

The complaint

Mr K complains about the quality of a car he has been financing through an agreement with Blue Motor Finance Ltd, who I'll call "BMFL".

What happened

I issued provisional decisions on this complaint earlier in the year. An extract from my most recent provisional decision is set out below.

I know it will disappoint BMFL, but I think the evidence suggests this car wasn't supplied in a satisfactory condition and I'm expecting to ask them to put things right for Mr K.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr K acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then BMFL, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr K. The car here was about ten years old and had already completed about 108,600 miles, so think a reasonable person would expect it to have quite a lot of wear and tear.

Whilst I accept that a car of this age and mileage, would be likely to be experiencing quite a bit of wear and tear I think a reasonable person would expect to be able to drive it from the forecourt without experiencing engine problems. The relevant legislation says that when we think about whether a car has been of satisfactory quality we should also consider whether it has been durable.

Mr K says he experienced problems with the injectors on the day he took receipt of it. A text message he sent to the dealership explained that he was "...wondering why it was running so strangely..." and Mr K went on to explain he'd performed a diagnostic scan of the system which showed an injector fault. In that same text he explained that he had "poured injector cleaner in" and "maybe it will help".

The dealership have explained that the failure of the injectors was due to Mr K using that

cleaner, but I don't think that can be the case as Mr K's text message explained that he'd used the cleaner to try to remedy the strange running of the engine. It therefore seems likely that the engine wasn't running properly before he used the cleaner, and I'm not therefore persuaded that the initial injector failures have been caused by that cleaner.

The relevant legislation gave Mr K the short term right to reject the car at that point, but he chose to have it repaired. I'm not persuaded that repair has been successful because:

- The third party garage report of 19 July 2022 says injector three isn't working.*
- The initial repair appears to have been carried out by 26 May and I can see that Mr K was complaining about further, similar issues, by at least 20 June 2022.*
- Mr K had only completed 724 miles in the car by the time the third party garage confirmed the subsequent injector fault, and it therefore seems to me it's more likely than not that was a failed repair rather than a new unconnected fault.*

The relevant legislation says that if a repair is unsuccessful the consumer should be allowed to reject the car, so I think that's what BMFL should now do.

And, even if I'm wrong about the failed repair being a reason to reject the car, I think rejection should also be authorised because this car wasn't durable. I don't think a reasonable person would expect such a significant failure within a few hundred miles of driving, even on a car of this age and mileage. Whilst I accept that injector's may be nearing the end of their serviceable life at over 100,000 miles, given that the dealership say they serviced the car before they supplied it to Mr K I think he could be entitled to expect it to have run relatively fault free for much longer than it did.

Putting things right

BMFL should collect the car at no cost to Mr K and they should end the finance agreement. They'll need to refund any deposit Mr K has paid and, as he's been deprived of that money, they will need to add interest to that refund.

Mr K has had to commission a report on the car's condition in order to support his claim. I haven't currently seen evidence that Mr K had to pay anything for the report but, if he did, I think the cost will have been incurred as a consequence of the car being of unsatisfactory quality. So, BMFL should refund the cost of that report if Mr K can provide a receipt. They should add interest to that refund too.

Mr K has been inconvenienced by these issues. He's had to take the car back to the dealership and has had to arrange a diagnostic. He's also had to escalate his complaint to this service when I think it could have been resolved earlier. In those circumstances BMFL should pay him £200 compensation for the distress and inconvenience he's experienced.

Mr K hasn't been able to use the car much. He's explained it's now sitting on his drive and can't be driven. The current fault was diagnosed in July 2022 and Mr K had only driven 724 miles at that point. Mr K's use of the car had been impaired before then by the issues he'd been having with it, and I can't see he was kept mobile with a courtesy car whilst his car was being repaired. Taking everything into account I think BMFL should refund all finance instalments due with the exception of the first one which they can retain in respect of the use Mr K has had from the car. They'll need to add interest to that refund too.

Mr K has explained that he's been insuring the car whilst it's been off the road and I'm therefore expecting to ask BMFL to provide a partial refund of that insurance. Mr K should pay for insurance until the date the current fault was diagnosed by the third party garage (19 July 2022), any insurance payments he's made since then, and can evidence to BMFL,

should be refunded with interest.

My provisional decision

For the reasons I've given above, I'm expecting to uphold this complaint and to tell Blue Motor Finance Ltd to:

- *Allow Mr K to reject the car and end the finance agreement.*
- *Collect the car at no cost to Mr K.*
- *Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Refund all but the first finance instalment, waive any that were due after that and haven't been paid, add 8% simple interest* per year to any refund from the date of payment to the date of settlement.*
- *Refund the cost of Mr K's diagnostic report on provision of a receipt and add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Pay Mr K £200 to compensate him for the distress and inconvenience he's experienced.*
- *Refund any insurance payments Mr K can evidence since the third party garage report of 19 July 2022.*
- *Remove any adverse reports they may have made to Mr K's credit file in relation to this issue.*

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

Further comments and/or evidence

Mr K explained that he'd started to use the car again after an MOT was completed on 13 April 2023. He said the car was covered in mould at that point because it had been stood for so long and he explained that some of that mould was still visible despite him cleaning it and bringing the car back to a good condition. He said the car is operational now and the MAF sensor has been replaced but the car is still under powered and uses more diesel. He provided a photograph of the odometer which showed the mileage in July 2023 to be 111,444. He also provided a copy of a diagnostic test showing the car had completed 111,811 miles by 17 July 2023. Mr K wanted to be reimbursed for the most recent bill he'd paid, in which the battery and MAF sensor was replaced, and the car was serviced. Mr K provided a copy of the receipt for his diagnostic report and also provided a statement showing his insurance contributions.

