

The complaint

Mrs B complains that a car she acquired under a hire purchase agreement with Blue Motor Finance Ltd (BMF) wasn't of satisfactory quality when it was supplied to her.

Mrs B has been represented throughout this complaint by her husband, but for ease of reading, I will refer only to Mrs B within this decision.

What happened

In November 2022, Mrs B acquired a used car from a dealership (F). She didn't pay a deposit and the total balance of the purchase was provided by BMF under a hire purchase agreement. The car was seven years old and had covered approximately 52,500 miles when the agreement started. The agreement was for 60 months, and the cash price of the car was £6,595.

A couple of months after taking delivery of the car, Mrs B got back in touch with F. She told them the car had a water leak, there was a constant low oil pressure light on, the car was overheating, and it was misfiring. F took the car back and replaced the head gasket under warranty.

A month or so later the car continued to overheat, and eventually it broke down. Mrs B got in touch with BMF at this stage, as the supplier of the car under the agreement. BMF arranged an independent inspection of the car in March 2023. The report said no faults could be found and there was no evidence the previous repairs had failed, so BMF didn't uphold Mrs B's complaint.

However, in September 2023 Mrs B complained to BMF again. She said the car had been in a garage since July 2023 and didn't start. She provided a 'health check' report from the garage, which confirmed four of the cylinders had no compression, resulting in not enough power being generated to start the car. The mileage at this time was approximately 59,300.

BMF didn't uphold the complaint. They didn't think the report was conclusive enough to suggest the car wasn't of satisfactory quality when it was supplied to Mrs B.

Mrs B brought her complaint to our service. Our investigator upheld it. She said she thought the report from Mrs B's garage demonstrated that the previous attempt to repair had failed, and therefore the car wasn't of satisfactory quality when it was supplied to Mrs B, due to its durability. She said BMF should end the agreement with nothing more for Mrs B to pay. She also said BMF should refund all the monthly payments made by Mrs B from July 2023, as she'd had to stop using the car at that point. She also asked BMF to pay Mrs B £200 compensation for the upset caused by having a car that wasn't of satisfactory quality.

Mrs B accepted but BMF didn't. They maintained that the evidence didn't support that the previous repairs had failed.

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.

As the hire purchase agreement entered by Mrs B is a regulated consumer credit agreement this service is able to consider complaints relating to it. BMF are also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mrs B entered. Because BMF supplied the car under a hire purchase agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

But on the other hand, satisfactory quality also covers durability. For cars, this means the components must last a reasonable amount of time. Of course, durability will depend on various factors. In Mrs B's case, the car was used and had covered approximately 52,500 miles when she acquired it. So, I'd have different expectations of it compared to a brand-new car. Having said that, the car's condition should have met the standard a reasonable person would consider satisfactory, given its age, mileage, and price.

Our investigator has explained that she thinks the car wasn't of satisfactory quality when it was supplied to Mrs B. I agree in this case. There is no doubt that the car has had faults and continues to have them – the reports I've seen confirm that to be the case. And I'm persuaded, from what I've seen, that the car wasn't of satisfactory quality when it was supplied to Mrs B. I'll explain why.

Mrs B needed to have the head gasket replaced on the car within a couple of months of acquiring it. The dealership took care of that under the warranty provided when the car was supplied to her. But a month later, the car broke down and it continued to overheat. As this all took place within the first six months of supply, it was the responsibility of BMF to investigate and determine if the car was of satisfactory quality or not. They arranged for an independent report to take place, which is what I'd expect them to do. And I know the independent inspection didn't identify any faults with the car – but it took place only a couple of months after the repairs had been completed, and I have to consider the possibility that the completed repairs had temporarily worked. Because of that, and because the car couldn't be road-tested at this time (although I'm aware this was down to a lack of fuel on Mrs B's part as opposed to a lack of power being generated) I'm not persuaded that the report confirms the car was of satisfactory quality when it was supplied to Mrs B. This is more relevant when I consider what happened with the car a couple of months later.

Mrs B has confirmed she was unable to use the car from July 2023 onwards. It wouldn't start. So she approached BMF again to explain she wasn't happy with it. At this time, she provided them with a 'health check' inspection from a garage. This check confirmed there was no compression in four of the cylinders, meaning the car wasn't generating enough power to start. Research shows that a common reason for this is because of a fault, or failing, of the head gasket. This is the same component Mrs B had to have replaced in January 2023, two months after being supplied with the car.

As mentioned above, the CRA includes durability – which means components must last a reasonable amount of time – and in Mrs B's case I'm not satisfied that the head gasket has lasted a reasonable amount of time following its replacement in January 2023. From the evidence, I think it's more likely than not that the repairs have failed after five months.

In addition to this, Mrs B has provided evidence to show the car continued to overheat and to produce warning lights and notifications suggesting the car shouldn't be driven prior to it stopping completely in July 2023. The CRA allows for one opportunity to repair, and I'm more persuaded than not, from the evidence, that the repairs completed have failed prematurely, resulting in the car not being of satisfactory quality because of its durability.

As BMF have had a chance to repair the car, and those repairs have failed, my decision is that Mrs B can now reject the car. BMF should take the car back and end the agreement.

Mrs B hasn't been able to use the car since July 2023, and she has continued to make her monthly payments. BMF should refund all payments made from July 2023. However, I'm satisfied that Mrs B had good use of the car up to that point – the mileage covered certainly suggests that – so BMF can keep all the monthly payments made prior to July 2023.

Mrs B has arranged for the 'health check' to be completed and, as yet, hasn't been charged by the garage for this. But I think it's fair she should be reimbursed for this and should provide the invoice to BMF once it's available.

Mrs B has also explained the upset and inconvenience she's experienced as a result of having a car that wasn't of satisfactory quality. The problems with it began shortly after she acquired it, and she has been in contact with the dealership on many occasions to try and have the issues resolved. Even after the head gasket was replaced, Mrs B continued to encounter problems with the car. For that, I'm asking BMF to pay her £200 compensation.

I know it's been a challenging time for Mrs B to have been left with a car that wasn't of satisfactory quality. I hope this decision allows her to move forward now with things.

My final decision

For the reasons above, I uphold this complaint. Blue Motor Finance Ltd must:

- end the agreement with nothing further for Mrs B to pay;
- collect the car (if this hasn't been done already) at no further cost to Mrs B;
- refund Mrs B for the inspection report she had completed in September 2023, once she has supplied the invoice showing costs;
- refund Mrs B's monthly payments from July 2023 to the date of settlement as she had stopped using the car at this point;
- pay 8% simple interest on all refunded payments, from the date of payment until the date of settlement;*
- pay Mrs B £200 to reflect the distress and upset she's been caused due to the car not being of satisfactory quality when it was supplied to her;
- remove any adverse information from Mrs B's credit file in relation to this agreement.

*If Blue Motor Finance Ltd consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs B how much they've taken off. They should also give Mrs B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or

reject my decision before 30 August 2024.

Kevin Parmenter
Ombudsman