

complaint

Mr S complains that the used car he acquired via a hire purchase agreement with Blue Motor Finance Ltd wasn't of satisfactory quality.

background

In June 2017 Mr S acquired a used car via a 15 month hire purchase agreement. The car was around 10 years old and had a mileage of approximately 74,000.

Mr S says that he discovered faults with the car when it was first collected and so in July 2017 the car was booked in for an inspection and repairs. Repairs were carried out in relation to the car's diesel particulate filter ("DPF").

However in August 2017 Mr S reported to the dealership that the DPF and injector warning light was illuminated. The dealership asked Mr S to get a mechanic's report on the car as the lights hadn't been on when they'd had the car.

Mr S had the car inspected at a garage which found a number of issues with the car which included a possible issue of the DPF being fitted without re-sensitisation and leaks from the sump and gearbox.

The car went in for repairs in September 2017 but a short time after it was returned to Mr S the DPF warning light illuminated again. He complained to Blue Motor. Blue Motor asked him to take the car to a local garage for a diagnostic report and said it would speak with the dealer to discuss the matter.

Blue Motor also arranged for the car to be inspected by an independent engineer. The engineer reported that the codes hadn't been reset following the new DPF being fitted. He also reported on the leaks from the sump and gearbox and said he found an issue with a loose heat shield and leakage from the cooling system. The engineer concluded that on the balance of probabilities these issues had been present at the point of sale.

A swap of the car was considered but Blue Motor said Mr S preferred to keep the car and have it repaired. It was agreed after some further inspections that the car would be repaired and Mr S would cover any items that had arisen from wear and tear. The dealership paid £300 towards the repairs for the various leaks and to the DPF. These repairs were carried out in October 2017.

In November 2017 Blue Motor issued Mr S with a final response letter to his complaint. It said that as the car had faults it would uphold his complaint and the car would be repaired. It said it would now close the complaint. Mr S replied to Blue Motor that he wasn't happy with its response and he was concerned the resetting of the DPF may not fix the issues with the car.

In November 2017 further repairs were carried out and paid for by Blue Motor.

In February 2018 the car was inspected by another garage and a number of other issues were found with the car including EGR valve and the glow plugs needing to be replaced.

In March 2018 Mr S made a new complaint to Blue Motor that despite the repairs the car had new issues which were related to the past faults. Blue Motor requested evidence that these issues had been there at the point of sale.

Mr S also said he thought the car was a potential health hazard due to the smell of fumes and smoke. He said the warning lights were illuminated on the dashboard.

In April 2018 Blue Motor arranged for the car to be inspected for a second time by an independent engineer. The engineer concluded that on the balance of probabilities the issues with the EGR and glow plugs would've been present at the point of sale.

In May 2018 Mr S obtained quotes for the repairs and in June 2018 repairs to the car were carried out.

However, in June 2018 a fault was then found with the inter cooler that had been caused by impact damage. Blue Motor contacted the independent engineer to see if this had been undetected at the inspection.

In the meantime Mr S contacted the dealer as despite the repairs the car continued to have fumes and smoke. He also said the warning lights were still illuminated. The dealer said the smoking could be due to the problem with the inter cooler. Mr S obtained a quote for the repairs to the inter cooler.

In July 2018 Mr S complained to Blue Motor about the length of time it was taking to get the car repaired and the ongoing issues he was experiencing with it. Blue Motor offered Mr S a goodwill gesture of £100.

Mr S had complained to this service back in June 2018. Mr S said he had incurred a loss over having to deal with issues with the car. He asked for compensation and following the various repairs he also asked for the car to be further inspected as he didn't believe the repairs had fixed the issues. He remained concerned about the car's reliability and quality.

A further inspection of the car was arranged for January 2019 by another independent engineer. This engineer found issues with the car's gaskets. However the engineer concluded that as the car had passed an MOT in July 2018 and had been driven for around 15,750 miles since purchase these weren't issues that would've been present at the point of sale.

Our adjudicator who had been dealing with Mr S's complaint recommended that Mr S's complaint should be upheld and that he should now be able to reject the car, have his deposit repaid with interest and receive £500 as compensation for the distress and inconvenience this matter had caused him.

