

## The complaint

Mr N complains about the quality of the car he acquired through a hire purchase agreement with Blue Motor Finance Ltd (“Blue Motor”).

## What happened

Despite numerous requests to each party, and for various reasons, the precise timeline of facts here is still difficult to ascertain. However, I will confirm below what my understand is at this point, and both parties have been given ample opportunity to clarify this or correct it, so I won't be considering it further. Mr N has been represented in bringing this complaint to us by his mother, but I will refer to Mr N at all times for simplicity.

Mr N acquired a car on a hire purchase agreement with Blue Motor. The Hire Purchase agreement was electronically signed on 13 August 2023, so it seems fair to assume the car was supplied at or just after this point.

There have been suggestions that the car stopped working on the way home after being collected, but neither party has been able to provide any evidence of this other than testimony. The selling dealership said Mr N called them to say the car wouldn't start, but then he wasn't at the point where he said he'd broken down when they arrived.

At some point after this, the car wouldn't start again, and seems to have been taken back to the selling dealership for investigation/diagnosis and possibly repairs. When Mr N raised a complaint with Blue Motor on 30 October 2023, he said the car had been with the supplying dealership for a number of weeks and he had no idea what was going on, or if it was fixed.

Blue Motor investigated the complaint and were eventually told by the supplying dealership that in mid-November they had called a local specialist who had said the car had been mis-fuelled with diesel instead of petrol. They appear to have said the customer had admitted to this.

I can see notes on the case and have a recorded call which is apparently with this specialist, in mid-November, in which he says that there is something in the petrol tank which isn't petrol, but he's not sure what it is.

On the call, the person says they will send an email to confirm their thoughts, but we haven't been supplied with this email, only two lines within the Blue Motor contact notes which have been pasted in by the complaint handler at Blue Motor saying they had this email.

The following day, there are again notes pasted in by the complaint handler to say that the dealer told them that the consumer had put the wrong fuel in the car, and the consumer would be paying for the repairs, at which point Blue Motor sent their final response letter (FRL) on 17 November 2023 not upholding the complaint and providing referral rights to our service.

There's no indication here as to the exact timescales involved, but Mr N has provided me a screenshot of his phone logs showing that between mid-September and mid-October, he

tried to call the dealer, or was called by the dealer, a total of 10 times. This appears to back up his claim that the car was already with the dealer at some point during this time.

There is an email on 1 December 2023 supplied by Blue Motor purporting to be between Mr N and the dealer, where they tell him that the cost of repairs for him putting the wrong fuel in, as per an attached invoice (which has not been supplied) meant he needed to pay them £1000 that day. Followed by a further £475.35 by 31 December 2023, and a further £500 by 31 January 2024.

By the time this had been sent, the case had already been referred to our service, and Mr N had set up his mother to deal with it on his behalf, as his mental health was very poor due to the stress. She shared medical details with us about what was going on with Mr N, which I don't feel it's necessary to share here, but which we shared with Blue Motor. They said they couldn't accept the detail as they had no authority from the consumer to store that information or to treat them as vulnerable.

An investigator here investigated the case and upheld it in favour of Mr N. They said it seemed clear that there was a problem with the car, they'd been provided with little evidence from Blue Motor about the purported wrong fuel being put in the vehicle, and the phone call supplied didn't say it had been wrongly filled up with diesel, just that there was a substance in the tank and they weren't sure what it was.

The investigator also said that Blue Motor were saying the proof Mr N had added the wrong fuel was that he'd agreed to pay for the repairs, but they didn't agree with this, as it was clear Mr N was suffering from poor mental health at this time and was indeed hospitalised, so they didn't feel this was evidence of any fault by him. They went on to say that they didn't feel Blue Motor had paid enough regard to the need to treat vulnerable customers fairly.

Blue Motor didn't agree with this. They said that Mr N had never told them he was vulnerable, so they couldn't act differently, as they couldn't take the word of a third party they had no authority to deal with, nor could they take the word of our service.

