

The complaint

Miss W 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, Miss W was supplied with a used car through a hire purchase agreement with BMF. She paid a £1,454.25 deposit and the agreement was for £7,743.75 over 60 months, with 59 monthly payments of £197.84 and a final payment of £198.84. At the time of supply, the car was almost seven years old, and had done 67,949 miles. At the time of supply, the supplying dealership also sold Miss W a lifetime warranty, at the cost of £49.99 a month. This warranty didn't form part of the finance agreement.

The car broke down on 9 May 2023. At the time of the breakdown, the car had done 69,304 miles – 1,355 miles in the 10-weeks Miss W had had the car. Miss W contacted the warranty company and they arranged for the car to be recovered to an approved garage. The garage ran a diagnostic, identifying a cylinder fault, and they replaced the coil pack and spark plugs. This didn't fix the fault, and the garage said the engine needed stripping down to identify what the issue was – something the warranty wouldn't cover. So, on 25 May 2023, Miss W complained to BMF that the car they'd supplied wasn't of a satisfactory quality.

BMF arranged for the car to be inspected by an independent engineer. This inspection took place on 3 July 2023. The engineer listed a number of potential causes for a misfire and said, *"to determine the exact cause and extent of failure, dismantling and further, more detailed, investigation will be required."*

However, in their conclusion, the engineer said, *"without the benefit of additional checks under workshop control conditions we can't confirm the exact cause, however, the symptoms have all the characteristics of a faulty injector or a faulty coil pack ... there was no suggestion that the current symptoms could have been present at the point of sale, as these are easily detectable, so we believe the symptoms could have developed after the point of purchase and the most likely cause of the misfire is age-related wear to one or more of the engine components. When trying to eliminate the misfire, we suggest replacing the coil pack and spark plugs in the first instance, if this does not rectify the symptoms, the next step is to check the injectors and complete a compression check."*

BMF responded to Miss W's complaint on 11 July 2023, explaining they weren't upholding it as the issues with the car were due to age-related wear and tear, which they weren't liable to rectify. Miss W wasn't happy with BMF's response, and she brought her complaint to the Financial Ombudsman Service for investigation.

In August 2023, while this matter was awaiting allocation to an investigator, the warranty approved garage carried out the repair work suggested by the independent engineer. However, this failed to fix the fault.

Our investigator said the car had broken down within two months of supply, and after having down around 1,000 miles. Because of this, he didn't think the car was sufficiently durable,

which made it not of a satisfactory quality when it was supplied to Miss W. As repairs to the car had failed, the investigator said that Miss W should now be allowed to reject the car.

The investigator recommended that BMF end the agreement; refund Miss W the deposit she paid as well as all the payments since 9 May 2023, when the car broke down; refund her the £312 diagnostic and repair costs she'd incurred; and pay her an additional £300 compensation for the distress and inconvenience she suffered.

BMF initially said they thought the repairs to the car were something the warranty company should do, but then they said that the dealership has the single chance at repair, which they haven't had the opportunity to undertake. So, they thought allowing the dealership to repair the car was the fairest resolution in the circumstances. The investigator thought the dealership had already had this opportunity but had chosen not to repair the car. As such, this matter has been passed to me 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. Miss W 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, business 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 business can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Miss W to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss W 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 business to put this right.

I've seen a copy of the independent engineer's report, dated 3 July 2023. The key elements of this report are quoted above, so I won't repeat them here. However, it's clear from this report that the engineer was unable to identify the exact cause of the issue with the car, recommending that the engine is dismantled for further investigation – exactly the same course of action as the warranty approved garage recommended.

The engineer suggested that the most likely cause of the issue was a faulty injector or coil pack, and recommended a course of action, which the garage undertook. However, as this didn't remedy the situation, it's reasonable for me to conclude that the engineer was wrong about this. Which leads the situation back to an engine strip down being needed to identify the root cause of the fault.

