

## **complaint**

Mr C complains that a pick-up truck he acquired through a hire purchase agreement financed by Blue Motor Finance Ltd wasn't of satisfactory quality.

## **background**

The lengthy background to this complaint, and my conclusions, were set out in my provisional decisions dated 9 October 2018 and 26 March 2019. Copies are attached and form part of this final decision.

In those earlier decisions, I explained why I felt Mr C's complaint should be upheld. In summary, I said that:

- I was satisfied there was enough evidence to persuade me that an inherent defect with the truck was present or manifesting at the point of supply. So I didn't think Blue Motor Finance had acted fairly and reasonably by supplying a truck that was not of satisfactory quality.
- I set out the steps that I thought Blue Motor Finance should take to put things right, which included ending the hire purchase agreement and covering the cost of repairs Mr C paid for. I also said that Blue Motor Finance should refund all of the monthly repayments he'd made in addition to covering some of the reasonably foreseeable business losses incurred as a result of not being able to use the truck. I also suggested that Blue Motor Finance should pay £350 compensation for the distress and inconvenience it had caused Mr C.

Following my first provisional decision, Mr C broadly agreed with the outcome but submitted evidence of further losses. But Blue Motor Finance disagreed that it had any responsibility to meet Mr C's business losses as a result of the fault with the truck and referred to an exclusion clause in the hire purchase agreement Mr C signed.

It said it had been contractually agreed that it wouldn't be responsible for the quality of the truck or whether it was fit for purpose. Blue Motor Finance said that Mr C, in his capacity as owner of his equestrian business, would have needed to use his own skill and judgment to determine whether the truck was of satisfactory quality.

It also disagreed with how I'd proposed to put things right. It didn't think Mr C had provided enough evidence to support his business losses and felt the mileage Mr C had been able to do in the time that he'd had the truck should be taken into account.

I contacted Blue Motor Finance to explore the new arguments it had put forward in response to my first provisional decision. I said that whilst I accepted that it was legally possible to limit liability for breach of implied conditions in some circumstances, I didn't think those circumstances applied here. Blue Motor Finance disagreed.

In my second provisional decision, I explained that I wasn't persuaded that it would be fair for Blue Motor Finance to be able to rely on the clause in the hire purchase agreement that allows it to exclude liability for breaches of satisfactory quality in the particular circumstances of this case.

I looked at Mr C's circumstances at the time he entered into the agreement. I thought that Mr C was most likely unaware of the exclusion clause in the agreement at the time he entered into it. I pointed out that it wasn't an individually negotiated contract and that I didn't think Mr C would've expected an exclusion clause of this nature to be in the agreement based on custom and practice. I also wasn't persuaded that Mr C was told about the restrictive terms and the different arrangements that could apply when entering into an agreement for business use.

I also revisited the proposals I'd made in my first provisional decision to put things right. Blue Motor Finance felt they went too far. It was concerned that I'd not made any allowance for the mileage Mr C had been able to do in the truck and felt that his business losses hadn't been sufficiently substantiated. Mr C didn't think the proposal covered all of his losses and had provided further details of costs he'd incurred.

I wasn't persuaded that it would be fair for Mr C to pay for the mileage that he'd been able to do. I didn't think he'd had good, uninterrupted use of the truck, even in the short time that he'd been able to use it. I thought the mileage Mr C had done was because he was making the best of a bad situation as Blue Motor Finance had told him it wasn't possible to return the truck.

I looked again at Mr C's business losses. I explained that I needed to see supporting evidence that clearly demonstrated a close connection between the losses being claimed and the finance provider's actions. I thought in this case it would be reasonable to expect that there would've been an impact on Mr C's business as a direct result of him being supplied a truck that was of unsatisfactory quality.

I thought Mr C's explanation around why he could continue with some of the riding lessons and his estimation of his losses was reasonable. I didn't think that Mr C's invoices in relation to the hay delivery and the mucking out costs were overstated or unreasonable either. I also noted that the period of time that Mr C was paying for two insurance policies was much shorter than first thought, so thought it would be fair for Blue Motor Finance to cover the cost of the insurance Mr C paid for his small car from when he first insured it to when he cancelled the insurance for the truck.

Following my second provisional decision, Mr C responded to say that the whole experience of having the truck has been an ordeal. He pointed out that the truck has been broken down for 22 of the past 25 months. He said that his business and his health have suffered considerably as a result of this dispute. He pointed out that his losses could have been avoided entirely if Blue Motor Finance had allowed him to reject the truck when he asked.

Mr C said he was desperate to bring things to a close so that he could move on and rebuild his business. He pointed out that he'd lost events and clients as a result of this. He said he would be willing to pay for half of the mileage that he's been able to do in the truck at the rate of 25p per mile to show some goodwill. He also said that he didn't want to prolong things any further by getting updated invoices from the traders that deliver the hay and provide him with mucking out services.

Blue Motor Finance didn't agree with my second provisional decision. It said that it maintained its position for all of the reasons it has already given. It said that my decision not to give any credit to Blue Motor Finance for the mileage that Mr C had been able to do was unfair. It said that Mr C had clearly had a financial benefit in using the truck for commercial purposes. It said Mr C wasn't entitled to receive a further benefit "*whether contractually, in law or in equity.*"

It added that my decision would unjustly enrich Mr C and that it considered it to be a "*penal sanction that wasn't justifiable.*" It maintained that Mr C had the benefit of a consumer hire vehicle which he had inappropriately used for the purposes of his business.

In relation to the riding lessons, it said that Mr C should've taken appropriate steps to mitigate his losses by arranging alternative transport or rescheduling the lessons. It pointed out that Mr C did not obtain appropriate insurance against business losses given his heavy reliance on the truck.

In relation to the hay delivery and mucking out expenses, it said that it would be for me to verify the costs incurred directly with the suppliers. It said that the information provided by Mr C was sparse and that it wasn't sufficient for me to make a decision that Blue Motor Finance would be liable for these expenses without making the appropriate enquiries. It said that Mr C's evidence should be tested in order to ensure fairness.

The matter now requires a final decision.

### **my findings**

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

Blue Motor Finance said that it disputes my second provisional decision for the reasons it has already stated. I've already set out in my provisional decisions, in some detail, my consideration of the evidence and what I think are the key issues in this case. I don't intend to repeat those considerations.

As Blue Motor Finance hasn't provided any new information or evidence for me to consider specifically in relation to whether it would be fair for it to be able to rely on the exclusion clause, I see no reason to depart from the position that I reached in my second provisional decision and for the reasons that I gave there. I remain of the opinion that it would not be fair or reasonable for Blue Motor Finance to rely on the term excluding the implied condition that the goods under the agreement were of satisfactory quality.

I shall now go on to consider Blue Motor Finance's further comments about my proposed redress.

Blue Motor Finance feels it is unfair that my decision doesn't make allowance for the 4,000 miles that Mr C was able to do in the time that he could use the truck, especially when I am proposing awarding consequential losses and a payment for distress and inconvenience.

