

## The complaint

Miss J 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

In January 2023, Miss J was supplied with a used car through a hire purchase agreement with BMF. The agreement was for £7,900 over 59 months; with monthly payments of £213.06. At the time of supply, the car was around nine years old, and had done 100,737 miles (according to the MOT record for 13 December 2022).

Miss J says she started to have difficulties with the car from when it was supplied. She contacted the supplying dealership, but they weren't helpful, so, on 3 March 2023, she took the car to a local garage. They inspected the car and said the fuel injectors needed replacing at the cost of £1,272. The supplying dealership agreed to pay £150 towards this repair in resolution to Miss J's complaint about the quality of the car, and Miss J had the work done.

However, the car broke down again on 2 June 2023, and was recovered to a garage at a cost of £247. Miss J was then told that the engine had failed and needed replacement. At the time of failure, the car had done 104,147 miles – around 3,400 more than when it was supplied to Miss J five months earlier.

Miss J complained to BMF, who arranged for the car to be inspected by an independent engineer. This inspection took place on 7 July 2023, and the engineer said the engine wouldn't turn over, and required further stripping to determine the cause. The engineer also said that *"there was evidence that the original [fuel] injectors were defective and there was evidence of the current injectors being of recent origin [but] without the stripping of the engine we cannot determine whether there is a fault with the injectors or something else."*

However, the engineer had been given the incorrect mileage at the point of supply, and the incorrect date the engine failed. This incorrect information informed the engineer's conclusion that *"the vehicle has been on hire for 68 days ... the vehicle has covered 4,149 miles since the point of purchase and therefore this fault could not have been present at the point of purchase."*

Based on this engineer's report, BMF didn't uphold Miss J's complaint. She wasn't happy with this and brought her complaint to the Financial Ombudsman Service for investigation. While this matter was with us for investigation, Miss J sold the car and cleared the agreement with BMF by way of a personal loan for the difference between the sale price and settlement figure.

Our investigator said there was a fault with the car's fuel injectors that was present or developing when the car was supplied to Miss J. So, she thought that BMF should be responsible for the costs of this repair. The investigator also thought the fault with the engine was present or developing at the point of supply, and BMF were also responsible for this.

As the car had been sold, the investigator said that BMF should now refund the diagnostic, recovery, and repair costs Miss J incurred for both the fuel injectors and engine failure (less the £150 the dealership paid); refund the payments she paid after the engine failed; and pay her an additional £350 for the distress and inconvenience she'd been caused.

Miss J accepted the investigator's opinion but provided evidence that the cost of the repairs to the fuel injectors, plus what she was charged for a 'courtesy' car while these repairs were taking place, came to £1,356.

BMF didn't agree with the investigator. They weren't happy that Miss J had sold the car for half of the settlement figure and didn't think she'd taken any steps to mitigate her losses. They also said that the supplying dealership hadn't been given the chance to repair the car, and now that it had been sold there was no opportunity for this, or to establish the actual cause of the engine failure. Finally, BMF raised the issue that the oil filter fitted to the car needed to be replaced "*due to it being chewed by a rat*", and they thought that the rodent damage may also be the cause of the damage to the engine/fuel injectors.

Miss J provided evidence of her attempts to sell the car to online car buying companies, and that she sold it for the best price offered. She also explained that the rodent damage to the car was present when it was supplied to her, and it wasn't something that occurred afterwards. Because of this, the investigator explained that BMF's comments didn't change their opinion.

BMF failed to respond to the investigator's update, confirming whether they now accepted the investigator's opinion. Because of this, 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 J 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 Miss J to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss J 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.

I've seen a copy of the independent engineer's report, dated 7 July 2023, and the key parts of this report are stated above. As such, I won't repeat them here.

The engineer has clearly said that the fuel injectors supplied with the car were defective, and that the engine would need stripping to determine the cause of the failure. The engineer also concluded that the car wasn't of an unsatisfactory quality at the point of supply, as Miss J had been able to cover over 4,000 miles in the 68 days between supply and failure. However, as stated above, this is incorrect as Miss J had the car for five months and covered just over 3,000 miles before the engine failed.

