

The complaint

Mr F complains about the quality of a car Blue Motor Finance Consumer (UK) Plc supplied to him under a hire-purchase agreement.

Background

I recently issued my provisional conclusions setting out the events leading up to this complaint and how I thought the dispute should be resolved. I've reproduced my provisional findings below, which form part of this final decision:

What happened

In October 2022 Mr F entered into a hire-purchase agreement with Blue Motor Finance so he could get a car he'd seen at a dealer "D". The car was around 10 years old at the time, having covered about 48,000 miles. It had a cash price of £8,000, to be repaid over 36 monthly payments of £218.14.

Unfortunately, the following May the car suffered an engine failure, diagnosed as being caused by a broken timing chain. The failure wasn't covered by the warranty on the car and Mr F faced a repair bill of around £2,400. The car has been off-road since it broke down.

Mr F didn't think the car was of satisfactory quality in line with obligations implied into the contract by the Consumer Rights Act 2015 ("CRA"). Mr F complained to Blue Motor Finance, providing photographs of the engine and damage the car had suffered. He sought a contribution to the cost of engine replacement.

Blue Motor Finance acknowledged the fault with the car but didn't think what Mr F had presented amounted to evidence of a lack of satisfactory quality at the point it had supplied the car. Noting that Mr F had covered a further 10,000 miles since he acquired the car, and advising that the timing chain was part of the general upkeep of a vehicle, Blue Motor Finance said it was unable to investigate further. Mr F was unhappy with Blue Motor Finance's response and referred his complaint to us.

Our investigator felt that the evidence Mr F had provided indicated the car was not of satisfactory quality. He noted that the photos showed evidence of sludge in the engine, indicating that the oil had solidified and pointing to poor servicing over many thousands of miles, rather than just in the period since Mr F got the car. The investigator further noted Mr F had obtained opinion from a third party garage, who had diagnosed the reason for the timing chain failure as attributable to a lack of servicing, incorrect oil specification, and metal shavings in the oil.

Our investigator considered that the available evidence pointed towards the car not being of satisfactory quality when Blue Motor Finance supplied it to Mr F, and that Mr F was entitled under the CRA to a repair of the car. He recommended that Blue Motor Finance either arrange for the repair itself, or reimburse Mr F for the cost of repairs – subject to his providing a suitable invoice and receipt. Our investigator also

proposed that Blue Motor Finance refund with interest the monthly payments Mr F had made while he was unable to use the car.

Blue Motor Finance didn't think it fair to pay for repairs to the car in light of the use Mr F had made of the car. Blue Motor Finance didn't think it reasonable for the investigator to have placed reliance on (or draw inferences from) the photos Mr F had supplied rather than to seek a written report on the car's condition. It said from the images, it looked like the oil had been mixed with coolant, and that if the issue was there from the beginning, Mr F would have gone back to the dealer or let Blue Motor Finance know.

The investigator reminded Blue Motor Finance that his recommendation was not based solely on the photos, but also on the comments made by the inspecting garage, which substantiated the conclusions he'd reached. Noting that Mr F had only used the car for around seven months before it failed, the investigator remained of the opinion that the problems leading to the timing chain failure predated the supply of the car to Mr F.

Blue Motor Finance didn't accept the investigator's conclusions and asked for this review, making the following points:

- Under the CRA, as more than six months had passed since the car was supplied, the onus would fall on Mr F to provide evidence to confirm the issue was there or developing at the point of sale. Although Mr F provided photos of a broken part, this could not be seen as sufficient evidence as it is not a report from a garage. Mr F sent these photos but did not follow up with a report from the garage
- Another thing to consider was the mileage covered on the vehicle. When raising the complaint, the customer advised the mileage of the vehicle was approximately 58,000. When the vehicle was sold it only had 48,590 miles. This would suggest Mr F covered almost 10,000 miles in the space of seven months. The average use per month is 1,000. Further, if the issue was present at the point of sale then how was Mr F able to use the vehicle for almost 10,000 miles

What I've provisionally 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.

Because Mr F acquired the car from Blue Motor Finance as a consumer, the arrangements are covered by – among other things – the Consumer Rights Act 2015 ("CRA"). One effect of the CRA is that the sale agreement is to be read as including a term that the car would be of satisfactory quality. Whether goods are of satisfactory quality is determined by reference to whether they meet the standard a reasonable person would consider satisfactory, taking account of matters such as price and description, and includes (among other things) matters such as appearance and finish, freedom from minor defects, safety and durability¹.

Mr F's claim is that the car Blue Motor Finance supplied to him failed to meet at least some of these requirements, and therefore that it was not of satisfactory quality, in breach of the term included in the contract by the CRA.

¹ Consumer Rights Act 2015 – Explanatory Notes para 62

I'm fully aware the car was far from new. The standard a reasonable person might expect from it would be lower than for a car that was new. And buying a used car carries some inherent risks, not least of which is that sooner or later items will need repair or replacement. While Blue Motor Finance has suggested that the timing chain is part of the general upkeep of a car, I haven't seen anything that suggests it is an item on the regular service schedule. Equally, the life expectancy of the timing chain is going to be something that varies depending on the way the car has been driven and maintained.

The overall mileage of the car was not particularly high for a ten-year-old car. Bearing this in mind together with the price attached to the car, and the general expectation of durability suggests that a reasonable person might expect such a car not to fail in the way it did only a few months after it was supplied.

The CRA says that goods that don't conform to contract at any time within six months of the consumer taking delivery are to be taken as not conforming to it at the point of supply, unless it is established that the goods did conform to contract on that day. That presumption doesn't apply in Mr F's case, because of the point at which he raised his claim. But it isn't replaced by a presumption that the goods *did* conform to contract.