She said despite the latest independent engineer's report she thought the car hadn't been of satisfactory quality at the point of sale. There had been numerous repairs over the past 18 months which had started shortly after Mr S had acquired the car. And these repairs hadn't fully fixed the issues and the adjudicator said further repairs may still not work and could have a negative impact on Mr S's situation.

Blue Motor didn't agree with our adjudicator's view. It said it accepted the car had been subjected to a number of attempted repairs but the report from the final independent engineer had stated the car "was of an expected condition considering the age and mileage".

Blue Motor said this meant the repairs had been successful. It agreed that the difficulties in diagnosing and repairing the car would've caused Mr S distress and inconvenience although it disputed its actions had been the sole cause of the delays. Blue Motor said a fair outcome was for Mr S to keep the car but receive the £500 compensation.

As the parties couldn't agree the complaint was passed to me.

my findings

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

Under the Consumer Rights Act 2015 ("The Act") the car must be of satisfactory quality, fit for purpose and as described. When deciding whether a used car is of satisfactory quality account needs to be taken of its age and mileage. Here the car was around 10 years old and had a mileage of 74,000 so that would mean that it would be expected that over time issues with parts becoming worn and needing repair or replacement would arise.

Although wear and tear issues with the car would've been expected over time I've seen that problems with this car came to light within a short period of Mr S acquiring it. And I've also seen that the issues with the car and the number of repairs were agreed by Blue Motor. So I think that means it's not disputed the car wasn't of satisfactory quality at the point of sale.

However, if faults with a car come to light 30 days after the car comes into a consumer's possession then the retailer has an opportunity to fix the fault. And Blue Motor says that looking at the third independent engineer's report the car was fixed and any new faults have arisen from use and so Mr S isn't now entitled to reject it.

I've seen from the evidence that Mr S has been able to have just short of the average use of the car (he's driven just under the equivalent of 1000 miles per month) and that the issues with the gaskets didn't come to light until January 2019. But prior to that date a number of faults have been found with car including leaks, fumes and smoking.

I've seen that the third independent engineer also noted odours from the engine, signs of an engine oil leak, a leak from the turbocharger and the cooling system expansion bottle exhibiting signs of excessive pressure. The car was noted to smoke when test driven. The engineer's opinion is that from these symptoms "the engine appears to be subjected to an intermittent internal head gasket failure". The engineer goes on to say that as the car passed an MOT in July 2018 and has been driven a number of miles this issue can't have been developing or present at the point of sale. He says symptoms would've shown up before now and that during the MOT as the engine's temperatures are monitored an issue would've been found. He concludes that car would've been of satisfactory quality at the point of sale.

However it's unclear to me what information this engineer had received in respect of the earlier repairs. He doesn't address what impact these earlier repairs might've had on the running of the car or whether there was any link to an intermittent issue with the head gasket. I've noted that the complaints Mr S made about the car have been consistent since he acquired it. The car doesn't appear to have exhibited completely new symptoms or problems.

I've also seen that originally the car failed its MOT in July 2018 and work had to be carried out on the turbo to lower emissions before it then passed.

I think that looking at the number of problems and attempted repairs this car has been subjected to since Mr S acquired it that notwithstanding its age and mileage most people would consider it wasn't of "satisfactory quality". I think the past repairs were unsuccessful as the issues with smoking and warning lights being illuminated remain.

So I'm not satisfied the third independent engineer's report establishes that the past repairs were successful even though it provides another opinion as to why the car isn't running correctly. I think Mr S has repeatedly raised the faults noted in that third report for many months before January 2019. So I think it's likely this car still has issues with faults it had at the point of sale and isn't of satisfactory quality.

I think it would be fair and reasonable for Mr S to now reject the car. As he has had use of it I wouldn't ask Blue Motor to repay him the cost of the car but I agree with our adjudicator that it would be fair for him to be reimbursed the amount of his original deposit together with interest. I also think that £500 compensation is fair to address the distress and inconvenience caused to Mr S over this matter. And I'm upholding his complaint.

my final decision

For the reasons given above I'm upholding Mr S's complaint. I'm asking Blue Motor Finance Ltd to do the following:

- Collect the car at no cost to Mr S.
- Reimburse Mr S his deposit of £1,995 plus interest at the rate of 8% per year simple from the date of payment until the date of settlement.
- Pay Mr S £500 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 May 2019.

Jocelyn Griffith
ombudsman