

The complaint

Miss H has complained that she is unhappy with the quality of a car she acquired in February 2023 using a hire purchase agreement with Blue Motor Finance Ltd (“Blue Motor”).

What happened

Miss H acquired a used Nissan in February 2023, using a hire purchase agreement. The cost of the car was £8,690, and of this, Miss H borrowed £6,690 over 48 months. The monthly cost was £173.86. The car was nearly eight years old, and the mileage was recorded as 92,141 at the point of supply.

Shortly afterwards, and after driving less than 2,000 miles in the car, problems arose with the diesel particulate filter (DPF) and the turbo. Miss H took the car to a third-party garage, which carried out repairs to the car, but it said further work was required. Because of this, Miss H complained to Blue Motor, saying that she wanted to reject the car, or at least have the car repaired.

Blue Motor commissioned an independent inspection of the car, and this confirmed that there were faults with the car. However, after contacting the dealership which sold the car, and the third-party garage, Blue Motor told Miss H that it would not be upholding her complaint. It said this was because it had been able to establish that there had been a remapping – the modification of the engine’s electronic control unit to improve vehicle performance - by the third-party garage, and this would remove the dealership’s liability. Therefore Blue Motor would be unable to assist with the issues on the vehicle.

Miss H then brought her complaint to this service, saying that she was unhappy about the quality of the car and about how Blue Motor had handled her complaint. Our investigator looked into this, and thought Miss H’s complaint should be upheld. Blue Motor disagreed, and asked that it be reviewed by an ombudsman.

I issued a provisional decision in October 2023, in which I explained that I was minded to agree with our investigator that the complaint should be upheld, but I had taken a slightly different view on the appropriate redress. Both parties have now responded, and I can now issue my 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.

I’ve decided to uphold Miss H’s complaint. I’ll explain why.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators’ rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

Because Blue Motor supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case, of course, the car was nearly eight years old, with a mileage of over 92,000. And the price was lower than that of a new car. So it's reasonable to expect that parts of the car would have suffered a degree of wear and tear, and that a car of this age would likely need repair and maintenance sooner than a newer car.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

It looks as though the faults occurred after the first 30 days, so I am not considering the short term right to reject under the CRA here.

In my provisional decision, I set out my reasoning as follows:

"I've carefully considered all of the evidence provided by both parties. Blue Motor has provided copies of the hire purchase agreement, independent inspection report, and its contact notes relating to the complaint. Miss H has provided her account of events, and copies of the invoice and estimate from the third-party garage. I note that Miss H said she didn't receive a copy of the independent report until this service prompted Blue Motor to send it to her.

The independent inspection report was carried out in June 2023. It notes the mileage as 94,083. The report states "No confirmation of any "Remap" operations could be either confirmed or denied by the diagnostic device used" and goes on to say: "The vehicle's overall physical condition is acceptable for its age and mileage and is no doubt the vehicle currently meets minimum MOT standards, however the vehicle not fit for use on the public highway as the oil level is high and contaminated with fuel."

And then:

"The vehicle fault codes had been cleared and around the date of sale all leading us to conclusion that the highlighted issues were present and developing stage at the point of sale.

In our opinion, the DPF should be cleaned, and the oil and filter changed, and the fault codes cleared, and the vehicle returned to service.

After a few hundred miles the turbocharger should be rechecked as potentially, the oil could have been bypassing the turbocharger seals as a result of increased induction pressures caused by the blockage of the DPF.

Finally, while the vehicle was sold in a condition that met minimum MOT standards, we do not believe it was durable so any necessary repairs should be borne by the sales agent.

Prior to returning the vehicle to the owner, it should be given an extended road test by an independent engineer to confirm that the repairs have been done to a satisfactory standard.”

Based on the independent report, which states that the car was not durable, I am satisfied that the car was not of satisfactory quality at the point of supply. Blue Motor has not explained why it believes that the actions of the third-party garage has prejudiced its position, and the independent report does not suggest that it has. I’m also satisfied that Blue Motor has responsibility for dealing with the repairs to the car. So I’m proposing to uphold Miss H’s complaint and to require Blue Motor to arrange for the repairs to be carried out.

I also note that the independent report states that the car is not fit for use on the road. As Miss H has been unable to use the car since the breakdown in May, I think it’s fair to require Blue Motor to refund the hire purchase payments for the months that Miss H has been unable to use the car, and to restart collection of the monthly payments when the repairs have been satisfactorily completed. I also consider that Blue Motor should pay an additional £150 in recognition of the inconvenience caused by the faults and its failure to act on the independent report.”

As I noted above, both parties have now responded. Miss H said she had no further comments except to note that the turbocharger has already "gone" as it was flooded with oil when the DPF blocked, but no doubt this will be seen when the repairs are done. And she queried whether Blue Motor would simply be required to defer the monthly payments on the car as part of the redress.

Blue Motor said it had nothing further to add.

With regard to Miss H’s comments, the independent report states, in its recommendations, that the turbocharger should be rechecked as part of the repair process, and the car then road-tested by an independent engineer to ensure satisfactory completion of the repairs. I am satisfied that this means that, if repairs to the turbocharger are required, they should be carried out as part of the repair process. With regard to the redress, I noted that Blue Motor should refund the payments Miss H has made during the period in which she has been unable to use the car, and not restart payments until the car has been satisfactorily repaired. For the avoidance of doubt, this means that Blue Motor is effectively responsible for the monthly payments due under the contract for the period during which Miss H cannot use the car, until the repairs stated in the independent report have been satisfactorily completed.

Overall, as no new evidence has been submitted, I have no reason to change my conclusions as set out in my provisional decision. Therefore I uphold this complaint.

Putting things right

Blue Motor should:

- Refund all monthly payments Miss H has made under the hire purchase agreement from 23 May 2023, with payments to restart on satisfactory completion of the repairs.
- Pay 8% simple interest* on all refunded amounts from the date Miss H paid them to the date compensation is paid.
- Arrange for the vehicle to be collected and taken to a recognised garage for repairs. The repairs should be carried out in line with the independent inspection report quoted above.
- Prior to returning the car to Miss H, arrange for an independent engineer to carry out the extended road test mentioned in the independent inspection report and obtain

confirmation that the repairs are of satisfactory quality.

- Pay Miss H £150 for the delays it has caused by its failure to follow the recommendations of the independent inspection report.
- Remove any adverse information from Miss H's credit file (if any has been added).

My final decision

For the reasons given above, I have decided to uphold Miss H's complaint. Blue Motor Finance Ltd should pay Miss H the compensation I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 1 December 2023.

Jan Ferrari
Ombudsman