

The complaint

Mrs G is unhappy with the amount Blue Motor Finance Ltd ('BM') is saying she owes as a result of her ending a finance agreement with it.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mrs G had a hire purchase agreement which she took out with BM on 30 September 2022. The cash price of the car was £22,995 and the total amount payable under the agreement £41,405.44 with interest charges.

Mrs G says she had problems with the car from the start and wanted BM to collect it. She said it refused and put the issue on her.

In March 2023 Mrs G enquired with BM about her options to return the car and agreed to a Voluntary Surrender ('VS') in April 2023. The agreement was terminated, the car was collected and BM received auction proceeds of around £15,000 which left Mrs G with a shortfall balance of around £24,000 to pay.

BM sent Mrs G a letter about the shortfall on 26 June 2023. It initially said that if she cleared the balance 'immediately' she may be eligible for a 'rebate of interest' and should contact it for an 'early settlement' quote. Mrs G was not able to pay the balance in full so the approximate £24,000 shortfall remains outstanding.

Mrs G says she surrendered the car because:

'I couldn't deal with it as my mother was terminally unwell. I handed the car back in desperation. I didn't understand the implications and the amount I would still owe. I feel taken advantage of'

Mrs G says BM acted unreasonably. And it is unfair that it is asking her to pay the shortfall owed on the finance of around £24,000.

BM said it wasn't aware of Mrs G's difficult personal circumstances before the car was sold. Our investigator did not uphold the complaint. So the matter has been passed to me for a decision.

Since receiving the file I have asked for further information – and I think this changes things. I issued a provisional decision on this case which said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.'

I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.'

I am aware that Mrs G had made several complaints to BM prior to this one about the quality of the car. I can see that her first complaint was raised with BM in October 2022 – just weeks after she took delivery of said car. And then she complained again after that around February 2023 and then in June 2023. On each occasion BM investigated and issued its Final Response letter. In summary, BM says it had on occasion tried to contact Mrs G but did not get a response from her. It says it asked Mrs G to arrange an expert report about the quality of the car and offered to pay for this – but Mrs G had failed to get this information at the time.

The issue with the quality of the car was then looked at by this service and not upheld. I am not revisiting a complaint about the quality of the car as previously looked into by this service. I am looking at the complaint about the circumstances around termination and Mrs G's liability as a result. This flows from BM's Final Response letter from 5 January 2024. However, in order to decide this complaint fairly I need to refer to the wider factual history, which concerns the previous events including Mrs G's complaint about the quality of the car.

I also consider it important to note (and in any event) that if material new evidence has come to light in respect of subject matter our service has previously commented on I can revisit the subject matter as it pertains to said new information.

I consider the key questions I have to answer here are:

- Did BM treat Mrs G fairly in the way it ended the agreement?*
- If BM has not treated her fairly what would a fair way be to resolve matters now?*

Did BM treat Mrs G fairly in the way it ended the agreement?

There is a call recording between Mrs G and a BM agent from 30 March 2023 (shortly before she decided to VS) which has come to light since our investigator viewed this case and as a result of my further enquiries. And I think this is newly disclosed information which is particularly material to the circumstances here.

BM has previously said that it treated Mrs G fairly before the car was sold as it was 'not aware' of her personal circumstances until afterwards. However, the call recording I have listened to demonstrates that is not the case.

Firstly, I have looked at the overall contact BM had with Mrs G and the correspondence it sent her. And as I result I think that it broadly gave her sufficient information about her options for terminating the agreement and the risks involved. From the information I have (including call recordings) I think Mrs G understood what VS involved, that selling the car at auction was a risk, that she would likely have an outstanding balance to pay and that it would impact her credit file. So my decision is not intended to be a wholesale criticism of BM's approach here.

However, after listening to the call from 30 March 2023 I consider Mrs G made it clear to the agent that:

- She had problems with the car from October 2022 including the engine management light coming on and the car shaking (and that there was a history of her complaining about this to BM);*
- The reason she has been unable to get the diagnostic/report BM requested to date is due to her mother being terminally ill.*

Mrs G is clearly distressed on the call. It's clear that she really doesn't want to terminate the agreement and be left with a liability but because of what she is going through she hasn't been able to cope with arranging to have the car inspected. She says she hasn't got the energy to deal with it, and that it doesn't seem fair that she is having to deal with it all when the problems started soon after she got the car.

