

The complaint

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

What happened

On 27 February 2023, Mrs A was supplied with a used car through a hire purchase agreement with BMF. She paid a £100 delivery charge, a deposit of £1,370.25 and the agreement was for £13,119.75 over 60 months; with 59 monthly payments of £308.05 and a final payment of £309.05. At the time of supply, the car was almost seven and a half years old and had done around 62,700 miles.

When Mrs A took possession of the car she said she could smell fuel fumes and there was a knocking noise that got worse over the first week. On 10 March 2023, she complained to the broker who'd arranged the finance, and they authorised for the car to be inspected at a garage local to Mrs A ('the garage'). On 6 April 2023 the car was repaired by the garage – a faulty injector seal and an ARB link were replaced.

The car broke down on 19 June 2023, following various warning lights becoming illuminated. A report from the breakdown company said it was likely the battery wasn't charging correctly, and they recommended the car be taken to a garage for investigation and repair. The car was inspected and repaired by the garage on 27 June 2023, as the engine was running roughly. The injectors were checked and recoded.

Mrs A complained to BMF, and they arranged for the car to be inspected by an independent engineer on 13 July 2023. At the time of this inspection the car had done 68,426 miles – around 5,700 miles since supply. The engineer said the car was in an average condition for its age and mileage and there were historic fault codes relating to previous repairs. A four-mile road test was carried out during which no issues were found, although he'd been told the car was misfiring when it had been moved for inspection.

The engineer said intermittent misfiring is usually associated with electrical issues and recommended the fuel pump and associated electrical connections were checked and cleaned, and a fuel system cleaning fluid used. However, the engineer concluded *"there was no suggestion that the vehicle was not sold in a satisfactory condition [and] there was no evidence to suggest any intermittent misfire that may be present was a result of a poor repair."*

Based on the independent engineer's report, BMF didn't uphold the complaint. Mrs A wasn't happy with this, and she brought her complaint to us for investigation.

In August 2023, while this matter was with us for investigation, Mrs A had more problems with the car and dashboard warning lights came on again. Due to this, Mrs A stopped using the car on 26 August 2023 and, when the MOT expired on 30 September 2023, it wasn't renewed.

Our investigator said that, while the independent engineer hadn't been able to find any faults, and suspected an intermittent issue, the job sheets from the garage, the breakdown report, and the correspondence between the garage and the warranty all pointed to an ongoing problem with the car that was present when the car was supplied and hadn't been fixed. So, she thought BMF needed to do something to put things right.

The investigator recommended that Mrs A be allowed to reject the car, and that BMF should refund her deposit, delivery and diagnostic costs, and payments while the car hasn't been on the road; as well as paying her £100 compensation.

BMF didn't agree with the investigator. They said the independent engineer hadn't found any misfire or failed repair, and said the car was in a satisfactory condition when it was supplied. So, they 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. Mrs A 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 Mrs A to show it was present when the car was supplied.

So, if I thought the car was faulty when Mrs A 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. The invoices from the garage dated 6 April and 27 June 2023 show that work on the car was carried out. And given the nature of this work, especially the failed seal and the worn ARB link, I'm satisfied it's more likely than not that these faults were present when the car was supplied.

While I've noted the contents of the independent engineer's report and appreciate this says that whatever fault there is with the car is both intermittent and not related to any previous repair, this is also based on a four-mile test drive. And I'm not satisfied this is sufficient to show a fault that's intermittent. I also need to take into consideration that the garage where the inspection took place reported they'd seen evidence of a fault to the engineer.

The garage requested warranty authorisation on 18 September 2023. They advised the warranty company that *"the vehicle has been in multiple times before, carried out diagnostics and multiple faults stored relating to ground issue. Found ABS grounds corroded and have cleaned and reassembled. Found body earth and cable corroded, replaced battery earth strap."* However, this request was declined because the warranty company didn't cover disturbed electrical connections.

I've also seen an email from the garage dated 4 October 2023 where they said that, when the car was originally repaired in April 2023, *"I expressed concern to you at the time that there was evidence that someone previously had carried out work on the injector harnesses as tape around the harnesses had been wound back and not refitted well, and the connections for the injectors had been probed too hard as the pins had been opened too wide. At the time, this didn't seem to cause any issues with the running of the car but I suggested it may cause problems further on."*

In addition to this, I've seen additional breakdown reports for 29 June 2023, where fault codes with the injection valve were found; and 26 August 2023 when the car was recovered to the garage. Mrs A hasn't used the car since this date.

As such, on the balance of probabilities I'm also satisfied there's an ongoing issue with the car. And, as the car is undrivable due to these issues, this makes the car of an unsatisfactory quality.

Section 24(5) of the CRA says *"a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract."* This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for BMF – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The CRA is clear that, if the single chance at repair fails, as was the case here because there are still ongoing faults with the car, then Mrs A has the right of rejection. As Mrs A no longer wants the car to be repaired, she should be allowed the right of rejection.

Putting things right

The car was off the road and undrivable between 25 March and 6 April 2023, during which period Mrs A has confirmed she was provided with a courtesy car for just two days. The car has also been off the road since 26 August 2023, a fact supported by the breakdown report of this date and the expiry of the MOT in September 2022. During these period, Mrs A was paying for goods she was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as BMF failed to keep Mrs A mobile; I'm satisfied they should refund the payments she made during this period.

Mrs A has also said she's had to pay £130 inspection and diagnostic costs. Given the car wasn't of a satisfactory quality when supplied, I think it's only fair that BMF reimburse these costs.

Finally, it's clear that Mrs A has been inconvenienced by what's happened. So, I think BMF should compensate her for this. The investigator had recommended BMF pay her £100, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, BMF should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mrs A;
- remove any adverse entries relating to this agreement from Mrs A's credit file;
- refund the £100 delivery cost Mrs A paid;
- refund the deposit Mrs A paid (if any part of this deposit is made up of funds paid through a dealer contribution, BMF is entitled to retain that proportion of the deposit);
- upon proof of payment, reimburse Mrs A for the £130 inspection and diagnostic payment she paid;
- refund Mrs A an amount equivalent to the payments she made for the period 25 March to 6 April 2023 (less two days when she was provided with a hire car);
- refund any payments Mrs A has paid on or after 26 August 2023, when she stopped using the car;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Mrs A made the payments to the date of the refund[†]; and
- pay Mrs A an additional £100 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

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

My final decision

For the reasons explained, I uphold Mrs A'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 X to accept or reject my decision before 13 February 2024.

Andrew Burford
Ombudsman