

## The complaint

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

## What happened

In May 2023, Mr S was supplied with a new car through a hire purchase agreement with BMF. He paid a £5,000 deposit and the agreement was for £6,450 over 60 months, with monthly payments of £160.62. At the time of supply, the car was almost eight years old, and had done 65,257 miles (according to the MOT record for 24 May 2023).

Shortly after being supplied with the car, Mr S experienced issues with the steering pulling to one side. Between June and September 2023, multiple attempts to repair the car took place, both at the supplying dealership and third-party garages, but Mr S wasn't happy that the steering fault was fixed. As part of this, an ABS fault was also identified in June 2023.

After complaining to BMF, they arranged for an independent inspection of the car. This took place on 30 October 2023, at which point the car had travelled 69,894 miles – 4,637 miles since it had been supplied to Mr S. The independent engineer said there was a fault with the car, relating to the ABS, and was likely a control module issue. The engineer thought this was likely caused by a sudden electrical failure so was *"not present at the point of sale and our opinion that it has developed after the point of purchase as result of normal age-related wear and tear."*

As a result of this inspection, BMF didn't uphold Mr S's complaint. So, he brought it to the Financial Ombudsman Service for investigation.

Our investigator said that there was sufficient evidence to show that Mr S was having problems with the car from when it was supplied to him, and that the ABS issue was originally identified in June 2023 by a third-party garage. So, they thought that BMF should arrange for the car to be repaired, and if those repairs failed then Mr S should be allowed to reject the car. The investigator also said that BMF should refund Mr S 5% of his payments to reflect the impaired usage he'd had of the car; refund the amount Mr S had paid for diagnosis and repair; and pay him £250 compensation for the trouble and inconvenience he'd been caused.

BMF didn't agree with the investigator's opinion and didn't agree there were any faults with the car they were responsible for. So, they asked for the matter to be passed to an ombudsman to decide. While this matter was awaiting allocation to an ombudsman, Mr S continued to have to have the car wheels realigned and has provided further invoices for the cost of this work.

## 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. Mr S 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. So, if I thought the car was faulty when Mr S 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 30 October 2023. The key elements of this report are detailed above, so I won't repeat them. However, I would like to reassure BMF that I've considered the comments that an ABS fault after Mr S had done almost 4,700 miles would not have been present when the car was supplied.

The car had an MOT test just before it was supplied to Mr S. There were two advisories from this – one for the anti-roll bar and one for imbalanced brakes that only just met the requirements for safety. I've also noted the anti-roll bar was an advisory for the MOT test conducted in July 2022. As I've seen nothing to show me these issues were fixed before the car was supplied to Mr S, it's fair for me to conclude there were issues with both the anti-roll bar and braking system when the car was supplied.

BMF have supplied comments from the dealership, who've said they sorted out the tracking, as well as replaced the brake discs and pads, shortly after the car was supplied to Mr S. The evidence shows this work was done on 16 June 2023, and the dealership confirms *"tracking was out badly."* The dealership also said the ABS issue *"came about way after purchase"* as well as *"the cars been to various different garages and no faults found in relation to the driving performance."*

In addition to the work completed by the dealership, I've seen the evidence of the following work done by various different garages in relation to the steering and braking systems:

- alignment adjusted on 10 June 2023, £52.00
- new anti-rollbar on 23 June 2023, £34.00
- alignment adjusted on 28 June 2023, £197.94 (this likely includes the cost of fitting the new anti-roll bar)
- alignment adjusted on 16 August 2023, £84.00
- diagnostic on 26 September 2023 shows ABS issue, £49.99

- alignment adjusted on 9 December 2023, £55.00
- alignment adjusted on 6 January 2024, £102.00
- alignment adjusted on 6 April 2024, £80.00
- alignment adjusted on 4 May 2024, £96.00

Based on this evidence, I can't agree that no faults have been found with the car. It's clear there is an ongoing fault with the car that's causing it to keep going out of alignment. This is likely related to the brakes being imbalanced, something the MOT shows was present when the car was supplied to Mr S. Obviously the ABS, which the independent engineer has confirmed was faulty, is part of the overall braking system.

Given the overall evidence, I'm satisfied there was an issue with the car when it was supplied to Mr S, and this made it of an unsatisfactory quality. As such, BMF should do something to put things right.

### **Putting things right**

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.

Based on the evidence I've seen, I'm satisfied the dealership carried out the single chance of repair in June 2023, and this was unsuccessful. The CRA is clear that, if the single chance at repair fails, as was the case here, then Mr S has the right of rejection. However, this doesn't mean that Mr S is required to reject the car, and he can agree an alternative remedy i.e., further repairs to the car. In this instance, Mr S would like the car to be repaired, so I think it's reasonable that BMF arrange for this. However, if this attempt to fix the car is ultimately unsuccessful, then Mr S will have the right to reject the car.

Mr S has been able to use the car while it was in his possession. Because of this, I think it's only fair that he pays for this usage. However, given the ongoing issues with the car, I'm also satisfied that Mr S's usage and enjoyment of the car has been impaired. So, I also think it's fair that BMF refund some of the payments Mr S made. And I think 5% of the payments made fairly reflects the impaired use caused by the car not being of a satisfactory quality.

Mr S has provided evidence of the costs he's incurred in repairing the car / having the car inspected. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that BMF reimburse him for these costs.

Finally, I also think Mr S should be compensated for the distress and inconvenience he was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended BMF pay Mr S an additional £250, to recognise the distress and inconvenience he's been caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and inconvenience Mr S would've felt by having to arrange for the car to be repaired on multiple occasions, and by these repairs being unsuccessful. So, this is a payment I'm directing BMF to make.

Therefore, BMF should:

- arrange for the issues identified in the independent engineer's report of 30 October 2023 to be repaired, within 28 days of the date on which we advise them Mr S has accepted my final decision, and at no cost to Mr S;
- refund the amount Mr S paid for the ongoing repairs to the car (as per the list detailed above);
- refund 5% of the payments Mr S has paid from the start of the agreement to the date the repairs to the car are completed;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr S made the payments to the date of the refund<sup>†</sup>; and
- pay Mr S an additional £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (BMF must pay this compensation within 28 days of the date on which we tell them Mr S accepts my final decision. If they pay later than this date, BMF must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment<sup>†</sup>).

<sup>†</sup>If HM Revenue & Customs requires BMF to take off tax from this interest, BMF must give Mr S a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr S'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 Mr S to accept or reject my decision before 1 January 2025.

Andrew Burford  
**Ombudsman**