They said that their evidence of this being the consumers fault was his admittance to the dealer that he'd put the wrong fuel in, along with the local specialist who told them there was something in the fuel tank that wasn't petrol, but which was unidentified.

They also said that the customer had advised them on a call on 6 November 2023 that he had been provided with a courtesy car by the supplying dealership (the resolution proposed included refunding payments for some of the period in question, as he hadn't been kept mobile while the car was at the garage for repairs). Blue Motor asked for an Ombudsman 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.

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 N 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, Blue Motor 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 Blue Motor can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr N to show it was present when the car was supplied.

The fundamental issue here is a lack of evidence. And as the fault presented within the first six months of supply, the emphasis, as described above, is on Blue Motor to prove the car was of satisfactory quality. Neither party have disputed that the car isn't working properly.

There seems to be confusion here about what is evidence, and what is testimony. Mr N has told us that he didn't put the wrong fuel in the car, doesn't know what's wrong with it, and doesn't know what repairs were being undertaken. He's also provided evidence of him trying to make several calls to the supplying dealership between September and October 2015, which backs up his explanation that they had the car for repairs in this period.

Blue Motor have broadly only provided testimony. They've told us that they've been told by the supplying dealership that the car has had the wrong fuel put into it, but we've seen no job sheets to back this up, no invoices, no garage reports about what's actually wrong with the car. They've mentioned a fuel pump seizing, but again, no garage report about this or independent report.

The single recorded phone call we've been supplied says that the person doesn't know what has been put into the fuel tank. The call ends with Blue Motor asking him to send an email confirming what he's told them, but we've not seen that email to be able to check the contents or attempt to verify the person's position as a specialist. Commentary in the case notes on Blue Motor's file says that the fuel pump has seized because there is another substance which has been put into the fuel tank, but again, we've got no garage report about this seized fuel pump, no independent report, not even an actual email. We don't know who this person is on the recorded call.

I have concerns that it seems the specialist was called in to check the fuel in November 2023, when Mr N has said the car had already been with the supplying garage for several weeks. No evidence has been supplied by Blue Motor around the timescale here, or what happened within that first period of weeks when the supplying dealership apparently had the car. Or indeed, any evidence to show they didn't have the car during those first few weeks as claimed by Mr N.

As such, the testimony of the parties differs wildly. The email provided to show that Mr N accepted the costs to repair the car because it had the wrong fuel put into it is dated 1 December 2023. This was after the non-uphold FRL had been sent out, and in the period when Mr N's representative has made us aware of how poor his mental health was, and he ended up being hospitalised because of it.

Again, when we've tried to discuss this with Blue Motor, they've said they can't treat Mr N as

vulnerable because he hasn't authorised anyone else to act on his behalf and supply this information to them. They've failed to consider what the Investigator was trying to show them, which was that any testimony regarding Mr N would need to be considered carefully, as his mental health was very poor, which his medical notes were suggesting was directly linked to this complaint.

It feels like the Investigator and Blue Motor have got a little bit caught up in the issues around vulnerability. The case itself is a simple one, whereby a fault has occurred within the first six months, and Blue Motor haven't provided any reasonable evidence or proof about the fault, just comments from the supplying dealer and an unknown third party. The investigator has said this in their view, and Blue Motor have responded by saying that their evidence is the email from Mr N accepting liability and the phone call they had with the third party.

To deal with these, the email from Mr N is dated 1 December 2023, well after Blue Motor had already issued their FRL, so cannot have been considered. It's also after we've told them about his mental health problems, which they've decided they can't consider. Alongside that, the email doesn't admit liability, it confirms he'll make payments to the supplying dealership for the repairs needed. As this is after the FRL, I don't give this much weight; having received a non-uphold response from Blue Motor, Mr N may have not known what else to do at that point, other than to agree to pay for the repairs.