But in its response to my second provisional decision, Blue Motor Finance also said:

*"it is clear that your decision intends to put Mr C back in the position he would have been in but for the alleged defects to the vehicle and/or to compensate him for any loss that he may have suffered as a result of the alleged defects."*

I don't think this is an unreasonable position for me to take or that by doing so, I would be "*unjustly enriching*" Mr C, as Blue Motor Finance has suggested.

As I've explained in considerable detail previously, Mr C has had a lot of trouble with this truck from very early on. He didn't have three months of continuous, uninterrupted driving. The reality of his experience of having the truck was very different. He entered into the hire purchase agreement on 23 March 2017. Less than two weeks later, the truck was off the road and required a repair. Then the truck was off the road again in June 2017 and required a further, more substantive repair for the same fault. This fault occurred again in August 2017. Mr C has pointed out that the truck has been broken down for 22 of the past 25 months. For these reasons, along with the commentary I've already given in my first and second provisional decisions, I don't think it's fair for Mr C to have to pay anything towards the mileage he was able to do.

Whilst I can appreciate that Mr C has, in good faith, made a gesture to pay something towards the mileage to try and bring the matter to a close, I don't agree that it would be fair for him to pay anything towards the mileage that he was able to do. In these circumstances, I think it's clear that Mr C was making the best of a bad situation because Blue Motor Finance didn't agree that he could reject the vehicle, even though it had been subject to recurrent repairs very early on.

Blue Motor Finance also disagreed with the proposals I'd put forward to take into account the losses incurred by Mr C's business. I accept that not having access to a truck will have had a wide reaching impact on Mr C's business operations. But I think it's important for Blue Motor Finance to note that I'm not saying that it needs to pay compensation to cover all of Mr C's business losses. I'm only proposing that Blue Motor Finance should pay compensation for losses that Mr C can support. I don't think this is unreasonable or unfair.

Blue Motor Finance suggests that Mr C could have done more to mitigate his losses. It suggests that he could've arranged alternative transport or that he could've rescheduled the cancelled riding lessons. It also suggests that he should've taken out insurance against business losses given his heavy reliance on the truck.

But I think Mr C has taken reasonable steps to minimise his losses. Mr C has explained to me that he hasn't been able to buy another truck to use because money is tight. But Mr C has made alternative arrangements, as best as he can. He's told me that he purchased a cheap small car to try and tide him over. He didn't anticipate when he did that just how long this dispute was going to run for. Mr C has explained to me, and I have outlined in my previous decisions, that the lessons that were cancelled would have involved the use of equipment that he couldn't transport and that they were scheduled to be in off road locations rather than at stables. Given the nature of Mr C's business, I think what he's said about missing out on these lessons is feasible.

It also ties in with the evidence he's been able to provide from his desk diaries. So I don't think making an award of £1925 to cover these missed lessons would be disproportionate. I would also point out that this award only covers lessons that Mr C had already got booked in. Given how long this dispute has been running for, it's likely Mr C will have lost out on further opportunities to give riding lessons that cannot be fairly quantified.

Turning now to the hay delivery and mucking out costs that Mr C has cited, Blue Motor Finance says that Mr C's evidence should be tested to ensure fairness. It says that it wouldn't be sufficient for me to make the decision that it should be liable for these expenses without making the appropriate enquiries. It has suggested that it would be prudent for me to verify with the suppliers whether these costs were incurred.

I agree with Blue Motor Finance that it shouldn't pay for losses that cannot be substantiated. Mr C has been consistent and compelling with his recollections during the course of this dispute and he has openly provided as much evidence and detail as he can whenever I have asked for it. I also think it's important to note that Mr C would have been able to collect the hay and move the muck himself if the truck supplied had been of satisfactory quality. So his business has directly incurred extra costs to make these essential arrangements.

Mr C has provided invoices from the traders to show the costs he's incurred. He's explained that the services are provided by other sole traders of a similar size and structure to his business and that these invoices are sufficient for his accounting purposes. He's provided the contact details of the traders. I have personally contacted both traders and verified the invoices that Mr C has submitted. As a result, I am satisfied that the paperwork Mr C has provided correctly reflects the costs his business had incurred up until the date the invoices were produced. Mr C has told me that he doesn't wish to submit updated records for any costs beyond the date of these invoices as he can't prolong matters any further. It's readily apparent that this ongoing situation is having a devastating impact on his business.

In my first provisional decision, I said that Blue Motor Finance should refund the insurance for the small car Mr C purchased from when Mr C first insured it to the date of settlement of this dispute. I thought this was fair and reasonable on the basis that Mr C was paying to insure the truck and the small car simultaneously when he wouldn't have needed to do so if the truck had been of satisfactory quality. However, in response to that decision Mr C said he'd cancelled the insurance for the truck in March 2018. As Mr C acquired the small car in November 2017, the period where he was paying for two insurance policies is much shorter than first thought. With this in mind, I thought it would be fair for Blue Motor Finance to cover the cost of the insurance Mr C paid for the small car from when he first insured it to when he cancelled the insurance for the truck.

Mr C has provided me with evidence from his insurers to show the separate cover that was in place for each vehicle. He's also provided me with evidence from his bank to show that he paid five monthly insurance premiums for the small car between November 2017 and March 2018, amounting to £300.57. So I think it would be fair for Blue Motor Finance to reimburse these specific payments.

I don't consider that my decision unjustly enriches Mr C, as Blue Motor Finance has suggested. He's maintained that almost from the outset this truck has had significant problems. The redress is intended to put Mr C back into, or as close as is possible, the position he would have been in had he not been supplied with a truck of unsatisfactory quality. I hope that this final decision helps both parties to finally now draw a line under this long running dispute.

## my final decision

My final decision is that I uphold this complaint. To settle it, Blue Motor Finance Ltd should:

- collect the truck at no cost to Mr C.
- end the hire purchase agreement with Mr C with nothing further owed by him
- refund the £250 deposit Mr C effectively paid by part exchanging his previous vehicle when he entered into the hire purchase agreement. It must pay interest on this refund at the rate of 8% simple per year. The interest should be calculated from the date the deposit was paid until the date of settlement.
- Mr C has provided a bank statement to show he paid £50 directly to the dealership to hold the truck. As I've not seen anything to show that this was refunded to him or used to reduce the purchase price, I agree that this is a consequential loss that Blue Motor Finance Ltd should reimburse Mr C for, plus interest at the rate of 8% simple per year from the date it was paid until the date of settlement.
- If Mr C paid any acceptance fees or purchase activation fees, Blue Motor Finance Ltd should refund them. It should add interest at the rate of 8% simple per year. The interest should be calculated from the date Mr C paid the fees to the date of settlement.
- reimburse Mr C for the £940 payment he made towards the repairs plus 8% simple interest from the date Mr C made the payment to the date of settlement.
- refund all of the monthly repayments Mr C made. Blue Motor Finance Ltd must pay interest at the 8% simple per year. The interest should be calculated from the date each repayment was made until the date of settlement.
- remove all mention of the agreement from Mr C's credit file
- pay Mr C £1925 for the riding lessons his diaries show were lost as a result of him not being able to get there
- reimburse the increased costs Mr C incurred for the delivery of the hay and the mucking out. The traders have confirmed to me that Mr C paid £1,880 to have manure removed and £900 to have hay delivered. Interest should be added at the rate of 8% simple per year, from the date Mr C made the payments until the date of settlement.
- reimburse the five insurance premiums Mr C paid to insure the small car from November 2017 to March 2018, totalling £300.57. Blue Motor Finance Ltd should pay interest on this refund at the rate of 8% simple per year, from the date Mr C made each payment to the date of settlement.
- pay Mr C £350 compensation for the distress and inconvenience Blue Motor Finance Ltd's lack of correspondence at pivotal times caused him.

