the independent inspection didn't replicate the issues Mr C described. BMF asked for the complaint to come to an ombudsman to decide and it came to me. I issued a provisional decision on 9 May 2023 upholding Mr C's complaint. I found that there were issues with the car when it was supplied to Mr C relating to the

suspension and tyres. I said that in order to put things right for Mr C BMF should either pay for the repairs or accept the car's return.

In response to my provisional decision, Mr C told us that although he'd carried out some repairs to the car in order for it to pass its MOT in April, he wished to return it. BMF said in its response that Mr C hadn't made any payments towards the agreement since August 2022 and if he rejected the car he would still need to discuss how to repay his arrears.

### **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 considered everything again including what both parties said in their response to my provisional decision, my conclusions are unchanged. Mr C told us that he wishes to reject the car although he has paid for some repairs to it and provided receipts for his costs. I remain of the view that my proposals for putting things right for Mr C are fair and reasonable and he can now reject the car. I'll set out again my reasons for upholding Mr C's complaint in this final decision.

As I'd said in my provisional decision, I want to reassure both parties that I have considered everything they've provided though I might not directly refer to it in my decision. The information I've reviewed included BMF's internal complaint notes, the independent inspection report and copies of correspondence and invoices from Mr C.

### What happened

Mr C told BMF on 21 June that he'd had the car serviced as per the service schedule. The garage report I've seen advised that the rear suspension bushes were un-bonding and a sealant had been used to repair a previous leak in the coolant system. Mr C said that this wasn't a proper repair. He told BMF on 12 August that he could hear air under the bonnet / hissing noise when he'd been out for a drive. He was concerned that the sealant wasn't working and said that the car wasn't steady. On 15 August Mr C provided BMF with a receipt and further comments from the garage which noticed the fix when servicing the car. Mr C had been told that there was no guarantee how long the fix would hold and that permanent damage could happen to the car.

Mr C also mentioned at this time that the gearbox wasn't operating as it should and that the ignition made a cranking noise on start-up. Mr C said that altogether it felt that there was something genuinely wrong with the car and he didn't expect these issues given the amount he was paying and how recently he'd acquired it.

Mr C took the car to an Audi garage on 30 August. A report from the garage noted that the car felt unstable while driving and experienced a loss of power. It found that the rear bushes on the wishbone had collapsed and an incorrect coil spring had been fitted on the front. It also found that the front and rear tyres were of different sizes. The garage noted that the gears jolted but didn't diagnose a fault. It said that further work was needed to investigate the cause of this issue. There was no mention of the coolant system. According to Mr C, the Audi garage wouldn't carry out the repairs because of the nature of them and the overall condition of the car.

On 1 September BMF told Mr C that continuing to drive the car could cause further damage. Later that month it told him that the selling dealership had offered to pay half of the cost of repairs and that it may look to assist Mr C with the remaining costs. Mr C obtained (VAT-inclusive) quotes from two different garages in October. His local garage could repair the

suspension for £430. Mr C forwarded the emailed quote from the garage and offered to provide the tyre size so BMF could source prices for replacements. He told BMF that he could book the car in for these repairs if it was happy to pay for them and he'd find another garage who could look into the transmission issue.

A second garage quoted £934 for the suspension repairs, and £424 for the replacement and rebalancing of the tyres. Mr C provided these quotes to BMF and said that this second garage wouldn't repair the gearbox as it needed to be stripped down and potentially sent off to have the synchroniser repaired.

On 6 October BMF advised Mr C to get a full invoice for the cost of the work including an hourly rate for the strip down of the gear box. Mr C replied that the garage who'd quoted for the repair had offered to carry out the diagnostic work on the gearbox when the car was in for the repairs to the tyres and suspension. However, the garage was unable to quote for repairs to the gearbox even on an hourly rate as it wasn't sure how long this would take. On 14 October Mr C told BMF that he'd been in contact with the selling dealership who'd told him that the warranty had expired and that it wasn't liable for repairs to the suspension. On 19 October the dealership told BMF that Mr C had had the car for around six months now and the items on the repair quotations were down to wear and tear. It also said that any wheel alignment issues could be down to Mr C hitting a pothole. It seems the dealership felt the repair quotes were too high.