It may be the case that, had the engineer known the correct mileage and date of engine failure, their conclusion may've been the same. However, BMF, despite knowing of this error, and having had plenty of opportunity to do so, didn't go back to the engineer to gain clarity. As such, in these circumstances, I'm not satisfied it's reasonable to rely on the engineer's report and opinion that the car was of a satisfactory quality when it was supplied.

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.

In their comments on the investigator's opinion, BMF have said that the dealership hasn't been given this single chance at repair. However, I disagree. The evidence is clear that Miss J contacted the dealership about the problems she had with the car, and they weren't prepared to help her. What's more, by offering to contribute £150 towards the replacement fuel injectors, I'm also satisfied that the dealership gave up their single chance of repair, in lieu of the local garage completing this repair for them.

Given this, I'm satisfied that the single chance of repair has been taken. And, given that the engine failed a few months after this repair was completed, it would be reasonable for me to conclude that either the repair failed or that a second fault with the car wasn't fixed during this single chance at repair. And this gives Miss J the right to reject.

However, even if I'm wrong about this, I also need to consider durability. While the car was around nine years old, and had done around 100,000 miles, at the point of supply, I don't think that any reasonable person would expect the engine to fail after just five months and 3,000 miles, especially as the car was fitted with a diesel engine that could reasonably be expected to last up to 200,000 miles.

As such, I'm also satisfied the engine wasn't sufficiently durable, and this made the car of an unsatisfactory quality at the point of supply. So, as the single chance at repair had taken place before the engine failed, this lack of durability also means that Miss J has the right to reject. Given this, I'm satisfied that BMF need to do something to put things right.

## Putting things right

Miss J was able to use the car while it was in her possession, until the engine failed, apart from a short period when the fuel injectors were being repaired. Miss J has said she was charged for a 'courtesy' car by the local garage the dealership agreed should do the repairs. As neither BMF nor the dealership have provided any evidence that this wasn't the case, and Miss J was provided with a courtesy car at no cost to her; I'm satisfied that, in addition to reimbursing the costs of the repair to the fuel injectors (which the independent engineer has confirmed were defective at supply), BMF should also cover what Miss J was charged for the 'courtesy' car.

For the reasons given above, I'm also satisfied that BMF should reimburse Miss J the recovery and diagnostic costs she'd incurred. However, they are able to discount these reimbursements by the £150 the dealership contributed to the repairs.

Under normal circumstances, I would also be directing BMF to allow Miss J to reject the car, and to reimburse her the payments she'd made since the engine failed, plus statutory interest. BMF would then be required to collect the car, and to absorb any loss upon its subsequent sale – given the evidence Miss J has provided about the sale proceeds she was offered for the car, I'm satisfied it's more likely than not that BMF would've suffered a loss.

However, as Miss J has sold the car at the best price she was able to, I think that BMF should reimburse Miss J the difference between the settlement figure (which included interest that wouldn't have been charged to her upon rejection) and the sale price, in addition to the regular monthly payments she made, instead.

Finally, it's clear that Miss J has been inconvenienced by having to arrange for the car to be repaired, after the dealership failed to assist her, and by the engine failing shortly afterwards. Miss J has explained the impact this had on her, as well as the impact of needing to take out a loan to settle the agreement with BMF, after BMF relied on the independent engineer's conclusion they knew was based on incorrect facts. This impact included, but was not limited to, the postponement of medical treatment and the downsizing of a wedding.

As such, I think BMF should compensate Miss J for this. The investigator had recommended BMF pay her £350, 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:

- treat this agreement as if the car had been rejected, and not settled early;
- remove any adverse entries relating to this agreement from Miss J's credit file;
- upon receipt of proof of payments from Miss J, reimburse her the fuel injector repair and associated 'courtesy' car costs, the cost of the diagnostic report in June 2023, and the cost of recovering the car after the engine failed, less the £150 the dealership contributed to the cost of the repairs;
- refund the payments Miss J made between the engine failing on 2 June 2023 and the date the agreement was settled;
- reimburse the £4,492.53 difference between the settlement figure Miss J paid and the amount she was able to sell the car for;
- apply 8% simple yearly interest on the reimbursements/refunds, calculated from the date Miss J made the payments to the date of the refund<sup>†</sup>; and
- pay Miss J an additional £350 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 J 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 J'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 J to accept or reject my decision before 17 April 2024.

Andrew Burford  
**Ombudsman**