I think the knowledge of Mrs G's exceptionally difficult personal circumstances shine a light on her previous lack of engagement with BM in responding to its enquiries and seeking out and obtaining a report. And while it appears BM were not aware she was supporting a terminally ill family member at that time (and were not necessarily acting unfairly in offering to pay for an inspection and expecting Mrs G to arrange it), when it then became aware of her circumstances it should fairly have acted differently.

At this point BM should fairly have looked into supporting Mrs G by arranging an expert to come and look into the issues with the car – instead of placing all the onus on her while she was unable to cope with it. I think this is particularly salient when in the particular circumstances here Mrs G made it clear (and the agent would be able to verify this in the notes) that she had been complaining about the quality of the car to BM a short time after taking delivery of it and had mentioned potentially significant issues including the engine management light illuminating at this early stage.

I acknowledge the agent went through the options for termination and suggests Mrs G can go to other organisations like Trading Standards/Citizens Advice before she makes her decision. However, I still do not consider this sufficiently mitigates the situation in light of what Mrs G disclosed about her personal circumstances. The agent barely acknowledges what Mrs G had said even though it goes some way to explain why she had not previously been able to engage with BM to a sufficient degree and arrange the report on the car.

Even if BM were to disagree that it should have at this stage pro-actively offered to arrange the inspection for Mrs G. I also consider some additional aggravating factors here which likely prevented Mrs G from seeking further advice before she decided to VS the car. I note:

- *the agent says some unhelpful and misleading things such as:*
 - *cars are bought off a forecourt 'sold as seen' (this isn't in accordance with Mrs G's consumer rights under the Consumer Rights Act 2015 'CRA');*
 - *the issue is about Mrs G 'proving to the dealer that they sold you a dud car' and that BM are just 'in the middle' (under the CRA in the first 6-months the onus is on the supplier of the car – which is BM and not the dealer – to show the car is of 'satisfactory quality');* and
 - *it might just be a problem with the battery.*
- *the agent did not (to me) sufficiently explore with Mrs G how BM could potentially assist temporarily with any difficulties maintaining payments in the circumstances. I say this noting Mrs G had said she stopped using the car months prior (and it stands to reason that Mrs G would likely be paying for an alternative, causing her financial strain). I note the agent did explore if she could maintain payments briefly and Mrs G said she didn't want to pay due to the quality of the car. But I don't think the agent was specific enough about whether (alongside not wanting to pay) Mrs G could actually afford it.*

In deciding what is fair I also note a call Mrs G had with BM on 24th March 2023 where she told it specifically she couldn't afford to keep paying for the car. But the agent does not really explore this and instead focuses on options for termination because Mrs G says she wants to give the car back. I appreciate Mrs G was not specific about the issues she was going

through at that point – however – she did specifically mention affordability. And had that been explored at the time Mrs G might have come to a temporary arrangement that allowed her more time to explore her options and seek advice in regard to the quality of the car before deciding to VS. I also note the agent did not appear to record what Mrs G said about her affordability issues on the contact notes –had she done so (as she should have) then the agent on the call on the 30 March is more likely to have explored this option in greater depth.

In summary, I consider Mrs G was not treated positively and sympathetically by BM in respect of what it learnt about her difficult situation. I now turn to a fair way to put this right.

What would be a fair way to resolve matters now?

In light of her circumstances, had BM offered to arrange the inspection for Mrs G instead of putting the onus on her to do this I consider it is likely she would have accepted that. As it is something she wanted all along due to the personal issues she had going on in the background.

And in any event had BM taken steps to address any affordability concerns while Mrs G sought other support through consumer advice agencies, and not made the unhelpful and misleading comments about the situation (as recounted above) she might have sought further support and advice in regard to the issues with the quality of the car before proceeding with VS.

However, the issue here is whether ultimately any of this would have made a difference to the outcome in regard to the quality of the car. Evidence might, or might not confirm the car was of satisfactory quality at the time of sale. In Mrs G's favour I note the cash price of the car at £22,995, while less than a new or newer car was not insignificant and the issues appear to have started very shortly after sale. Furthermore, some of the issues (the EML light and subsequent 'shuddering') suggest more significant engine problems than usually expected wear and tear. However, on the other hand I note the car was also around five years old and had done around 63,000 miles at the time of supply so expectations on durability are lower. And we don't know exactly what was causing the EML to light. I also note that Mrs G was able to cover around 9,000 miles in the car based on the return mileage information obtained by BM including a significant proportion of that in the early stages of having the car. So there is a level of uncertainty here as to whether the car as supplied was of 'satisfactory quality' under the relevant law (the CRA here).