Blue Motor Finance Ltd must pay the total compensation within 28 days of the date on which Mr C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision until the date of payment at the rate of 8% simple per year.

If Blue Motor Finance Ltd considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mr C can reclaim the tax if he is able to.

Mr C should refer back to Blue Motor Finance Ltd if he is unsure of the approach it has taken.

Both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 June 2019

Claire Marsh  
**ombudsman**

## COPY OF MY FIRST PROVISIONAL DECISION

### **complaint**

Mr C complains that a pick-up truck he acquired through a hire purchase agreement financed by Blue Motor Finance Ltd wasn't of satisfactory quality.

### **background**

At the end of March 2017, Mr C entered into a hire purchase agreement for a used pick-up truck. Mr C is a sole trader and wanted the truck specifically for his equestrian business. The cash price of the truck was £16,750. It was first registered in 2013 and had done just over 32,000 miles when it was supplied to him.

On 3 April 2017, Mr C started to experience problems with the DPF filter, causing the car to go into limp mode. He explains that he contacted the dealership that supplied the truck and was told to take the car to the nearest main dealer garage. The DPF filter was repaired and the supplying dealer covered that cost. Mr C collected the truck on 14 April.

On 9 June 2017, the truck went into limp mode whilst Mr C was driving on the motorway. Mr C contacted the dealership that supplied the truck. They said to take it to the main dealer garage. The main dealer advised that the DPF filter was blocked and couldn't be regenerated. A new DPF filter, pipes and sensors had to be fitted at a cost of almost £2,300. The truck's mileage at this time was 33,830. Mr C says he was struggling to get hold of the supplying dealership on the phone and that they'd stopped responding to his emails. So he had no choice but to go ahead and get the work done as he needed the truck urgently for work. Mr C collected the repaired truck on 22 June 2017.

At the same time, Mr C contacted Blue Motor Finance. He explained there had been a further fault with the DPF that he'd needed to get repaired. Blue Motor Finance issued its first final response on 27 July 2017. It proposed splitting the cost of the repair three ways with Mr C, the supplying dealer and Blue Motor Finance each contributing a third. Mr C received a payment of £1,880 for the contributions from the supplying dealer and the finance company.

In August, the truck went into limp mode whilst Mr C was driving on the motorway. Mr C says that Blue Motor Finance told him to take it back to the main dealer garage.

The main dealer garage said work had been carried out on the engine in the past as there were traces of silicone. Mr C says the main dealer garage told him the engine had been rejuvenated 44 times in the month before he got the truck but this hadn't been documented. It said there was a misfire causing excess fuelling and excess soot build up within the DPF, which was likely caused by an injector or a holed piston, but the engine would require a main strip down to confirm this. The main dealer suggested that it wouldn't be cost effective to try and fix the engine given that it looked to have been repaired previously and that it should be replaced.

Mr C told Blue Motor Finance that he wanted to reject the car and cancel the finance agreement. Blue Motor Finance wrote to Mr C on 22 August 2017 to confirm that it would investigate these points.

Mr C chased Blue Motor Finance for a response. The truck was at the main dealer's garage and they wanted it to be moved. On 1 September 2017, Blue Motor Finance arranged for the truck to be moved from the main dealer's garage to the supplying dealer's garage.

Mr C was anxious to find out what was going on. He chased Blue Motor Finance again as he'd not had any response to his emails or phone messages. He reiterated that he wanted to reject the truck.

The supplying dealer arranged for the truck to be inspected. This inspection happened on 20 September 2017 when the truck had done 35,079 miles. The inspection report suggested that the problem with the DPF was happening because Mr C wasn't taking extended journeys on a weekly basis to aid the regeneration process or because the truck had been subjected to excessive forced regeneration as a result of the repairs. The inspection also concluded that there were holes in the cylinder head along with damage to the cylinder piston, bore and glow plug tip.

Blue Motor Finance issued another final response on 10 October 2017. It said that the problems with the DPF were caused by the way Mr C was driving the truck. It added that it wouldn't be able to share the inspection report with Mr C because it was paid for by the supplying dealership. Mr C disagreed that the problems were because of the way he was driving the truck. He pointed out that the truck had broken down twice whilst he was making long motorway journeys.

On 20 November 2017, Blue Motor Finance contacted Mr C to let him know that the supplying dealer had repaired the truck with a reconditioned engine even though they felt it wasn't their liability. Blue Motor Finance told Mr C that he was still liable for the repayments.

Mr C contacted solicitors, who proposed a compromise. The solicitors said that Blue Motor Finance should refund four payments because Mr C had been unable to use the truck for four months. The solicitors also wanted to see the inspection report. They suggested that Mr C should be allowed to terminate the agreement if there are any further problems with the DPF.

On 14 December 2017, Blue Motor Finance replied to Mr C's solicitors. It said that it had no liability to repair the truck and that Mr C has no right to reject it. It pointed out that the supplying dealership had repaired the truck as gesture of goodwill and that Mr C hadn't collected it.

On 10 January 2018, the supplying dealer delivered the truck to Mr C. He explains that he tried to make the best of the situation and used the truck to drive to a weekend away. Mr C says the DPF filter light came on whilst he was driving on the motorway. He contacted Blue Motor Finance to let them know the problem was still happening.

Mr C pointed out that the truck had been in the garage for almost all of the time that he'd had it. He felt it had already been well established that there had been problems with it right from the very start. Mr C decided to stop making the monthly payments. He said it was "*financial and emotional madness*" to continue to pay for the truck in these circumstances. He felt he'd made it perfectly clear that he wanted to reject it many times and that he'd been ignored.

Mr C said that Blue Motor Finance reluctantly agreed to send an engineer out to inspect the new problem with the truck after he contacted his MP.

On 21 February 2018, Blue Motor Finance registered a further complaint for Mr C and arranged the inspection. On 27 February 2018, the engineer came out. At this point in time, the truck had done 36,130 miles. Mr C says that the engineer felt it wasn't safe to drive or inspect the truck as moving it could do more damage.

The engineer's report said that it was unable to connect diagnostic equipment to the truck. It noted that the DPF light was flashing on the display and states that no road testing was carried out for fear of causing consequential damage. The engineer provided an opinion that the current fault was "*most likely as a consequence of the type of use that the vehicle had been subjected to.*"

On 1 March 2018, Blue Motor Finance issued another final response. It said that as Mr C had entered into the agreement over six months ago, it was his responsibility to prove the fault with the truck was there or developing at the point of sale. It pointed out the most recent report had concluded that the fault with the DPF system wasn't linked to the repairs that had previously been carried out.