Instead, the question becomes one of whether, on balance, it is more likely than not that the goods failed to conform to contract. So I've considered what Mr F provided to Blue Motor Finance in support of his claim. When Mr F contacted Blue Motor Finance he presented evidence that the car had suffered a significant failure only seven months after it was supplied, along with photos showing broken parts of the engine and oil sludge. He was not under any obligation to submit an inspection or written report, though doing so might have helped to establish the root cause that led to the failure.

Blue Motor Finance's response to Mr F's complaint and its correspondence with us appears to place greater emphasis on whether the car was defective, to the possible detriment of considering the basic durability question of whether a car it supplied ought to have been capable of running more than 10,000 miles. On the face of it, Blue Motor Finance had a case to answer based on the information Mr F supplied to it. He had a reasonable expectation that the car would last rather longer than it did.

I've noted what our investigator said about the service history of the car and likely root cause of the failure. This was based on the photographs and evidence from the third party garage. It's apparent from the photos that oil sludge was present. The cause for that may be open to discussion, but I've no reason to disregard the technical knowledge of the third party garage.

If the timing chain failed because the car wasn't serviced properly, then it seems to me more likely than not that this was a situation that existed when the car was supplied to Mr F, rather than something that only arose during his limited use of it. He didn't have the car long enough to reach the next service interval, and D had told him the car was serviced prior to being supplied. If the failure was down to a mixture of coolant in the oil as Blue Motor Finance has ventured, then it seems to me quite possible that the car could run for a period of time following D's oil change before it ultimately failed.

Given the timing chain failure's occurrence at only 58,000 miles and the relatively short period of Mr F's use, there was a clear line of enquiry that should have prompted further investigation. I'm not minded that Blue Motor Finance acted

reasonably in concluding that the car was of satisfactory quality when supplied. It appears to have placed greater emphasis on the fact that the timing chain hadn't failed at point of supply than it has on the possibility that this failure was merely a consequence of an underlying issue that was present at the point of supply.

On balance I'm not currently minded to find that Blue Motor Finance has dealt fairly with the situation by declining Mr F's claim for the reasons it has. I'm also inclined to find that the failure of the car after only seven months is not something a reasonable person would be likely to consider indicative of satisfactory quality.

I'm conscious the CRA² sets out certain remedies that Mr F is entitled to seek in respect of his claim. They include requiring repair of the car at no cost and without significant inconvenience to him. I appreciate that Mr F himself only sought a contribution towards the indicated £2,400 cost of repair, but I don't think that's a reason for me to say he shouldn't be entitled to having the full cost covered.

If Mr F has arranged for the repairs to be carried out at his own expense, then subject to him providing receipted documentation for this, Blue Motor Finance should reimburse him in full. Alternatively, Blue Motor Finance should undertake to arrange such repair on Mr F's behalf as soon as reasonably possible.

I'm conscious our investigator proposed a refund of payments Mr F has made towards the hire-purchase agreement while he has been unable to use the car. I'm not minded to require this. I don't consider it to be an appropriate way to reflect the inconvenience he's been caused by the impairment to his use of the vehicle, and doing so in this way doesn't properly reflect the degree to which Mr F's payments have gone towards the purchase of the car. Instead, I propose to award Mr F £300 in addition to the repair costs I've mentioned, by way of recognising his inconvenience.

I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

Response to my provisional decision

Both parties provided additional comment in response to my provisional decision. Mr F said that he would accept the £300, but that he'd like Blue Motor Finance to arrange the repair as the mechanic from whom he'd originally got the repair quote was unavailable.

Blue Motor Finance said that D had advised it serviced the car and that this could be verified by reference to the date on the oil and air filters. Blue Motor Finance also said that the noise from the timing chain would have been apparent before breaking, which might indicate Mr F had caused the subsequent damage by continuing to drive the car. It asked whether it could arrange an independent inspection to establish these points.

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've thought about what Blue Motor Finance has said in response to my provisional decision. But I'm not inclined to agree to a further inspection of the car. It's been off-road for over a year, and the point at which such an inspection should have been carried out was really

² Section 23 of the Consumer Rights Act 2015

before Blue Motor Finance decided to reject Mr F's claim, rather than now. It is in any event debatable what value such an inspection would add to the circumstances of the case.

It's not disputed that D carried out a service of the car, including changing the oil and filters. My provisional decision noted that an oil change might well have meant the car was able to run for longer while leaking coolant into the engine. And an inspection won't necessarily tell us whether the noise from the car ought to have given Mr F cause to stop using it before the timing chain failed. Nor does this speak to whether the car was of satisfactory quality when Blue Motor Finance supplied it to Mr F.

I understand the argument made in mitigation of its liability for the damage the engine sustained, but I'm not persuaded that this means Blue Motor Finance doesn't need to pay for the car to be repaired.

I've noted Mr F's comments in this respect, and in light of this it seems sensible to amend the proposed resolution to reflect the need for a suitable repairer to be sourced. Blue Motor Finance should work with Mr F to facilitate this.

Having reviewed all that's been said and provided, I'm not persuaded there's any need to change any other of my provisional findings and so I adopt them in full in this final decision.

My final decision

My final decision is that to settle this complaint, Blue Motor Finance Ltd must, within 28 days of receiving Mr F's acceptance, take the following steps:

1. Arrange, at its own cost and with minimal inconvenience to Mr F, for the car to be repaired by a suitably qualified garage so that it meets the satisfactory quality standard as required under the CRA; and
2. pay Mr F £300 in recognition of his distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 29 November 2024.

Niall Taylor
Ombudsman