BMFL also responded. They said:

- *Mr K is a mechanic.*
- *He test drove the vehicle – presumably it was fine for the test drive.*
- *The vehicle was supplied with mileage 102,200. It has recently passed an MOT with mileage 109,244 – that is 7k miles, not 700 as alleged by Mr K.*
- *The MOT did not contain any reference to injector faults which occurred after Mr K added an additive to the engine.*
- *We have no evidence of any further injector repairs to enable 7k miles to be driven*
- *We contend that by adding significant mileage Mr K has affirmed the agreement by continued use and cannot now reject.*

I asked BMFL to provide evidence that the car had completed 102,200 miles at inception of the deal as that wasn't what I'd been led to believe. They provided a copy of the "Dealers

Offer and Warranty" form (one document) that was signed by the dealership on inception of the deal. I asked Mr K about that too, but he didn't agree with BMFL; he said the mileage was 108,000 and he provided a copy of the warranty agreement that demonstrated that was the case. He also referred me to the screen shot he'd initially provided of the diagnostic he'd performed three days after the car was supplied to him. That showed the mileage as 174,777km (108,601 miles) and also listed the correct VIN.

What I've provisionally 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.

I've not been provided with any new evidence that would lead me to change my opinion that the car wasn't of satisfactory quality when supplied or that Mr K shouldn't be allowed to reject it.

With regard to the car's mileage at inception, BMFL have provided one form to show the mileage was 102,000. It doesn't appear to be a form that was ever shared with Mr K, and he would therefore never have had the opportunity to dispute it. The car had already completed a little over 102,000 miles when it was MOT'd in November 2021, six months before Mr K took receipt of it. I think it's more likely than not that it would have covered further miles in that time. The diagnostic completed a few days after the car was supplied, shows the mileage to be a little over 108,000, as would be expected if 108,000 was the delivery mileage. The correct VIN is attached to that diagnostic, and I'm persuaded it's likely to be an accurate record of the actual mileage on the car at that time. That evidence, and the mileage on the warranty, leads me to believe it's most likely the mileage on the car at inception was indeed 108,000.

Mr K has now explained he's been using the car for the last few months. I wasn't previously aware of that, but I understand the need as Mr K has explained he works 30 miles from home and can't afford to replace the vehicle. His usage, however, means that I've needed to revisit the refund of instalments I was thinking of ordering.

The car had completed 111,811 miles on 18 July 2023 so, I'm persuaded Mr K has completed 3,811 miles and not the 724 miles I had relied on in my first provisional decision. But that further usage has been impaired because I think Mr K would have been concerned about the car's condition. In the circumstances I think BMFL should refund all finance instalments due with the exception of two that they can retain in respect of the use Mr K has had from the car. They'll need to add interest to that refund.

I'm not expecting to ask BMFL to refund the cost of the recent work on the car. I think the work completed was likely to be the result of normal wear and tear and expected routine maintenance on a car of this age and mileage.

I've reconsidered the insurance refund as Mr K has now explained he's been using the car since April 2023. BMFL should, therefore, refund any insurance payments Mr K can evidence from the date of the third party garage report (19 July 2022) to the date of the MOT (13 April 2023).

My provisional decision

For the reasons I've given above, I'm expecting to uphold this complaint and to tell Blue Motor Finance Ltd to:

- Allow Mr K to reject the car and end the finance agreement.

- *Collect the car at no cost to Mr K.*
- *Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Refund all finance instalments except two that they can retain in respect of fair use. Add 8% simple interest* per year to any refund from the date of payment to the date of settlement.*
- *Refund the cost of Mr K's diagnostic report on provision of a receipt and add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Pay Mr K £200 to compensate him for the distress and inconvenience he's experienced.*
- *Refund any insurance payments Mr K can evidence for the period of non-use 19 July 2021 to 12 April 2023. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Remove any adverse reports they may have made to Mr K's credit file in relation to this issue.*

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

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.

Mr K accepted my latest provisional decision, and MBFL didn't have any further comments. I've therefore, found no reason to change my latest provisional decision, and that becomes my final decision on this complaint.

My final decision

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

- Allow Mr K to reject the car and end the finance agreement.
- Collect the car at no cost to Mr K.
- Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund all finance instalments except two that they can retain in respect of fair use. Add 8% simple interest* per year to any refund from the date of payment to the date of settlement.
- Refund the cost of Mr K's diagnostic report on provision of a receipt and add 8% simple interest* per year from the date of payment to the date of settlement.
- Pay Mr K £200 to compensate him for the distress and inconvenience he's experienced.
- Refund any insurance payments Mr K can evidence for the period of non-use 19 July 2021 to 12 April 2023. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to Mr K's credit file in relation to this issue.

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 18 September 2023.

Phillip McMahon
Ombudsman