Both Mr C and his MP contacted Blue Motor Finance to point out that the engineer hadn't actually driven the truck. Blue Motor Finance said that the reason the DPF light was illuminated was down to the maintenance of the DPF system. Mr C said it was "*complete guess work*" for Blue Motor Finance to say the ongoing problem was caused by maintenance when no test drive or computer diagnostics had been undertaken.

Blue Motor Finance wrote to Mr C to chase the arrears on the account. So Mr C asked us to investigate.

Our investigator looked into things and didn't feel the current issue with the DPF was present from the point of sale because the early issues Mr C had experienced had been repaired. He placed weight on the independent inspections and felt it was Mr C's driving style that was the most probable cause of the DPF failing.

Mr C didn't agree. He pointed out that he'd only been able to drive the truck for three months since the agreement had started. He felt the problem with the DPF had been consistently reoccurring. He asked for an ombudsman to review matters afresh, so the complaint has been passed to me.

### **my provisional findings**

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 am minded to uphold it. So I'll explain why.

Mr C acquired the truck through a hire purchase agreement in March 2017. As the supplier of the truck, Blue Motor Finance is responsible for the quality of the truck it's providing.

I have to take account of relevant law when I decide what is fair and reasonable. The relevant legislation says that goods should be of satisfactory quality which means they meet the standard that a reasonable person would consider satisfactory (taking account of their description, price, and other relevant considerations). Aspects of the quality of goods can include their durability. If goods are not of satisfactory quality, then the finance provider can be liable as this is a breach of contract.

In this case, the first thing I need to decide is whether the truck was of satisfactory quality at the time it was supplied to Mr C. This involves me considering what a reasonable person would expect of a truck of this age and cost. If I don't think Blue Motor Finance supplied a truck of satisfactory quality, I'll then need to go on to think about what it should do now to put things right.

#### ***did Blue Motor Finance supply a truck of satisfactory quality?***

Blue Motor Finance supplied Mr C with a truck that was around three years old and had done in the region of 32,000 miles. I don't think Mr C expected the truck to be in perfect condition, but given that it had a cash price of £16,750, I think it was reasonable for him to expect that he could drive it free from major defects for a considerable period of time. Blue Motor Finance wouldn't be responsible for any wear and tear issues, but it would be responsible if the truck was sold with defects that you wouldn't expect on a vehicle of this age, mileage and price.

Mr C experienced problems with the DPF filter almost from the very beginning. A regeneration repair to the DPF filter was required less than two weeks after he got the truck. But it wasn't clear at this point in time that the problem with the DPF was significant.

From the information I have I understand that problems can arise with DPF filters if the vehicle isn't driven over a certain speed for a consistent time, as this is needed to ensure particles are expelled. This first regeneration repair happened quickly, at no cost to Mr C.

Mr C then experienced problem after problem relating to the DPF filter in June 2017, despite taking the truck on longer journeys on the motorway as recommended. The DPF filter was entirely replaced with a brand new system by a manufacturer main dealer just two months after the first regeneration took place. This was an expensive and seemingly significant repair. Considering the age and mileage of the truck at the time it seems unexpected and unlikely to be attributed to general wear and tear. And I don't think it was appropriate for Blue Motor Finance to suggest that Mr C should have to pay one third towards the cost of replacing the system given that the law says the onus is on it, as supplier, to make sure the truck was of satisfactory quality.

I can see that the supplying dealership felt it could've arranged for the system replacement to have been done much cheaper than the main dealer's price. But Mr C has been consistent in his recollections that he was told to take the truck to a manufacturer main dealer. And he's also shown us the emails that he sent to the supplying dealership at the time that were never responded to. Given that Mr C's business was losing money whilst the truck was off the road, I can see why he needed to repair it as quickly as possible.

I think it was reasonable for Mr C to assume that entirely replacing the DPF system would resolve the issue. Yet still the problem persisted. I note that the truck went into limp mode whilst Mr C was travelling on the motorway at speed. So Mr C was driving the truck for longer distances and at higher speeds, which should be sufficient to enable the DPF to be regenerated.

So I'm not persuaded that the problems Mr C has experienced with the truck are due to fair wear and tear or his driving style. As Mr C has experienced the same issue repeatedly, even after the truck had a brand new DPF system and a reconditioned engine, I think it's more likely the fault with the DPF is due to an inherent problem with the truck that hasn't been fixed properly.

The investigator placed weight on the independent inspection reports. But I'm not persuaded that the reports are conclusive. The inspection that took place in September 2017 suggests the problem with the DPF filter is most likely because it wasn't being regenerated in service. But from what Mr C has told me about his business, he was required to make journeys of the kind that would regenerate the DPF on a weekly basis. And it's clear from what the main dealer had said about the condition of the engine that work had been carried out on it before.

The report suggests that the engine cylinder head displayed holing consistent with increased combustion temperatures and damage to a cylinder piston bore and glow plug tip which was linked to DPF concerns. It seems unlikely that Mr C's driving style would've been able to do that much damage to the truck in such a short space of time, especially when taking into account the amount of time the truck had been off the road.

When the truck was inspected again in February 2018, the engineer was unable to connect diagnostic equipment. The report clearly states that the engineer "*declined to carry out road testing for fear of causing consequential damage.*" With this in mind, all the report was able to establish with any certainty was that the truck was still presenting with DPF concerns. I don't think it was fair to say that the faults would not have been developing at the point of sale given that Mr C encountered problems very soon after he got the truck and the evidence from the main dealer garage suggests the engine had been repaired previously.

Having very carefully considered all the evidence which has been presented in this complaint I think it's more likely than not that the truck was not of satisfactory quality when it was supplied to Mr C. It's clear that the truck hasn't performed as it should've done. I think it was supplied with an underlying defect that has presented a persistent problem with the DPF. And I think it's most likely that the previous repairs to the engine were connected to this problem. As such, I'm not persuaded that in supplying a truck of that quality Blue Motor Finance acted fairly and reasonably. So next I have to consider a fair way to put things right.

### ***putting things right***

It's clear that Mr C wanted to reject the truck from very early on. And I think that he should have been able to do this once it became clear that the earlier repairs failed. I understand that further repairs have been carried out but the latest report confirms issues with the DPF are still presenting. This is despite a reconditioned engine being fitted and an entire DPF system replacement. With this in mind, I think it would be fair for Mr C to reject the truck with Blue Motor Finance collecting it at no cost and ending the hire purchase agreement, with nothing further owed by him. Blue Motor Finance should also refund the £50 deposit Mr C paid to hold the truck and the value of the part exchange when he entered into the agreement, as well as the money he contributed towards repair costs.

Mr C said that he stopped making the monthly repayments because he didn't want to pay for a truck that he couldn't use. And whilst I can appreciate that would be frustrating for him, I'm also mindful that Mr C had signed an agreement to say that he would make the payments. Having said that, there's a period of at least five months where the truck wasn't in Mr C's possession. It's also evident that the truck has been off the road for weeks at a time whilst extensive repairs have been carried out. The mileage when Mr C got the truck was around 32,000. At the last documented inspection in February 2018, the mileage was 36,130. I think this supports Mr C's position that he's hardly been able to use it. Given the independent engineer's comments that driving the truck may cause more damage, I can see why Mr C lost confidence with the truck and didn't feel able to drive it.

