

## **The complaint**

Mr H has complained about the quality of a car he acquired under a hire purchase agreement with Blue Motor Finance Limited (BMF).

## **What happened**

In March 2022 Mr H acquired a used car under a hire purchase agreement with BMF. The cash price of the car was £17,250 and he paid a £2,500 deposit. The car was around seven years old and had covered around 33,000 miles. Monthly repayments were around £270.

In June 2022 I understand Mr H discovered:

- The spare wheel didn't fit the car.
- An incorrect socket was provided.
- The bolts were modified.
- The tyres were severely worn.
- The passenger side tie rod was bent.

He says the car needed to be recovered at a cost of £230. I understand the supplying dealer agreed to replace the tie rod and tyres. But in July 2022 Mr H contacted the supplying dealer and BMF to explain he'd experienced:

- A loss of power and the engine was cutting out.
- The turbo was discharging above 50mph making a loud fluttering noise.
- A message on the dash said 'engine service required immediately'.
- A stop/start button and active braking were disabled.
- The passenger wheel was shaking/wobbling above 50mph.

Mr H said the issues arose within a few days of the supplying dealer's previous repair. I understand the car was returned again and the supplying dealer advised a turbo sensor had failed. In August 2022 BMF explained the supplying dealer had agreed to repair the car again. I understand in October 2022 the supplying dealer found a tab on the MAP sensor had been broken. It wasn't seating correctly, and it fixed it.

I understand Mr H contacted BMF to explain the car had been repaired but returned with a faulty immobiliser so he couldn't start it. He paid £60 to have the immobiliser removed in November 2022.

Mr H had a previous complaint with the Financial Ombudsman around this time and as the investigator thought the repairs were successful, excluding the electrical and immobiliser issue, no recommendations were made.

BMF told Mr H it would need to see evidence the immobiliser issue was present at the point of supply in order to say whether it was liable. Mr H wanted to reject the car. He contacted BMF again in December 2022 to say the Engine Management Light (EML) had come on and he was experiencing the issues he had in July 2022 again. An independent report was carried out in January 2023 when the mileage was around 44,700. The report broadly said:

- A turbo boost sensor was stored but cleared down.
- The engine performed as expected during a road test, but the fault code had returned.
- The fact the turbo had already been replaced suggested the turbo sensor was faulty or that there was a blockage in the system.
- It couldn't say if the current issue was associated with previous repairs until a full diagnostic was completed.

BMF said it couldn't confirm if the faults were related to previous repairs and it was unable to investigate further. Mr H had diagnostics carried out in February 2023 to try to establish the problem at a cost of £54. In May 2023 a garage inspected the car at a cost of £442.32 and said:

- There were faults with the intercooler boost sensor.
- Multiple wires to the sensor were broken which needed replacing.
- It renewed the sensor.
- The engine had been remapped.
- The blow off valve was adjusted but it was unable to resolve the pressure release sound.
- The engine was running better.

Mr H referred his complaint to the Financial Ombudsman to consider.

One of our investigators looked into things and, in summary, said:

- He was persuaded there was a fault with the car.
- The car still experienced turbo boost related problems after the supplying dealer attempted to repair this.
- The issue occurred within the first six months of possession, and it hadn't been fully repaired.
- The independent report noted the fault could have been triggered by an electrical issue.
- The car was supplied with a third-party immobiliser which failed. Installing these types of devices requires them to be wired into the main wiring harness which involves cutting into the main harness to create bypasses. If this isn't done properly it can cause various electrical issues.
- A reasonable person wouldn't expect a key security system to fail within the lifetime of the car or to experience issues likely related to poor installation.
- He appreciated Mr H had the immobiliser removed but this was done by a professional. He thought there were too many faults showing for this to be related to just the car's age.
- He thought the turbo and electrical faults were potentially linked. The supplying dealer had the opportunity to repair the boost issue, but it remained a problem.
- It was possible the supplying dealer damaged sensors when repairing the turbo.
- He thought the car wasn't of satisfactory quality when it was supplied, so he recommended BMF allow Mr H to reject it, and to refund him his deposit.
- Mr H had use of the car, so it was fair for him to pay for it.
- The matter had caused inconvenience to Mr H, so he recommended BMF pay £400 compensation.
- He said BMF should also cover certain costs Mr H had evidenced totaling £786.32 which I've highlighted above.

BMF didn't agree. It said the evidence it had indicated the removal of the immobiliser may not have been done correctly and that could have caused the current problem. It said the car

should be taken back to the garage that removed the immobiliser. It said given the mileage covered, it's unlikely the issues were present at the point of supply.

Our investigator wrote back to BMF to say if the immobiliser wasn't removed correctly Mr H wouldn't have been able to start the car, so he didn't think its removal had caused several other issues. He highlighted the turbo issues were discovered in the first six months and again were confirmed in the independent inspection. He said several wires to sensors were broken which weren't linked to the ignition system. He thought the repair in October 2022 failed. He said Mr H had been experiencing running issues and EML warnings since July 2022 which were never fully addressed. He thought the issues were intermittent and highlighted the car failed and passed an MOT on the same day in April 2023 due to an EML being illuminated.

