

The complaint

Mr P is unhappy that a car supplied to him under a hire purchase agreement with Blue Motor Finance Ltd ('BMF') was of an unsatisfactory quality.

What happened

In January 2023, Mr P was supplied with a used car through a hire purchase agreement with BMF. The agreement was for £3,800 over 57 months; with monthly payments of £113.33. At the time of supply, the car was around nine years old, and had done 82,900 miles (according to the MOT record for 13 January 2023).

Shortly after being supplied with the car, Mr P says an engine warning light came on. The vehicle then went into limp mode and was recovered to the supplying dealership. The dealership say they fixed the car, but when it was returned to Mr P, the warning light was still on. Mr P says the dealership told him this was due to the coolant and would 'sort itself out'.

Mr P wasn't happy with this and, in February 2023, he took the car to a garage to be inspected. They said there was an issue with the thermostat. Mr P still wasn't happy with the car, and he called his breakdown company to inspect it. The breakdown company said there were bolts missing from the clutch and the head gasket may need changing.

Unhappy with the report from the breakdown company, Mr P complained to BMF. The dealership re-inspected the car and said the only problem was that the battery needed replacement. Mr P wasn't happy with this response, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator was satisfied there was a fault with the thermostat that was present when the car was supplied to Mr P. But he wasn't satisfied there were any other faults with the car – the breakdown company suspected a problem with the head gasket, but this was based on a roadside examination, and no fault had been identified on any further investigations.

So, the investigator said that BMF should refund Mr P the cost of the thermostat repair. The investigator also said that, if Mr P believes there are still issues with the car, BMF have said they would arrange for an independent inspection. And if this confirms BMF are liable for any issues they would allow Mr P to reject the car.

BMF agreed with the investigator's view, but Mr P didn't. And he asked for an ombudsman to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, 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. Where evidence has been incomplete

or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 (if appropriate) what I consider was good industry practice at the time. Mr P was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BMF are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMF can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr P to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr P took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMF to put this right.

Based on what I've seen, I'm satisfied there was a fault with the car. Within a few weeks of being supplied with the car, it went back to the dealership for repair. I've seen an invoice dated 14 February 2023 which shows the water pump was replaced at the cost of £70.99. It's not disputed that Mr P wasn't charged for this repair.

I've also seen an invoice dated 25 February 2023, when the car had done 83,759 miles. This shows that Mr P was charged £143 for a replacement thermometer. BMF have confirmed that Mr P wasn't refunded the cost of this repair. They've also agreed they will refund this. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision.

Following the repair to the thermostat, the car broke down. The breakdown report of 28 February 2023, when the car had done 83,828 miles, says there was a fault code relating to the thermostat, the oil looked to be contaminated with coolant, and the coolant level was low. Because of this, the attending mechanic said the *"symptoms are very indicative of a head gasket failure."*

However, rather than recovering the car to a garage for the head gasket to be replaced, the attending mechanic cleaned the spark plugs and checked the coil pack. As well as noting there were bolts missing in the gearbox bellhousing (which was unrelated to the breakdown), the attending mechanic advised Mr P to drive the car home and contact the finance company – BMF. He was also advised not to drive the car any further unless it's to an approved garage for repairs.

While I appreciate that Mr P would've been concerned about this report, based on the report and the actions taken by the attending mechanic, I'm satisfied this was only a suspected head gasket failure. The report doesn't convince me the head gasket had actually failed, and the attending mechanic's advice was essentially to have the car checked out at a garage, but not to drive it until this had been done.

Mr P complained to BMF, and the car was taken back to the dealership for inspection. I've seen an inspection report dated 31 March 2023 which says the car needs a replacement battery and headlight bulb. There's nothing in this report that indicates a problem with the head gasket and/or coolant system. Nor have I seen any other inspection report that has indicated a head gasket and/or coolant system failure.

Following this report, BMF asked Mr P to collect the car. They advised that if he wasn't happy with the car, even 'one minute after collection', then he should contact them, and they would arrange for an independent inspection. They also said that, if fault was found that they were liable for, then they would support rejection of the car as the dealership had already attempted a repair. However, Mr P has chosen not to collect the car, and it's my understanding that it remains at the dealership.

Based on what I've seen, I'm not satisfied there was a further fault with the car, as there's no inspection report to show this is the case. Notwithstanding this, I'm satisfied that BMF have acted reasonably by offering to have the car independently inspected once Mr P had collected it, and if he remains unhappy/there is still an indication of a fault with the car. This offer, and the offer to allow rejection if there is a fault they're liable for, is in line with the CRA and remains open for Mr P to accept.

The car has been ready for collection by Mr P since May 2023 at the latest (when BMF issued their final complaint response), although I suspect it's actually been available for collection since shortly after the inspection that took place on 31 March 2023. What's more, Mr P has been able to collect the car in the knowledge that BMF would arrange for an inspection if any faults remained. As such, it's been Mr P's choice not to collect the car. So, I don't think it's fair and reasonable for BMF to refund any payments he's made to the agreement.

If Mr P chooses to collect the car after reading my decision, and it transpires there are faults with the car, I would remind him that BMF would only be liable for any faults that were present or developing at the point of supply. If any faults have arisen solely as a result of the car essentially being abandoned for the best part of a year, then BMF wouldn't be liable for these.

Putting things right

Given the above, BMF should:

- upon receipt of proof of payment, reimburse Mr P with the £143 cost of replacing the thermostat; and
- apply 8% simple yearly interest on this reimbursement, calculated from the date Mr P made the payment to the date of the refund[†].

[†]If HM Revenue & Customs requires BMF to take off tax from this interest, BMF must give Mr P a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr P's complaint about Blue Motor Finance Ltd. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 February 2024.

Andrew Burford
Ombudsman