In these circumstances, I'm currently minded to think it would be fair for Blue Motor Finance to refund the payments Mr C did make and ensure that the agreement is removed from his credit file.

### ***the impact on Mr C's business***

Mr C has explained that this issue has had a huge impact on his life and business. He feels that Blue Motor Finance should cover the business losses that are directly attributable to not having the truck, as well as paying compensation for the distress and inconvenience the matter has caused him.

Mr C says that he purchased the truck to move his equine equipment, to tow his horse box and also because it was suitable for him to get to riding lessons, which he's said were often located on farms and in fields. From what Mr C has told me about his equestrian activities, his need for a vehicle like this one makes sense. But in order to fairly say that Blue Motor Finance should be responsible for covering some or all of these costs, I need to see persuasive evidence that Mr C's business has made these losses. I'd also have to think these losses came around as a direct result of something Blue Motor Finance did wrong and that it was reasonably foreseeable to Blue Motor Finance that Mr C would make these losses.

Mr C says he's lost £1,925 from riding lessons that he wasn't able to get to and £3,300 from weddings that he wasn't able to do. He's said that he's had to pay an extra £900 for hay to be delivered to him and £1,880 for muck to be removed as he's not able to collect or move anything himself without a truck. Mr C did buy a small cheap car in November 2017 when it became apparent that the problem with the truck was ongoing and the dispute wasn't going to be resolved. Whilst this meant he was able to mitigate some of his losses for the riding lessons, he's said that the small car wasn't suitable for transporting hay bales or mucking out. Mr C points out that he's also had to pay extra to insure the small car as well as the truck.

So I think it would be reasonably foreseeable that Mr C not having access to a truck would have some knock on impact to his business. I asked Mr C to provide evidence to support these losses. Mr C has explained that his industry is predominately cash based and he doesn't have receipts. I accept Mr C's position that his records of the riding lessons are in his desk diaries. Mr C has provided extracts from his diaries to show that he's lost riding lesson clients. The dates on which the blocks of lessons are cancelled do coincide with the problems with the truck, so it seems more likely than not that these lessons were cancelled because Mr C didn't have reliable transportation to be able to take them.

I've not seen anything that makes me think these clients decided not to continue lessons for any other reason. I've looked carefully at the diaries and I can see that Mr C had five clients that used to take regular riding lessons disappear from his books. So I'm currently minded to think that Mr C's estimation of the amount he's lost as a result of not being able to teach his lessons isn't unreasonable.

I asked Mr C if he could provide invoices for the costs of the hay and mucking out. I accept the principle that it would cost more to have hay delivered and muck taken away compared to what it would cost Mr C to arrange these things himself. But Mr C hasn't been able to provide any receipts to show the extra he's paid or any confirmation of the increased costs from the traders that have been doing this work for him. Without a clear audit trail that shows the increased costs as result of not having access to a truck, it's very difficult for me to fairly quantify these losses or say that Blue Motor Finance should be responsible for them.

I've also thought about the weddings that Mr C says he wasn't able to do. I asked Mr C if he had any emails or contracts to show what the jobs would've been, or if any of the couples had paid him a deposit. I also asked Mr C more about what the costs to him would've been so that I could understand how much potential profit he might've made. Whilst I do understand why Mr C ultimately couldn't take the jobs on, I'm also mindful that he hasn't been able to provide any specific evidence to show specifically what had been arranged or that he turned the jobs down. So I can't be as sure about this potential loss as I would need to be in order to say that it would be fair for Blue Motor Finance to cover it.

Mr C says that he spent £480 on solicitor's fees during this dispute. Whilst I've not seen any invoices to confirm this, I'm not currently persuaded that it would be fair and reasonable for me to say that Blue Motor Finance needs to cover these costs. This is because it was Mr C's choice to instruct a solicitor to try and move things forward to a resolution. It wasn't something that Blue Motor Finance told him he needed to do and he has been able to pursue the dispute independently of using legal assistance.

Turning now to the small car Mr C purchased, I understand his position that he probably wouldn't have needed to buy this car at all if the truck had been of satisfactory quality. But I don't think it would be fair for Blue Motor Finance to refund the £275 Mr C says he paid for it. This is because Mr C could potentially sell the car to recover that money. In addition, Mr C has said that he intends to keep the car for his partner to drive, so it's clear that he's still going to get some benefit from it after this dispute has ended.

Having said that, I can appreciate that Mr C has paid two lots of insurance simultaneously when he wouldn't otherwise have done so. He's said that the insurance for the car was around £730 a year and the insurance for the truck was around £750 a year. I'm mindful that it was a requirement of the finance agreement that the truck was insured. I'm also mindful that Mr C was always going to have to pay to insure one vehicle if everything had gone to plan. With this in mind, I currently think it would be fair for Blue Motor Finance to cover the cost of the insurance for the replacement car Mr C obtained from the date that he first insured it to the settlement date of this dispute. In order for Blue Motor Finance to work out what this amount should be, Mr C should provide the details of his cover.

*the distress and inconvenience caused to Mr C.*

From what I've read in this case, I think Blue Motor Finance were aware some time ago that Mr C had experienced more trouble than was fair for a truck of this age, cost and mileage.

In an internal email dated 30 August 2017, Blue Motor Finance says "*as the vehicle is faulty again the customer is looking to reject the vehicle. At this point we believe the customer has this right as this is the third fault with the vehicle and also so sooner (sic) after having the last repair.*"

Mr C has repeatedly made it very clear to Blue Motor Finance how worried he was about this matter and how not having a truck could impact his business. Mr C has had to do most of the running to move things forward, as well as explaining his concerns over and over again. A lot of the anxiety and upset that Mr C has experienced over this past year could've been avoided if Blue Motor Finance had allowed Mr C to reject the vehicle sooner.

Whilst I recognise that money can't make up for the impact things have had on Mr C, especially given what he's said about his health, I do think it would be appropriate for Blue Motor Finance to pay Mr C £350 compensation for the distress and inconvenience he's been caused. It's clear that Blue Motor Finance's customer service has had a considerable impact on Mr C over the time this dispute has been running. Blue Motor Finance wasn't very responsive to his emails and calls when decisions about both the repairs and storage of the truck needed to be made. It's clear that Mr C had to send multiple emails and make many phone calls to chase matters up, which has caused him anxiety.