BMF didn't agree. And so the complaint has been passed to me to decide.

### **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 want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr H and BMF that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr H acquired the car using a regulated hire purchase agreement. Our service is able to consider complaints relating to these sorts of agreements.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr H entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. BMF is the supplier of the goods under the agreement and is therefore responsible for dealing with a complaint about their quality.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of delivery.

In Mr H's case, the car was used and around seven years old when it was supplied and had already covered around 33,000 miles. I think the reasonable person would have different expectations of it compared to a new car. But I'm conscious it cost over £17,000. So I don't think a reasonable person would have expected it to have any significant issues present when it was supplied.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

It's not in dispute there were various faults with the car within the first few months Mr H had been in possession of it. The supplying dealer carried out repairs in relation to the tyres, bolts, and tie rod around June 2022. Mr H complained about an issue with the turbo in July 2022. The supplying dealer carried out work in relation to a broken tab on the MAP sensor in October 2022. On balance, I don't think a reasonable person would have expected these sorts of issues to have occurred within the first few months of acquisition given the car's price, age and mileage at the point of supply. But Mr H was happy for it to be repaired. And BMF was involved at this early stage. It upheld the complaint, but as the repairs were being arranged it thought this was fair. Which I agree with.

However, it's not in dispute that a turbo issue remained. This was confirmed in the independent report carried out in January 2023. And referred to again in the May 2023 inspection. BMF has referred to the removal of the immobiliser in November 2022 and said this may have caused the issue. But I think our investigator's reasoning on this point seems valid. I've not seen sufficient evidence the removal of the immobiliser caused the turbo issue. I'm conscious the independent inspection referred to previous repairs and didn't give any indication the immobiliser removal was the cause of the issue.

Taking everything into account, I think there was a problem related to the turbo that manifested within a few months of supply of the car. I think this made the car of unsatisfactory quality. There were repairs carried out as agreed but there were still problems with the turbo after the repairs. On balance, I agree it's more likely than not the problems with the turbo were not fully resolved during the initial repair, as opposed to being as a result of the removal of the immobiliser that Mr H had carried out himself. I've not seen enough to determine the problems with the turbo weren't present or developing at the point of supply. I think it's reasonable to make that finding based on how quickly the faults manifested, and in the absence of evidence to show otherwise.

I think it's important to also note that Mr H seems to have had the immobiliser removed because of issues starting the car rather than because he didn't want it. I don't think a reasonable person would have expected to be required to take that sort of step within a few months of acquiring the car given its cost, age and mileage.

In all the circumstances, on balance, seeing as though I don't think the car was brought back to conformity after the turbo repair, I think Mr H had grounds to validly seek to reject it. The CRA sets out that the consumer can seek rejection of the goods in this scenario.

It's clear Mr H has been able to carry on using the car. He'd covered around 15,000 miles in it within the first year of acquisition. I agree it's fair he pays for the use of the car. But I think there has been some impairment for the time he's been using it. There's no exact science for how fair use should be calculated. I think the monthly repayments towards the hire purchase agreement are a fair place to start. I've thought about whether any refund should involve an increase or reduction in this figure. Given it seems that Mr H has been having above average use of the car, I think this broadly offsets the impairment he's told us about. I'm minded to simply say BMF can keep the monthly payments for the period Mr H has been using the car.

Mr H has also complained about consequential losses. He's had to pay for various repairs, recovery and inspections throughout the course of his ownership that I don't think he'd likely have incurred had the car been of satisfactory quality. I broadly agree with our investigator that it's fair he has certain costs returned. But he'd need to show BMF he's paid these costs in order for it to refund him:

- £230 in relation to recovery of the car in around June 2022.
- £60 for immobiliser removal in November 2022.

- £54 for diagnostics around February 2023.
- £442.32 for inspection and repairs carried out in May 2023 for boost and wiring issues.

For completeness, I can also see Mr H paid to have tracking work undertaken; a replacement fuse for the electric windows/mirrors; and a full service carried out in May 2023. But I don't think I can safely conclude those costs were as a result of the car being of unsatisfactory quality and not as a result of usual maintenance. I'm not going to direct BMF to reimburse Mr H for those costs.

I also think there's been overall inconvenience caused as a result of Mr H being supplied a car that wasn't of satisfactory quality. The car has broken down. He's had to take it for various inspections and repairs. He must've been really disappointed to have so many issues after acquiring the car for a significant sum. I agree with our investigator's recommendation of £400 compensation.

### **My final decision**

My final decision is that I uphold this complaint and direct Blue Motor Finance Limited to:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Mr H;
- refund Mr H's £2,500 deposit;
- reimburse Mr H £786.32 upon receipt of evidence those costs have been paid;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay £400 compensation;
- remove any adverse information from Mr H's credit file in relation to the agreement.

If BMF considers it is required to deduct tax from my interest award it should provide Mr H a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 April 2024.

Simon Wingfield  
**Ombudsman**