

The complaint

Ms N complains that the car she acquired through Blue Motor Finance Ltd (“BMF”) wasn’t of satisfactory quality. She says she took the car to an approved dealer, and it identified unnatural and man-made damage, and she’s had to pay around £1,000 for diagnostics to identify the full extent of the damage.

Ms N is represented in her complaint. For ease of reading, any reference to “Ms N” refers to the testimony of both Ms N and her representative.

What happened

Ms N entered into a hire purchase agreement in September 2022 to acquire a used car. She paid a deposit of £1,200, and the balance of £15,000 was to be paid through the credit agreement which was set up over a 60-month term. Her monthly payments were £418.04 meaning the total repayable under the agreement would be £26,283.40. At the time of acquisition, the car had been driven just over 30,000 miles and was just around three years old. Ms N told us:

- She’s had the car around 14 months, when it lost all power on the motorway;
- the car was taken to a garage – one associated with the car manufacturer – where it was inspected, and ‘unnatural and man-made damage’ was identified;
- the garage said there was a known manufacturing fault with this particular model of car;
- she’s paid nearly £1,000 for diagnostic works and labour in order to identify the full extent of the damage and the repairs required;
- the diagnostics indicated that the timing belt had disintegrated and been in that condition for some time, meaning that it’s likely that a new engine is required at a cost in excess of £7,000;
- she’s only driven the car a limited number of miles in the time she’s had it, and although she’s provided BMF with all the information it’s asked for, there’s been no satisfactory resolution;
- the vehicle isn’t safe to drive, and she’s been without a car for some time which, in her circumstances, is causing some difficulties;
- she’s asked BMF to cover the cost of the repairs, but it’s refused;
- she’s asked BMF to source a replacement vehicle so she can continue the rest of the hire purchase agreement, but it’s refused; and
- she’s asked BMF to allow her to reject the car and refund her what she’s paid so far, but it’s refused;

Ms N says the car sold to her was not of satisfactory quality and wasn’t fit for purpose at the time of sale. She wants the car repairing or replacing so she can continue with her financial agreement. And if this isn’t feasible, she like to reject the car and cancel the credit agreement. She also wants BMF to compensate her for the costs she’s incurred in having to take taxis because BMF didn’t keep her mobile.

BMF rejected this complaint. It acknowledged that, after investigation, some fault codes were found, and it was confirmed that the wet belt had failed, and the strainer had become blocked. In short, the car was no longer safe to drive. But it went on to say that no 'point of sale' issue had been identified. And it said that in the absence of full-service history, a goodwill contribution towards any repairs would not be forthcoming.

Unhappy with BMF's response, Ms N brought her complaint to this Service, and she provided copies of call recordings; text messages and photo/video evidence from the garage that had first looked at the car.

Our investigator looked at this complaint and said that she thought it should be upheld. She said there were clearly things that were wrong with the car, and she didn't think that BMF had acted fairly in the circumstances. She said she didn't think that the car supplied to Ms N had been durable at the point of supply, and as a result, the issue with the timing belt would, on balance, have been present or developing at the point of supply, and there wasn't anything that Ms N could've done to prevent its failure. Taking everything into account, she thought a fair outcome in this case would be to allow Ms N to reject the car.

BMF disagrees so the complaint comes to me to decide. It says Ms N drove more than 17,000 miles so it can't see how the car can be deemed as not durable. And it also noted that Ms N had raised her concerns with a dealer associated with the manufacturer, rather than the selling dealership.

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 considered all the evidence and testimony from both Ms N and BMF afresh, I've reached the same conclusion as our investigator and for broadly the same reasons. I'll explain why.

The hire purchase agreement entered into by Ms N is a regulated consumer credit agreement which means that this Service is able to consider complaints relating to it. BMF is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory"

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £16,000. It was around three years old and had travelled just over 30,000 miles at the time of supply. With this in mind, it's reasonable to say that parts of the car may have already suffered from wear and tear.

I've seen evidence that Ms N's car has suffered from deterioration of the wet belt, and in order to repair the fault, a replacement engine is required at a cost of around £7,200.

The car uses a *wet belt* system, meaning that the belt is constantly lubricated by the oil. Oil degrades with use over time and loses its protection/lubrication qualities and this will cause the belts to wear faster and break up within the engine.

In this particular case, that deterioration doesn't appear to have been through general wear and tear. The garage confirmed that *unnatural and man-made* damage was to blame, and it provided photographs and a short video that supports this.

In the call recordings, it explained that the wet belt failed the width test and was swollen, and it indicated that there was a known fault associated with this particular model of car. It went on to explain that the strainer was damaged and that there was a hole in it which *"seems to be a little too perfect we have seen damaged / sucked in strainers before but not seen anything like this...technician removed the debris from the strainer...the sump has definitely been off before as far as we are concerned for whatever reason which may well have occurred before you bought the car...we could be looking at engine damage ultimately due to the cambelt debris running through the engine"*. And it said there was a bolt missing from the sump.

In a subsequent call, the garage said that there was a hole in the strainer, which could have been caused by someone trying to clean the strainer and not doing it very carefully. It went on to say that the sump had been previously removed, which would indicate that something had gone on with the vehicle prior to Ms N having it.

All this is particularly important given that these timing belts have a significantly longer expected lifespan than that experienced here. In fact, most manufacturers refer to a lifespan measured in terms of tens of thousands of miles and multiple years elapsing before one might need replacing. And the garage in this case said that this particular manufacturer's wet belt would've been expected to last at least 6 years and more than 60,000 miles before it would need looking at and a replacement considered.

Taking all this into account, I've concluded that as Ms N had only had the car around 15 months before she experienced the catastrophic failure on the motorway, and in that time, only driven around 17,000 miles, the car supplied by BMF was not suitably durable. Put simply, a reasonable person would not expect to experience engine problems in a car of this age and mileage. So, on balance, I don't think the car was durable and it therefore wasn't of satisfactory quality when supplied.

I've considered BMF's comments that Ms N raised her concerns with a dealer associated with the manufacturer, rather than the selling dealership. But I don't think that makes a difference in the circumstances of this case. Ms N was recovered from the motorway, and in my opinion, reasonably allowed a garage associated with the manufacturer to investigate what was wrong with the car. Moreover, BMF has had ample opportunity to investigate the issues identified, but it hasn't done so, and I don't think it reasonable to delay things further.

The CRA says that when goods are not deemed to be durable, a consumer has a final right to reject. So, I'm going to direct BMF to accept rejection of this car, but I'm going to take account Ms N's the usage of the car.

Putting things right

I direct Blue Motor Finance Ltd to put things right by doing the following:

- End the credit agreement with nothing further to pay;
- Collect the car, at no cost to Ms N, and at a time and date suitable to her;
- Refund Ms N her deposit of £1,200;
- Remove any adverse information from Ms N's credit file, including any arrears markers in relation to this agreement;
- Refund 5% of all monthly payments made under this agreement from September 2022 in recognition of Ms N's impaired usage of the car;
- Pay Ms N £963.00 – this is the cost of the initial diagnostic and repairs she had to have undertaken – upon her producing a receipt for this work;
- Pay 8% simple interest on the refunded amounts, per annum, from the time these payments were made to the date of settlement*.
- Pay Ms N £150 for the distress and inconvenience caused.

*HM Revenue & Customs requires Blue Motor Finance Ltd to take off tax from this interest. Blue Motor Finance Ltd must give Ms N a certificate showing how much tax has been taken off if she asks for one.

My final decision

My final decision is that I uphold this complaint and require Blue Motor Finance Ltd to compensate Ms N as I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 8 January 2025.

Andrew Macnamara
Ombudsman