To summarise, I'm currently minded to think it would be a fair and reasonable outcome for Blue Motor Finance to:

- collect the truck at no cost to Mr C
- end the hire purchase agreement with Mr C with nothing further owed by him
- refund the £250 deposit Mr C effectively paid by part exchanging his previous vehicle when he entered into the hire purchase agreement. It must pay interest on this refund at the rate of 8% simple per year. The interest should be calculated from the date the deposit was paid until the date of settlement.
- Mr C has provided a bank statement to show he paid £50 directly to the dealership to hold the truck. As I've not seen anything to show that this was refunded to him or used to reduce the purchase price, I agree that this is a consequential loss that Blue Motor Finance should reimburse Mr C for, plus interest at the rate of 8% simple per year from the date it was paid until the date of settlement.
- If Mr C paid any acceptance fees or purchase activation fees, Blue Motor Finance should refund them. It should add interest at the rate of 8% simple per year. The interest should be calculated from the date Mr C paid the fees to the date of settlement.
- reimburse Mr C for the £940 payment he made towards the repairs plus 8% simple interest from the date Mr C made the payment to the date of settlement.
- refund all of the monthly repayments Mr C made. Blue Motor Finance must pay interest at the 8% simple per year. The interest should be calculated from the date each repayment was made until the date of settlement.
- remove all mention of the agreement from Mr C's credit file
- pay Mr C £1925 for the riding lessons his diaries show were lost as a result of not being able to get there
- Refund the insurance for the small car Mr C purchased from when Mr C first insured it to the date of settlement of this dispute. It should pay interest at the rate of 8% simple per year from the date Mr C made each payment to the date of settlement
- pay Mr C £350 compensation for the distress and inconvenience Blue Motor Finance's lack of correspondence at pivotal times caused him

If Blue Motor Finance considers it is legally required to deduct income tax from the interest outlined above, it will need to send a tax deduction certificate with the payment so Mr C can reclaim the tax if he is able to.

#### **my provisional decision**

Subject to any further evidence or representations I receive from either party, I'm minded to uphold this complaint and say that Blue Motor Finance Ltd should sort things out in line with the instructions I've set out above.

**Claire Marsh  
ombudsman**

## COPY OF MY SECOND PROVISIONAL DECISION

### **complaint**

Mr C complains that a pick-up truck he acquired through a hire purchase agreement financed by Blue Motor Finance Ltd wasn't of satisfactory quality.

### **background**

The background to this complaint is set out in my first provisional decision, a copy of which I attach and forms part of this second provisional decision.

In brief summary, I said that I intended to uphold this complaint. I was minded to think there was enough information to persuade me that the truck wasn't of satisfactory quality when it was supplied to Mr C. I thought it was clear the truck hadn't performed as it should've done and that it was most likely supplied with an inherent defect.

I set out the steps that I thought Blue Motor Finance should take to put things right, which included ending the hire purchase agreement and covering the cost of repairs Mr C paid for. I also said that Blue Motor Finance should refund all of the monthly repayments he'd made in addition to covering some of the business losses incurred as a result of not being able to use the truck. I also suggested that Blue Motor Finance should pay £350 compensation for the distress and inconvenience it had caused Mr C.

### **responses and developments**

#### *Mr C's initial response*

Mr C broadly agreed with the outcome but submitted evidence of further losses. He explained that he's unable to move any equipment without a truck and is having to pay extra to have horse muck removed and hay bales delivered. He pointed out that these additional costs for muck and hay are ongoing week on week until this matter is resolved. He also provided an invoice to show the solicitor's fees he'd paid.

Mr C accepted that he didn't have enough evidence to be able to show how much his business had actually lost as a result of not being able to accept the two wedding bookings. He added that he would be willing to pay for the insurance for the three months he'd been able to use the truck.

#### *Blue Motor Finance's initial response*

Blue Motor Finance disagreed that it had any responsibility to meet Mr C's business losses as a result of the faults with the truck and referred to an exclusion clause in the hire purchase agreement that Mr C signed.

It said it had been contractually agreed that it wouldn't be responsible for the quality of the truck or whether it was fit for purpose. Blue Motor Finance said that Mr C, in his capacity as owner of his equestrian business, would have needed to use his own skill and judgment to determine whether the truck was of satisfactory quality.

It also disagreed with the amount I'd proposed should be paid to Mr C to compensate for his business losses. It said that the cancellation of riding lessons could have been for varied reasons and that Mr C's diary entries only showed that lessons were booked and later cancelled. It didn't consider that Mr C had provided enough evidence from his ex-clients to show that they cancelled the lessons as a result of his inability to attend them at the requested times.

Blue Motor Finance also felt that I should've taken into account that Mr C had been able to use the truck for at least some of the time he'd had it. It pointed out that he'd been able to travel just over 4,000 miles in the three months he'd been able to drive it. It suggested that this should be taken into account at the rate of 0.25p per mile.

*Mr C's further comments*

Mr C looked at Blue Motor Finance's comments. He said the broker that arranged the finance knew why he wanted this type of truck and that they were made fully aware he was purchasing for business use. He pointed out that the truck is classified as a commercial vehicle and that it was insured under specialist commercial insurance.

Mr C said that he was "bewildered" that Blue Motor Finance wanted to charge him for the use that he'd had even though he had maintained that the truck needed to go back just weeks after purchase as it was clear that something was seriously wrong. He felt that his losses had increased as a direct result of what he described as Blue Motor Finance's "intransigence" and that it had made a situation that could've quite easily have been resolved amicably much worse. He pointed out that the proof he'd been able to provide of his losses is in line with how the equine business world works and that he's shown me everything that he has.

Mr C expressed concern at how long matters are taking to be concluded. He said it was unfair that Blue Motor Finance were making legal arguments when they no doubt had access to a legal team. He said it can't be right for Blue Motor Finance to supply a truck that clearly isn't road worthy, whether he's a private or a business customer. He was concerned that his business may have to fold as it is being devastated by the continued uncertainty and mounting losses.

*my clarification with Blue Motor Finance*

I contacted Blue Motor Finance directly to explore the new arguments it had raised in response to my first provisional decision. I said that whilst I accepted that it was legally possible to limit liability for breach of implied conditions in some circumstances, I didn't think those circumstances applied here.

I said that I thought the term in Blue Motor Finance's hire purchase agreement that excluded its liability for problems with the goods was unreasonable when taking the relevant law in to account, including The Unfair Contract Terms Act 1977 (UCTA).

I felt Mr C's bargaining position meant he wasn't in a position to individually negotiate the term. I pointed out that Mr C had no knowledge of the term or its potential effect until I highlighted it to him. So I asked Blue Motor Finance for its comments around why it thought excluding the implied conditions that the truck was fit for purpose and of satisfactory quality was fair or reasonable.

Blue Motor Finance responded to say the Supply of Goods (Implied Terms) Act 1973 would apply to the agreement but for the provisions of the exclusion clause in the hire purchase agreement. It thought that the exclusion clause would be reasonable because:

- Mr C had a choice of counter party. It said there was a wide choice of contracting parties because of the number of car finance companies in the market, but Mr C chose to contract with Blue Motor Finance and agreed to be bound by the terms of the agreement.
- Blue Motor Finance said that Mr C had received a compensating benefit for agreeing to the exclusion clause, as the charge of hire was equivalent to that of private use. It felt that it had provided valuable consideration and that Mr C would benefit unjustly from the agreement if the exclusion clause was considered to be void.

- It said there was a clear commercial reason for the term and that it is to safeguard Blue Motor Finance from unforeseeable loss and damage in circumstances where an individual purports to enter into the agreement for personal use and then uses it for the purposes of their business. It said that it was unaware of Mr C's intention to use the truck for his business.
- Blue Motor Finance said that Mr C was aware of the exclusion clause. It felt that it is very prominent in the agreement and clearly not hidden. It pointed out that by signing the agreement, Mr C was confirming that he'd received an explanation of its features and that he'd been given the opportunity to ask questions. It highlighted the signature page of the agreement to support this. It said that Mr C's position that he didn't know about the exclusion clause and its effect is "*untenable*" and "*cannot withstand scrutiny*."