BMF then asked the dealership to take the car back for repair and the further inspection (of the gearbox). The dealership refused saying that its premises was closed for building maintenance and it didn't know when it would reopen.

BMF organised an independent inspection of the car on 10 November 2022. The complaint notes state that it did so in order to diagnose the issues with the gearbox. It seems BMF didn't want to cover the cost of some of the repairs if the as yet un-costed work would eventually result in the total cost of repairs being uneconomical. The inspection was to confirm if there was an issue with the gearbox and to carry out a full health check.

The inspector couldn't replicate Mr C's concerns - there were no unusual noises from the engine and the gears performed as expected during a static test. There were expected levels of wear to the suspension components but no issues were noted with the steering, the engine or transmission throughout the road test. The inspection report noted that the front and rear tyres were different sizes and that the ride height was higher in the front. There was evidence the water pump had recently been replaced and the front coil springs may have been replaced but not recently. It concluded that the car was road legal and fit for purpose when supplied.

### My considerations

The Consumer Rights Act (CRA) 2015 is relevant here. This act implies a term into any contract to supply goods that those goods will be of satisfactory quality. Satisfactory means what a reasonable person would expect, taking into account the description of the goods, the price and any other relevant circumstances. 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. The relevant circumstances in this complaint would include, for example, the nature of the fault and the age and mileage of the car.

The CRA gives customers solutions if they find themselves with faulty goods. They can reject the goods if the fault happens within 30 days, or have the goods repaired or replaced. Outside of this period the supplier has the chance to repair the goods before anything else

happens. The supplier must either repair or replace the goods within a reasonable time and without significant inconvenience to the customer (Section 23). If this doesn't solve the problem and it's found that the fault was there or developing when the goods were supplied, then a consumer might be entitled to other solutions such as a price reduction or a final right to reject the goods.

In this case faults manifested with Mr C's car more than 30 days after it was supplied. My first consideration is whether the faults were there or developing from the start or whether they arose later, for example through wear and tear caused by normal usage. If I find that the faults were present from the outset, does this mean that the car didn't conform to the contract at the time or, in other words, was of unsatisfactory quality? If so, what should happen now?

#### Issues with the suspension and the tyres

In this case the car Mr C acquired was 11 years old and had travelled 71,683 miles. The mileage recorded at the service in June was 72,503. So Mr C had the car a little over two months and had driven it 820 miles when the suspension issues were first noted by a third party. When Mr C brought his car to an Audi garage at the end of August the mileage recorded was 73,236. This visit confirmed the issues with the suspension and the tyres. BMF's contact record and the garage reports and invoices provided by Mr C are consistent in their descriptions of the issues with the suspension and the repairs required.

The MOT carried out in April 2022 noted that the near side front tyre was worn close to the legal limit. This was picked up on the June garage report and the Audi report in August concluded that the front and rear tyres were of different sizes. I think it's more likely than not that the car had been provided to Mr C with these mismatched tyres.

Altogether, I'm satisfied that the car had faults with the suspension and had mismatched tyres when provided to Mr C.

Given the age and mileage of the car when supplied, I think it's fair to say that Mr C might have needed carry out repairs or maintenance work on this car sooner than a newer or less used model. That said, Mr C had the car for a relatively short time and hadn't travelled particularly far when he started having problems with it. While the independent report concluded that the car was road legal and fit for purpose, it didn't mention other aspects of quality. Altogether, I don't consider that the car was of sufficient durability or free from defects when it was provided to Mr C. It follows that I've concluded the car wasn't of satisfactory quality. This means BMF is liable for the costs of these repairs.

However, it's clear to me that BMF has had a reasonable period of time to rectify the issues with the suspension and tyres for Mr C. These issues had been diagnosed by two garages within a few months of supply and Mr C had obtained quotes for the work involved by October. BMF attempted to have this work and further diagnostic work carried out by the selling dealership but was unsuccessful. I think another attempt at repair would likely cause further inconvenience to Mr C. I've concluded that Mr C should now be allowed to reject the vehicle on this basis, should he chose to do so.

#### Issues with the repair to the coolant system

The repairs to the coolant system were noted in the service report in June 2022. I appreciate that the quality of this repair remains an ongoing concern for Mr C but so far there hasn't been any independent confirmation that this repair which was carried out before the car was supplied to him is causing an ongoing issue.