Any other "evidence" of Mr N admitting liability is actually just commentary from the supplying dealership. To prove this mis-fuelling had happened, I'd expect Blue Motor to provide evidence of the faults with the car, invoices for the repairs needed, and commentary, ideally from an independent engineer, to say how they think its most likely this has happened.

Alongside this, there's no evidence or even commentary to say what the supplying dealership did with the car for the time period before Mr N raised his complaint with Blue Motor. I'm unclear why, if they felt the car had been "mis-fuelled", they didn't inform the finance company of the issue immediately, as the supplier of the car. Alongside this, nobody seems to have looked at what other options Mr N might have had if he had mis-fuelled the car; for example, whether Mr N's insurance may have covered repairs for the wrong fuel being put into it, if this had happened.

It seems it was some considerable time after the supplying dealership received the car back, before anyone aside from the supplying dealership was asked to look at the car, and even then, I have no evidence confirming what problems had occurred. An unnamed person said they thought it had a different substance he couldn't identify in the petrol tank on a phone call, but no written evidence was supplied, nor any evidence as to who this person was, and what their expertise entailed.

This brings further into question what has actually happened, and what is actually wrong with the car. On this basis, I don't agree that Blue Motor have proven there was any error here by Mr N in mis-fuelling the car. Indeed, I don't think it's clear from evidence provided what was wrong with the car, or how it could have happened.

There has also been some confusion over whether a courtesy car was ever supplied to Mr N. He told us he hadn't had one, and Blue Motor told us in replying to our view that Mr N had told them on a phone call that he had been supplied with one. But again, they've provided no evidence to prove this, and don't appear to have asked the supplying dealership. As such I have to assume there has been no courtesy car supplied, as there has been no proof of one provided and Mr N told us he wasn't supplied with one.

I am upholding this complaint. I believe Blue Motor through their broker, the supplying dealership, have had the car now for many months, so I don't think it's reasonable now for them to have the right to repair the car and return it to Mr N. Mr N has asked to reject the car, and I agree this is now the fairest resolution due to the time that's elapsed.

As I am unclear exactly when the car was left with the supplying dealership, and Mr N has had some use of the car, I think it's fair for Blue Motor to keep some of his monthly payments to recognise this use he appears to have had. Without a clear timeline here from either party, I feel that it's fair for Blue Motor to retain the monthly payments for the car up to and including the October 2023 payment. However, any payments made from 1 November 2023 onwards should be refunded to Mr N.

I also don't think Mr N should have had to pay to repair this car, and it appears he may have paid at least £1000 towards repairs. So, I am instructing any money he's paid for repairs by the supplying dealership be refunded.

Mr N and his representative have highlighted the significant distress and inconvenience that he has suffered due to the supply of this faulty car. I empathise with the effect the incident has had on his mental health and think Blue Motor should pay him £500 to recognise this distress they've caused.

### **Putting things right**

To put things right, I instruct Blue Motor Finance Ltd to carry out the following:

- End the agreement with nothing further for Mr N to pay.
- Collect the car at no further cost to Mr N (I believe this has already been done).
- Refund Mr N's deposit paid of £245.
- Refund Mr N any monthly payments made to the agreement from 1 November 2023 onwards.
- Refund Mr N any payments he has made so far for the repair of the car at the supplying dealership, which I believe has been £1000 but may be more by now. Write off/cancel any further payments still owing from Mr N for repairs to this car.
- Blue Motor should pay 8% simple yearly interest on all refunds detailed above, from the date of payment until the date of settlement.
- Remove any adverse information from Mr N's credit file in relation to the agreement.
- Pay Mr N £500 for the distress and inconvenience caused by supplying him a faulty car and the knock on effects from this.

### **My final decision**

I am upholding this complaint and instruct Blue Motor Finance Ltd to do the above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 17 September 2024.

Paul Cronin  
**Ombudsman**