

complaint

Mr M complains that a car that was supplied to him under a hire purchase agreement with Blue Motor Finance Limited wasn't of satisfactory quality and about the default that it's recorded on his credit file.

background

A used car was supplied to Mr M under a hire purchase agreement with Blue Motor Finance that was dated in April 2017. He returned the car to the dealer in July 2017 (when he says that he'd used it to drive about 3,000 miles) because he said that there was a fault with the car's gearbox. He wasn't satisfied with the dealer's response so he cancelled his direct debit and returned the car's keys and documents to the dealer. And he told Blue Motor Finance that he'd cancelled his agreement and the car's road tax. It arranged for the car to be inspected by an independent expert at the end of August 2017. The expert concluded that: *"... the vehicle could return to normal service use in its present state with no fault found at this stage"*. So Blue Motor Finance told Mr M that his agreement hadn't been cancelled and that he should collect the car from the dealer. He didn't collect the car so Blue Motor Finance issued a notice of default to him in September 2017. The dealer parked the car on the road from where it was impounded because it wasn't taxed and it was then crushed. Mr M complained to Blue Motor Finance but wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. She said that the car was inspected by an independent expert and found to have no faults – but Mr M refused to collect the car from the dealer. Blue Motor Finance said that the car was abandoned uninsured and untaxed – in breach of the hire purchase agreement – and the car was impounded and crushed. Blue Motor Finance issued a notice of default to Mr M in September 2017 and Mr M asked it in October 2017 to amend his credit rating. He also asked if he could arrange his own inspection of the car but it was discovered that the car had already been impounded. He said that he'd cancelled his agreement and rejected the expert's report. But the adjudicator concluded that Mr M had no legal right to cancel the agreement and that the notice of default remained valid. So she said that she was unable to ask Blue Motor Finance to remove or amend the default applied to his credit file.

Mr M has asked for his complaint to be considered by an ombudsman. He says, in summary, that:

- the car had a gearbox issue that the dealer refused to fix due to the price of the repairs;
- he asked Blue Motor Finance to get involved but it took seven months and still didn't arrange a proper engineer's report;
- the faults only become apparent after 20 to 30 minutes of driving and the car wasn't tested under those conditions;
- the dealer (without his knowledge or permission) parked the car illegally outside of its premises which resulted in the car being crushed;
- he left the car inside the dealer's premises and had no further communication with the dealer; and
- he didn't abandon the car and had every intention of paying all of the instalments but took the car back to the dealer because it was faulty and he just wanted it fixed.

my findings

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

I can understand Mr M's frustration as a result of his dealings with the dealer and Blue Motor Finance. He clearly feels very strongly that the car is faulty. But the car was supplied to him in April 2017 and he didn't complain to the dealer about it until July 2017 – about three months later. And in that time he'd used the car to drive about 3,000 miles. I'm not persuaded that he'd have been able to use the car to drive that distance if the car hadn't been of satisfactory quality when it was supplied to him. And I consider that it's reasonable to expect that he would've complained to the dealer about the gearbox earlier than he did if it had been faulty in April 2017. The car has been inspected by an independent expert who found no fault. So I'm not persuaded that there's enough evidence to show that the car wasn't of satisfactory quality when it was supplied to him. And I'm not persuaded that he was entitled to cancel his hire purchase agreement.

He contacted the dealer in July 2017 and then contacted Blue Motor Finance. He was clearly frustrated by its failure to respond to him and, in August 2017, he told it that he'd cancelled his agreement and direct debit and he returned the car's keys and documents to the dealer. He also cancelled the car's insurance and road tax. But I don't consider that he had any right to cancel the hire purchase agreement or to reject the car in these circumstances. Blue Motor Finance arranged the independent inspection of the car at the end of that month and it wrote to him to say that no fault had been found and that he needed to collect the car from the dealer.

He didn't do so and the dealer left the car (which had then had its tax and insurance cancelled by Mr M) parked on the road – from where it was impounded and crushed (presumably because it was uninsured and untaxed). But the car was still Mr M's responsibility at that time. And it was the dealer – and not Blue Motor Finance – that left the car on the road. And Blue Motor Finance isn't responsible for those actions of the dealer. So I consider that it was Mr M's actions, in breach of the hire purchase agreement, that caused the problems about which he's complained.

I consider that Mr M still owes money to Blue Motor Finance and that it was entitled to seek to enforce that debt against him. So I'm not persuaded that there's enough evidence to show that it acted incorrectly when it issued the notice of default to him – and I don't consider that it would be fair or reasonable for me to require Blue Motor Finance to withdraw the notice of default or to remove any of the adverse information that it's recorded on Mr M's credit file. I suggest that Mr M contacts Blue Motor Finance to agree a repayment plan for the outstanding balance on his account.

my final decision

For these reasons, my decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 July 2018.

Jarrold Hastings
ombudsman