It asked me to provide copies of Mr C's evidence to support the additional hay and mucking out costs, which I did. Blue Motor Finance hasn't provided any further comments or response about these losses.

#### *Mr C's updates*

Mr C stressed again that his losses are ongoing and asked if Blue Motor Finance would collect the truck from his driveway as it's been sat there for a long time. I explained that Blue Motor Finance didn't agree that it needed to take the vehicle back, but it might be possible for Mr C to end the hire purchase agreement early by voluntary termination or voluntary surrender, assuming that the agreement hasn't defaulted.

Blue Motor Finance said it disputed the validity of Mr C's complaint in its entirety and didn't consider it had any obligation to accept rejection of the truck. It said that Mr C has the option to terminate the agreement pursuant to Section 99 of the Consumer Credit Act 1974.

Mr C considered his options but decided not to terminate the agreement.

Mr C provided further clarification around his circumstances at the time he entered into the finance agreement. He explained that it was the dealership that put Blue Motor Finance on the table and there were no other finance providers approached.

Mr C explained that he declared the truck as being off the road in February 2018 and that he'd cancelled the insurance for it in March 2018. He explained that he didn't think it was economically viable to continue making the payments or to try and put the truck through an MOT due to the serious reoccurring fault.

#### **my provisional findings**

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I am not persuaded that it would be fair for Blue Motor Finance to be able to rely on the clause in the hire purchase agreement that allows it to exclude liability for breaches of satisfactory quality. So I'll explain why.

I think that both sides broadly now accept that the truck was supplied to Mr C with faults. Where the parties disagree is on the liability for those faults. Mr C's position is that Blue Motor Finance is responsible. Blue Motor Finance disagrees. It says that the exclusion clause in the hire purchase agreement has been validly executed and the effect of the term makes it not responsible for the quality of the truck provided or any of the problems Mr C has encountered as a result of the issues with the truck.

Clause 13 of the hire purchase agreement says:

*If you are entering into this Agreement in the course of a business, or if you give us the impression that you are entering into this Agreement in the course of a business, or if the goods are not of a type ordinarily supplied for private use or consumption,*

- *you must inspect the goods and use your own skill and judgment to decide whether the goods are of satisfactory quality and fit for their intended purpose; and*
- *we will not be responsible for the quality of the goods or whether they are fit for their intended purpose, or whether they match any description or specification.*

It's not in dispute that Mr C entered into this hire purchase agreement to obtain a truck which was wholly or predominately for his equestrian business, which he runs as a sole trader. This means that he wasn't acting as a consumer when he entered into the agreement so the protections in the Consumer Rights Act 2015 wouldn't apply to him.

But this doesn't mean Mr C has no statutory rights at all. The Supply of Goods (Implied Terms) Act 1973 implies terms into hire purchase contracts. It says that the goods supplied must be of satisfactory quality and fit for their purpose.

A finance provider can exclude or restrict liability for breaches of the satisfactory quality provisions in the 1973 Act, but only if the exclusion clause satisfies the reasonableness test in section 11 of the Unfair Contract Terms Act 1977 (UCTA). Schedule 2 of UCTA provides guidelines for the application of the reasonableness test which I have taken into account. Whether clause 13 is an unreasonable exclusion clause under UCTA is a matter that the courts might be asked to determine in accordance with the relevant case law. But in assessing whether Blue Motor Finance treated Mr C fairly and reasonably, I'm not limited to the position a court might reach provided I take account of relevant law.

To decide whether it is fair and reasonable of Blue Motor Finance to rely on this exclusion clause in the contract, I have thought about the circumstances at the time Mr C entered into the agreement.

From what I have seen, Mr C isn't representing a business that is likely to have had an in-depth knowledge of how exclusion clauses work. I accept that he was most likely unaware of the exclusion clause in the agreement at the time that he entered into it. I say this because Mr C was very shocked and concerned when he understood what the implications of Blue Motor's response to my provisional decision were. It was apparent to me that he was hearing this information for the very first time.

I've also thought about the strength of Mr C's bargaining position when he entered into the agreement. This wasn't an individually negotiated contract. Although Mr C is a business man, he's a sole trader. His operations are simple in structure and his turnover relatively modest. I don't think he would've been familiar with sophisticated legal concepts or that he would've expected an exclusion clause of this nature to be in this agreement based on custom and practice.

Blue Motor Finance has said that it was unaware that Mr C was intending to use the truck for his business. Notwithstanding the fact Mr C says that he explicitly told the credit broker this, I don't think it's fair for Blue Motor Finance to try to rely on the paperwork Mr C signed to say that he'd received an explanation of the key features and the opportunity to ask questions. As Blue Motor Finance has said it was unaware what Mr C was intending on using the truck for, I can't be as sure as I would need to be that he was told anything about different arrangements that could apply when entering into an agreement for business use. It seems more likely that no information was provided. This means that I'm not persuaded that Mr C was given fair opportunity to take steps to mitigate that position. He may have decided to obtain protection such as a warranty or other cover if he'd realised that responsibility for the quality of the truck was going to fall on him.

And I don't think Mr C would've entered into the agreement expecting any major problems to develop with the truck. Although it wasn't brand new, its cash price of £16,750 was still a significant amount of money and a mileage of 32,000 wasn't excessive for a truck of this age. I think Mr C would've been expecting to be able to use the truck without any major problems for some time. It wouldn't have been at the forefront of his mind to be anticipating problems.

Blue Motor Finance has said that Mr C had a choice as to which provider he entered into a finance agreement with and points to the wide choice of car finance companies in the market. But I think this is far too broad and open. Mr C says that he ended up entering into the agreement with Blue Motor Finance because it was the company put forward by the credit broking dealer. He says that he wasn't given a choice of different finance providers. I can see why Mr C wouldn't have thought to question it at the time. He wasn't anticipating any restrictive terms and most likely wasn't made aware of the possibility that they could've been included. So I don't think it would've occurred to Mr C to ask any questions about how any other car finance companies in the market would've operated.

I'm also not persuaded that Mr C understood that he was receiving any inducement or advantage to the price by entering into the agreement.

Having considered Blue Motor Finance's comments carefully, for the reasons I've explained above, I'm minded to think that in Mr C's particular circumstances it is not fair or reasonable for Blue Motor Finance to rely on the term excluding the implied condition that the goods under the agreement were of satisfactory quality.

#### *putting things right*

For the reasons I explained in my provisional decision, I think there is a fault with the truck which made it not of satisfactory quality at the point it was supplied to Mr C.

For the reasons I have explained above, I don't think that Blue Motor Finance can fairly exclude responsibility for supplying Mr C with a truck of unsatisfactory quality.

In my provisional decision, I set out what I thought would be fair steps for Blue Motor Finance to take to put things right.

Both Blue Motor Finance and Mr C responded to my proposals to put things right. Blue Motor Finance felt they went too far. It was concerned that I'd not made any allowance for the mileage Mr C had been able to do in the truck and felt that his business losses hadn't been sufficiently substantiated. Mr C didn't think the proposal covered all of his losses and provided further details of costs he'd incurred.