### Issues with the transmission

I understand that in order to diagnose a fault with the transmission further work is required which involves stripping the gearbox and investigating the synchroniser.

Mr C first got in touch with BMF about the problems he was experiencing with the car on 21 June. In August BMF agreed to pay £130 for the Audi garage to look into the problems he was having with the suspension but didn't agree to pay more for the diagnostic to cover the problems with the transmission. The report from the Audi garage on 30 August confirmed that further work was needed to diagnose the issue with the transmission. As mentioned, Mr C obtained quotes for the repairs to the suspension and the tyres in early October, but could not obtain a quote for the gearbox repair without first having a diagnosis. BMF chose not to accept the quotes without an estimate of the cost of repairing the gearbox. BMF asked the dealership to carry out the repairs and provide an estimate of the further work required but it refused. This was on 21 October prior to the independent inspection in November.

The independent inspection didn't manage to replicate the problem but this may be because it's an intermittent issue. Mr C explained that the issue with the gears happens after the car has been driven for some time. However, in order for me to find that BMF is liable for a repair or replacement relating to this issue, Mr C would need to have the issue diagnosed in the first instance. I don't have enough information to find that a fault exists with the transmission which was present or developing at the point of supply.

### What should happen now

The car failed its MOT on 23 April of this year due to a cut in the offside rear tyre. The MOT also reported advisories relating to the suspension. The mileage recorded was 75,534 so the car's travelled 3,851 miles while in Mr C's possession. Our investigator recommended that BMF retains the monthly payments Mr C made as he's had the use of the car. Bearing in mind the cash price of the car, the use Mr C's had of it and the ongoing problems he's experiencing and the impact these have had on his enjoyment of the car, I think it's fair that he isn't liable for the full monthly payments. In this case, I think a 20% reduction in the monthly payments would be fair. This limits Mr C's liability to £214 a month for each month he's had the use of the car.

In addition, Mr C has experienced distress and inconvenience by being supplied with a faulty car. I can see from BMF's contact notes that Mr C has spent considerable time trying to sort out the problem himself – gathering quotes for repair and keeping in touch with BMF. There isn't a specific calculation for awards to compensate for the emotional impact of errors. We have an approach (which is set out on our website) which I've borne in mind alongside everything else when making this decision. Our investigator proposed an amount of £150 but I don't think this fairly reflects the impact this has had on Mr C. The approach set out on our website includes examples of awards of over £300 and up to £750 where a mistake has caused "considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out. Typically, the impact lasts over many weeks or months". I think an award in this range would be appropriate here.

As mentioned, the car failed its MOT on 23 April this year due to a cut in the offside rear tyre. It also had advisories relating to the suspension and the condition of the nearside rear tyre. The car passed its MOT on 10 May with the advisories still in place. Mr C provided invoices for repairs to the car which included replacing the tyres. I appreciate that Mr C needed to replace a tyre in order for the car to pass its MOT but he was liable for any wear and tear costs when the car was in his possession irrespective of the issue with the mismatched tyres. And, as Mr C has chosen to reject the car instead of keeping the car and having the

cost of repairs covered, I don't think it's fair that BMF should accept the return of the car and also pay for these repairs.

BMF said in response to my provisional decision that Mr C hasn't met his payments for about a year and his account is in arrears. If Mr C accepts my decision then BMF can only ask him to repay a limited amount as set out below. BMF should treat Mr C sympathetically and fairly regarding the repayment of this debt, which may mean agreeing an affordable repayment plan with him.

### **Putting things right**

In order to put things right for Mr C, BMF should now:

- End the agreement with nothing for Mr C to pay going forwards and collect the car at no further cost to him; and
- Limit Mr C's liability to £214 a month for each month he's had the use of the car; and
- Consider any payments he's made as payments towards this reduced liability; and
- Pay Mr C an amount of £300 to reflect the distress and inconvenience this matter has caused.

### **My final decision**

For the reasons I've explained above I am upholding Mr C's complaint against Blue Motor Finance Ltd and it now needs to put things right for him as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 September 2023.

Michelle Boundy  
**Ombudsman**