The engineer also said that the symptoms of the fault with the car weren't present when the car was supplied to Miss W. But this doesn't mean that the underlying fault wasn't present at supply. What's more, the engineer said that the fault with the car was due to underlying age-related wear and tear, but this was based on the assumption the fault was caused by a faulty coil pack or injector, which has been proved not to be the case.

As such, as the independent engineer wasn't able to identify the fault with the car without further inspection, an inspection that hasn't taken place because neither the warranty company, dealership, nor BMF have approved this work; I don't think it's reasonable to rely on the engineer's statement that the fault was caused by age-related wear and tear, and wasn't something present when the car was supplied to Miss W.

Given this, I've considered the durability of the car. While I appreciate the age and mileage at the point of supply, Miss W paid over £9,000 for the car. As such, I think any reasonable person would expect the car to last for more than 10-years and around 1,300 miles before it breaks down with a fault that can't be identified. Therefore, I'm satisfied the car wasn't reasonably durable at the point of supply, and this makes it 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 conform 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, Miss W has the right of rejection.

BMF have said that the dealership should be given the single chance of repair, as they've not yet had this opportunity. When the car broke down, Miss W tried to have this repaired under the warranty supplied by the dealership. And I think it's more likely than not that, had Miss W contacted the dealership in the first instance, they would've told her to have the repair done under the lifetime warranty they sold her. As such, it's arguable that the unsuccessful warranty repair was the dealership's single chance at repair.

But, even if I'm wrong about this, it's clear from the evidence that BMF (and by extension the dealership) were aware of the fault with the car in May 2023. Section 23 of the CRA states:

*If the consumer requires the trader to repair or replace the goods, the trader must –
(a) do so within a reasonable time and without significant inconvenience to the consumer*

Given that BMF have been in possession of the same facts i.e., the independent engineers report and that the repairs recommended in this report failed to rectify the issue with the car, since mid-2023, it's arguable that BMF asking for the opportunity to repair the car months later is a failure to comply with Section 23(2)(a) of the CRA.

As such, and given all the circumstances referred to above, Miss W should now be able to reject the car.

Putting things right

The car has been off the road and undrivable since 9 May 2023, and Miss W hasn't been supplied with a courtesy car. As such, she's been paying for goods she's been 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 Miss W mobile; I'm satisfied they should refund the payments she made since this date.

Because I'm recommending a full refund of the payments Miss W made, I won't also be recommending BMF refund her alternate transport costs, as to do so would put her in a position of betterment, it would essentially mean Miss W would have been able to travel at no cost since the car broke down – something that wouldn't have happened had the fault with the car not occurred.

Miss W has provided evidence of £265 plus VAT (£318) she's been charged by the warranty approved garage for the diagnostic and repair costs on the car. Given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that BMF reimburse/pay these costs.

Miss W has said that the warranty approved garage have also been charging storage costs. I would expect Miss W to mitigate any costs and I can't see that she's done so in this instance i.e., she didn't arrange for the car to be recovered to her home address once it became clear that it wasn't going to be repaired by the warranty/BMF, nor did she advise BMF of the storage costs so they could make alternative arrangements. As such, I don't think it's fair for me to ask BMF to cover these costs.

Finally, it's clear that Miss W has been severely inconvenienced by what's happened and having to arrange for the car to be repaired twice, both times unsuccessfully. So, I think BMF should compensate her for this. The investigator had recommended BMF pay her £300, 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 Miss W;
- remove any adverse entries relating to this agreement from Miss W's credit file;
- refund the deposit Miss W 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);
- refund the payments Miss W has paid since 9 May 2023, when the car broke down and became undrivable;
- upon proof of payment, reimburse Miss W the £265 plus VAT diagnostic and repair costs she paid to the warranty approved garage (if this hasn't yet been paid, then BMF should arrange to make payment within 14-days of being advised Miss W has accepted this decision);
- apply 8% simple yearly interest on the refunds, calculated from the date Miss W made the payment to the date of the refund[†]; and
- pay Miss W an additional £300 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 Miss W a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss W'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 Miss W to accept or reject my decision before 13 March 2024.

Andrew Burford
Ombudsman