The car has obviously been sold so can't be inspected by an expert now to get to the bottom of things. So I have to look at what is overall fair and reasonable in the circumstances. In doing so I note that at one stage it appears BM were willing to offer Mrs G an interest rebate if she settled the shortfall arrears immediately. I know that offer is no longer available because Mrs G did not pay the shortfall immediately. But considering what has occurred here I consider it fair and reasonable for BM to reinstate this offer of an interest rebate but without the time limit on payment.

I want to be clear that I am not directing BM to carry out an early settlement as set out in relevant legislation as I understand the agreement was ended by VS rather than early settlement. However, I am deciding what is fair and reasonable here. And I don't consider it fair that BM benefit from repayment of all the outstanding interest on the agreement in the particular circumstances. Also noting that it was willing to provide a rebate at least at one point in the past.

BM has not been clear what the interest rebate would have been which it referred to in its letter following VS. But it prepared an early settlement quote for Mrs G in March 2023 which said the rebate would be £15,723.13. I appreciate this was calculated in accordance with the

relevant legislation. I want to underline that my intention is not to say that Mrs G would usually have a 'right' to combine VS and early settlement here. However, the rebate BM offered in accordance with early settlement appears to be a good barometer of the proportion of the shortfall amount which is made up of interest charges. And the likely discount Mrs G would have received had she paid the shortfall in one go. So, in the circumstances I consider it fair this is the amount removed from said shortfall.

In considering fair redress I note that overall this settlement will mean BM will still receive the capital they lent Mrs G and an additional sum to cover some degree of interest on that (when factoring in Mrs G's past and future repayments along with the proceeds it received from the auction).

Once BM has recalculated the shortfall it should engage with Mrs G to set up an affordable repayment plan for the remaining balance – being positive and sympathetic to her circumstances.

I don't know for sure if Mrs G would have been in the same situation she has ended up in regarding adverse credit information had BM acted differently when she engaged with it in March 2023. Once again, it is an unknown factor how the issues with the quality of the car would have panned out. However, I think in the circumstances it is fair for it to remove any default in relation to the hire purchase agreement from her credit file and reflect the situation as a repayment plan following a VS. If Mrs G does not maintain the payments under the repayment plan for the remaining shortfall balance then BM is able to reflect this on her credit file and seek to recover it in the usual way. If Mrs G is unhappy with how the repayment plan is handled or about adverse information BM applies to her file going forward in respect of the outstanding balance she may be able to raise a complaint about this separately.

In deciding what is a fair and reasonable way forward I have also factored in the additional distress and inconvenience that Mrs G has likely suffered as a result of BM not engaging with her positively and sympathetically when she shared with it her difficult circumstances. I know that BM were not responsible for what was going on with Mrs G in her personal life – but had it acted differently at the time I think this would have at least provided some short term relief to the level of distress Mrs G was experiencing at the time. However, I do have to consider that even if BM had acted differently it would not necessarily have ultimately resulted in the outcome she wanted or avoided her having to end the agreement in a similar way. Thinking about what is fair here in light of my overall redress recommendation and the particular circumstances along with the information about distress and inconvenience awards on our website I consider that BM should provide Mrs G with a payment of £300.

My provisional decision

I uphold this complaint and direct Blue Motor Finance Ltd to:

- Recalculate the shortfall arrears balance by deducting £15,723.13;
- amend Mrs G's credit record in accordance with my direction above; and
- pay Mrs G £300 for distress and inconvenience.

Neither party responded to my provisional findings by the deadline set.

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 see no reason to alter my provisional findings. These now form my final decision.

Putting things right

If Mrs G accepts my decision then BM should carry out the direction below.

My final decision

I uphold this complaint and direct Blue Motor Finance Ltd to:

- Recalculate the shortfall arrears balance by deducting £15,723.13;
- amend Mrs G's credit record in accordance with my direction above; and
- pay Mrs G £300 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 7 April 2025.

Mark Lancod
Ombudsman