#### *the mileage Mr C was able to do*

Blue Motor Finance felt that it should be given a credit for the mileage that Mr C had been able to do in the time the truck was operational. But I don't agree that would be fair. I still don't think that Mr C had good, uninterrupted use of the truck, even for the three months that Blue Motor Finance has cited.

Whilst Mr C was initially amicable to repairs because he wanted to get the truck back on the road quickly, he also made it very clear that the truck was experiencing more problems than anticipated. The truck was repaired shortly after supply in April 2017 and then underwent further and more significant repairs related to the same issue in June 2017. When the symptoms of the same problem appeared again in August 2017, I don't think it was unreasonable of Mr C to think the truck wasn't performing in the way that he could fairly expect.

Although it's not disputed that Mr C was able to do just over 4,000 miles in the limited time that he was able to drive the truck, I don't agree that it would be fair and reasonable for him to pay for that in these circumstances. I consider this mileage was Mr C making the best of a bad situation because Blue Motor Finance had told him it wasn't possible to return the truck. Blue Motor Finance's proposal to charge Mr C 0.25p per mile feels unfair in this particular case.

### *Mr C's business losses*

When considering awarding commercial losses, my starting point is that I need to see supporting evidence that clearly demonstrates a close connection between the losses being claimed and the finance provider's actions. In this case, I think it's reasonable to expect that there would've been an impact on Mr C's business as a direct result of him being supplied a truck that was of unsatisfactory quality.

The difficulty here is that Mr C hasn't been able to provide sufficient evidence to support everything he says that he's lost out on. Mr C is aware that I'm unable to take into account business losses that can't fairly be substantiated. He's accepted that I can't take into account the weddings that he's turned down because he doesn't have enough to show what had been arranged. I'm also not persuaded that it would be fair for Blue Motor Finance to cover Mr C's solicitor's costs, as he didn't need professional legal advice to raise his complaint.

Blue Motor Finance disagree that Mr C has done enough to show that the riding lessons were cancelled as a direct result of him not having access to a truck. It felt he needed to provide further evidence directly from his ex-clients that they cancelled the lessons as a result of his inability to attend them at the requested times. It also felt that he could've done more to mitigate the losses, either by rearranging the lessons or making alternative arrangements. When I spoke to Mr C about this, he explained that he was able to continue with some lessons because he could get there in the smaller car he'd bought. But he wasn't able to continue with lessons that required him to bring specialised equipment, nor was he able to continue with the lessons that took place in a field or on a farm rather than at stables. Mr C says that the evidence from his appointment diaries is legitimate and in line with the way the equine business world works. As I highlighted in my provisional decision, the dates on which the blocks of lessons are cancelled do coincide with the problems with the truck. So I'm still minded to think that Mr C's estimation that he lost approximately £1,925 as a result of riding lessons that he wasn't able to get to isn't unreasonable.

In response to my provisional decision, Mr C provided two simple invoices to show he'd paid increased costs for the delivery of hay and for mucking out. I provided copies of these invoices to Blue Motor Finance for its consideration but it never specifically responded to say whether it felt they were sufficient. It maintained its position that it wasn't responsible for providing a truck of satisfactory quality at all, meaning that it didn't feel that it needed to meet any of Mr C's losses.

I asked Mr C about the invoices. He said the people that these services are being provided to him by small sole traders that operate in the same industry as him and in a similar way. He explained that these invoices were the best that he could present to evidence his ongoing weekly costs. The sole traders have signed the invoices and provided contact details, suggesting that they would be willing to verify the expense if required. Mr C re-iterated that his business is cash based and he doesn't always receive receipts from all suppliers. He explains that he records these costs and informs his accountant, which is standard practice.

Looking at this in the round, I don't think Mr C's losses in relation to the hay delivery and the mucking out are overstated or unreasonable. He's provided as much evidence to support these specific costs as he can and his suppliers are willing to verify the expense.

In my first provisional decision, I said that Blue Motor Finance should refund the insurance for the small car Mr C purchased from when Mr C first insured it to the date of settlement of this dispute.

I thought this was fair and reasonable on the basis that Mr C was paying to insure the truck and the small car simultaneously when he wouldn't have needed to do so if the truck had been of satisfactory quality. However, Mr C cancelled the insurance for the truck in March 2018. As Mr C acquired the small car in November 2017, the period where he was paying for two insurance policies is much shorter than first thought. With this in mind, I think it would be fair for Blue Motor Finance to cover the cost of the insurance Mr C paid for the small car from when he first insured it to when he cancelled the insurance for the truck.

To summarise, I am currently minded to say that a fair way to put things right would be for Blue Motor Finance Ltd to:

- collect the truck at no cost to Mr C
- end the hire purchase agreement with Mr C with nothing further owed by him
- refund the £250 deposit Mr C effectively paid by part exchanging his previous vehicle when he entered into the hire purchase agreement. It must pay interest on this refund at the rate of 8% simple per year. The interest should be calculated from the date the deposit was paid until the date of settlement.
- Mr C has provided a bank statement to show he paid £50 directly to the dealership to hold the truck. As I've not seen anything to show that this was refunded to him or used to reduce the purchase price, I agree that this is a consequential loss that Blue Motor Finance should reimburse Mr C for, plus interest at the rate of 8% simple per year from the date it was paid until the date of settlement.
- If Mr C paid any acceptance fees or purchase activation fees, Blue Motor Finance should refund them. It should add interest at the rate of 8% simple per year. The interest should be calculated from the date Mr C paid the fees to the date of settlement.
- reimburse Mr C for the £940 payment he made towards the repairs plus 8% simple interest from the date Mr C made the payment to the date of settlement.
- refund all of the monthly repayments Mr C made. Blue Motor Finance must pay interest at the 8% simple per year. The interest should be calculated from the date each repayment was made until the date of settlement.
- remove all mention of the agreement from Mr C's credit file
- pay Mr C £1925 for the riding lessons his diaries show were lost as a result of him not being able to get there
- cover the weekly costs Mr C has incurred for the delivery of the hay and the mucking out. He has provided evidence to show that he has been charged £20 per week to have two bales of hay delivered and £40 a week to have manure removed from his yard. Mr C should provide Blue Motor Finance with a breakdown of the affected weeks countersigned by the sole traders that provide these services to him.
- cover the cost of the insurance for the small car Mr C purchased from when Mr C first insured it to the date when Mr C cancelled the insurance for the truck. It should pay interest at the rate of 8% simple per year from the date Mr C made each payment to the date of settlement
- pay Mr C £350 compensation for the distress and inconvenience Blue Motor Finance's lack of correspondence at pivotal times caused him

If Blue Motor Finance considers it is legally required to deduct income tax from the interest outlined above, it will need to send a tax deduction certificate with the payment so Mr C can reclaim the tax if he is able to.

### **my second provisional decision**

My second provisional decision, subject to any final comments I receive from either party, is that I'm intending to uphold this complaint. To put things right, I am minded to say that Blue Motor Finance Ltd should follow the instructions that I've set out above.

I've put a date for reply of two weeks from 26 March to move the complaint forward. If either Mr C or Blue Motor Finance Ltd requires additional time, they can let me know and I'll consider any reasonable request.

Claire Marsh  
**ombudsman**