

The complaint

Mr P complains that the car he acquired through Blue Motor Finance Ltd (“BMFL”) wasn’t of satisfactory quality. He wants BMFL to repair the car or accept its rejection.

What happened

Mr P entered into a hire purchase agreement on 25 September 2023 to acquire a used car. The cash price of the car was £14,950, and the total repayable was £22,785.20, and was to be repaid through the credit agreement which was set up over a 60-month term with monthly payments of £375.57. At the time of acquisition, the car had already been driven just over 58,000 miles and was more than six years old.

Mr P told us:

- five months after acquiring the car, having driven around 8,000 miles, he experienced a juddering and shaking sensation when driving, which was particularly noticeable after the car had been running for 30 minutes;
- he reported this to the supplying dealership and to BMFL on 9 March 2024 – which was *“within the six-month period covered by the Consumer Rights Act 2015”*;
- the supplying dealership arranged an inspection, conducting a road test, a health check, and some diagnostics – but it didn’t find faults, and it didn’t address the clutch issue that he had specifically reported;
- the inspection wasn’t detailed or thorough enough and, as a result, the problem remained unresolved;
- he contacted BMFL with his concerns and persuaded it that a more detailed inspection was required. And an independent inspection took place in July 2024 – but this was nearly four months after he’d made his initial complaint;
- the independent report confirmed his experience and said the most likely cause was wear of the clutch and flywheel – but it concluded that as these components were serviceable, and the issue had developed through normal wear and tear;
- because the report was four months after he’d first raised his complaint, it was impossible for an inspector to determine whether the fault was present or developing at the point of supply. And as a result, his complaint has been unfairly dismissed;
- despite reporting the issue within the Consumer Rights Act six-month window, the supplying dealership and BMFL won’t repair or accept the rejection of the car, leaving him with the only option to arrange a further diagnostic inspection at his expense;
- the situation has caused significant stress, and inconvenience – he’s continued making payments on a car that isn’t fit for purpose.

BMFL rejected this complaint. It said it hadn’t seen any evidence that the problems with the clutch and flywheel, or the faults identified by the independent assessor were present or developing at the point of supply. It said, *“the clutch is considered to be a serviceable item and will inevitably require replacement at some point”*, and it concluded that the most probable cause was normal wear and tear of the components.

Our investigator looked at this complaint and said she didn't think it should be upheld. She said there was no dispute that there was a fault with the car but – based on the independent inspector's report – she thought it was most likely that the issue with the clutch and the flywheel that resulted in the juddering and shaking that Mr J experienced were a result of normal wear and tear. And she concluded that the car was not of unsatisfactory at the point of supply.

Mr P disagrees so the complaint comes to me to decide. He says the delay in getting an independent inspection has unfairly worked against him, and the inspector was unable to state whether the issue existed at the point of sale, because of the additional mileage he'd driven while waiting for the inspection to be arranged.

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 agree with our investigator – I don't think this complaint should be upheld – and I'll explain why.

I hope that Mr P won't take it as a discourtesy that I've condensed his complaint in the way that I have. Ours is an *informal* dispute resolution service, and I've concentrated on what I consider to be the crux of this complaint. Our rules allow me to do that. Mr P should note, however, that although I may not address each individual point that he's raised, I have given careful consideration to all of his submissions before arriving at my decision.

When looking at this complaint I need to have regard to the relevant laws and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Mr P is a regulated consumer credit agreement this Service is able to consider complaints relating to it. BMFL is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 ("CRA") there is an implied term that when goods are supplied "the quality of the goods is satisfactory". The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods. So, what I need to consider in this case is whether the car *supplied* to Mr P was of satisfactory quality or not.

The CRA also says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMFL can show otherwise. But, if the fault is identified after the first six months, then it's for Mr P to show the fault was present when he first acquired the car. So, if I thought the car was faulty when Mr P took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMFL to put this right.

I don't think there's any dispute that Mr P has experienced problems with the car. That has been well evidenced by both his testimony and the information he's sent us, along with the

findings of the independent inspection. But, whilst I accept that there have been issues with both the clutch and the flywheel, BMFL would only be responsible for putting things right if I'm satisfied that these issues were present or developing when the car was supplied – that is to say, the car wasn't of satisfactory quality when Mr P first acquired it.

As Mr P correctly points out, *"faults that manifest within six months of delivery are presumed to have been present at the time of delivery unless the seller can prove otherwise"*. But having carefully considered the independent inspection, I'm satisfied that BMFL has *proved otherwise*.

The third party instructed by BMFL to carry out an independent inspection of Mr P's car is a recognised and trusted expert in this arena. From reading its report, it's clear that it was provided with an accurate background that clearly set out the issues. In their report, the engineer said that *"the vehicle is displaying a judder vibration on initial take up of drive on every occasion"*. So, I'm satisfied that the fault that Mr P complained of is present and as he described.

But the simple existence of the fault in itself isn't enough to hold BMFL responsible for repairing the car or accepting its rejection. The legislation says that this will only be the case if the fault was present or developing at the point of supply; the car supplied was not of satisfactory quality.

The independent report went on to address this, and the independent engineer made the following points:

- *"We consider the most probable cause is wear of the clutch and flywheel"*.
- *"Clutch and flywheel components wear by design, as when carrying out their function, this also reduces their lifespan naturally, due to using frictional material, rotational bearings and dampening mechanisms to conduct their normal operation"*.
- *"The clutch is considered to be a serviceable item and will inevitably require replacement at some point"*.
- *"There is no specific lifespan of a clutch and flywheel, as these components are heavily reliant upon usage type, driving style and operator technique"*.
- *"We do not consider the clutch has suffered from an unexpected component failure, and this is considered to have come to the end of this serviceable life."*

The report concludes that *"the vehicle is displaying symptoms of general in-service wear of the clutch and flywheel. This would not have been present at inception, and there is no evidence of previous related repairs"*.

So, on the basis that the fault was *not* present or developing at the point of supply, I'm satisfied that the car supplied was of satisfactory quality.

I've considered Mr P's comments and concerns about the timing of the independent inspection, but I don't think this makes a difference. I say this because the report makes no cautionary statements about the conclusions reached, or that a different conclusion may have been reached had the inspection been undertaken sooner.

The instruction of an independent inspection is what's required and expected of BMFL in these circumstances. And in the absence of any other persuasive evidence to the contrary, I'm not persuaded that Mr P's car was of unsatisfactory quality when supplied. So, I can't hold BMFL responsible for the problems Mr P has experienced with it.

Finally, Mr P complains about the timing of some of the supplying dealership's responses to him, and he references some dis-satisfaction with another car that he acquired previously through the same dealership. But these things are not complaints that I can consider here because Mr P's previous car was not financed by *this* regulated credit agreement. And it's only the actions of BMFL in relation to *this* regulated credit agreement that I can consider under this complaint.

I know Mr P will be disappointed with this decision, but I hope he understands why I've reached the conclusions that I have.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 March 2025.

Andrew Macnamara
Ombudsman