

The complaint

Mr T complains about a car he acquired under a hire purchase agreement with Blue Motor Finance Ltd ("BMF").

What happened

In October 2022 Mr T entered into a hire purchase agreement with BMF for a used car. The car was eight years old, the mileage was over 98,000 miles, and the cash price was £8,279. The car was delivered to him, and on the same day it broke down. Mr T says there was smoke coming out of it.

There is a dispute about whether Mr T exercised his short-term right to reject the car under the Consumer Rights Act 2015, or whether he agreed to have the car repaired instead. But it is not in dispute that the dealer repaired the car, and that this involved replacing the starter motor, the battery, the oil filter, and the front brake pads and discs. Afterwards, Mr T refused to collect the car, and he cancelled his direct debit. BMF defaulted his account, treated the car as abandoned, sold the car at auction, and pursued Mr T for the rest of his debt.

Mr T brought this complaint to our service (represented by Mr C), but our investigator did not uphold it. He said that he did not need to decide whether Mr T had exercised his short-term right to reject the car or not, because he did not agree that he had been eligible to exercise it. He said that the faults with the car were the result of fair wear and tear, and so they did not amount to a breach of the statutory implied term that the car was of satisfactory quality. He found that BMF had been entitled to auction the car, default Mr T's account, and pursue him for the balance of his debt.

Mr C, on behalf of Mr T, did not accept that opinion. He accepted that a certain amount of wear and tear is to be expected with a vehicle of the relevant age and mileage, but he did not agree that this meant that the car did not have to be roadworthy. Since it had broken down on the first day, and since the brakes are essential to safety, he said that the car cannot have been fit for purpose when sold. And he insisted that he had never agreed to having the car repaired instead of rejecting it and ending the agreement. He asked for an ombudsman's decision.

I wrote a provisional decision which read as follows.

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.

Having done so, I am currently minded to uphold it. I will explain why.

It is not in dispute that the car was not in perfect condition, and that there were some problems which had to be repaired. Whether those problems meant that the car was of unsatisfactory condition or not depends on the circumstances: a used car may be expected to have some issues due to ordinary wear and tear sustained in the course of driving it,

without that being a breach of contract, when the same defects in a brand new car would be a breach. So a problem which is present at the point of sale may still be consistent with the degree of wear and tear that is to be expected in a used car. However, I agree with Mr T's argument that a used car should at least be roadworthy.

The fact that the brakes were replaced does not necessarily mean that they were no longer fit for purpose, and that might have just been done as a gesture of good will by the dealer, to compensate for the breakdown. (The car had passed its MOT with no advisories in July 2022.) But the fact that the car broke down on the very day that it was delivered indicates to me that it was not of satisfactory quality. No purchaser reasonably expects that to happen on day one. And an average mileage of 12,000 miles a year does not seem to me to be excessive.

The dealer has suggested that the starter motor may have been damaged by Mr T attempting to jump start the car. However, that seems to me to be entirely speculative; there is no evidence about this, and no obvious reason why Mr T would want to jump start a car he had a key for. A damaged starter motor would not explain the smoke coming out of the car. And if the dealer did have evidence to support this, then it's likely that they would have charged him for the repair instead of doing it for free. So I am not persuaded that this happened. It's also clear that there were other issues with the car besides the starter motor. For these reasons, I find that the car was of unsatisfactory quality at the point of sale.

Mr T has provided a screenshot of an email he sent to BMF on 3 November 2022 (two days after the car was delivered, and the day before the car was collected by the dealership) in which he said: *"I want to cancel this contract because the car for which I requested the finance is broken. I would return it back and I want to cancel the contract."*

I think that is an unequivocal request to cancel the contract, under the statutory short-term right to reject the car. I don't have a verbatim record of what he told the dealership, but the dealership appears to have thought that Mr T had just changed his mind about the purchase and was trying to exercise another right – the right to withdraw from the credit agreement within 14 days. But even if that was ambiguous to begin with, he had already made a clear statement of his intentions to BMF, and he repeated his request on 9 November, which is the date on the job sheet for the repair. He had cancelled his direct debit the day before.

Based on the email of 3 November, and in the absence of any evidence to suggest that Mr T waived his right to reject the car, I am satisfied that he did reject the car before it was collected from him and repaired. I am also satisfied that he was entitled to exercise that right. This means that his agreement should have been cancelled on 3 November 2022, with nothing for him to pay.

I therefore intend to uphold this complaint. Subject to any further representations I receive from the parties ... I will order Blue Motor Finance Ltd to stop pursuing Mr T for payment, and to amend his credit file to reflect that the agreement was cancelled by him in November 2022.

Responses to my provisional decision

Mr C accepted my provisional decision. BMF did not reply. So there is no reason for me to depart from my provisional findings, and I confirm them here.

My final decision

My decision is that I uphold this complaint. I order Blue Motor Finance Ltd to stop pursuing Mr T for payment and to treat his account as settled, and to amend Mr T's credit file so that it

shows that the hire purchase agreement was cancelled on 3 November 2022, and to remove any adverse information recorded on his credit file in relation to the agreement after that date.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 October 2023.

Richard Wood
Ombudsman