

complaint

Mr A complains that a van that was supplied to him under a hire purchase agreement with Blue Motor Finance Limited wasn't of satisfactory quality.

background

A used van was supplied to Mr A under a hire purchase agreement with Blue Motor Finance that he electronically signed in January 2019. He had some issues with the van in January and February 2019 so it was returned to the dealer for repairs but Mr A returned the van to the dealer in April 2019 because of a noise that was coming from it. No fault was found but a crank pulley was replaced. Mr A complained to Blue Motor Finance and it arranged for the van to be inspected by an independent expert. The expert said that there was a noise coming from the van but it was a maintenance issue. Mr A wasn't satisfied with Blue Motor Finance's response so complained to this service.

The adjudicator recommended that this complaint should be upheld. She said that it was evident that the van wasn't of satisfactory quality when it was supplied to Mr A and that he should be allowed to reject it. So she recommended that Blue Motor Finance should: settle the hire purchase agreement and collect the van; mark the credit file as settled; refund the deposit and the monthly payments made since April 2019 (all with interest); and pay him £100 to recognise the distress and inconvenience that he'd been caused.

Blue Motor Finance has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- the van passed an MOT test in January 2019 when it's mileage was recorded as 75,237 miles showing it was fit for purpose at the point of sale;
- Mr A had issues with the van in January and February 2019 and the dealer replaced the EGR valve and fuel filter – which was accepted by Mr A and was the first opportunity to repair the van under The Consumer Rights Act 2015;
- Mr A reported a noise coming from the van in April 2019 and it was checked but no fault was found but Mr A asked for the crank pulley to be replaced;
- there's still a noise issue but a manufacturer's dealer and an independent expert have said that it's a result of early stages of wear and tear of the timing chain rather than a manufacturing or material defect;
- the independent expert says that the van was fit for purpose at the point of sale; and
- it doesn't feel that it's acted unfairly or that there are any grounds for rejection as the van isn't faulty and there've been no failed repairs.

Mr A says that he paid £250 to reserve the van and an advance payment of £500 and he's provided evidence of two payments of £250 to the dealer and a cash withdrawal of £250 which he says was paid to the dealer. Blue Motor Finance says that Mr A paid a £500 deposit for the van as shown on the invoice and he paid £246 for an extended warranty – but it's agreed to refund the warranty payment to him.

my findings

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

Blue Motor Finance, as the supplier of the van, was responsible for ensuring that it was of satisfactory quality. Whether or not it was will depend on a number of factors, including the

age and mileage of the van and the price that was paid for it. The van that was supplied to Mr A was about four years old, had been driven for approximately 75,000 miles and had a price of £8,000. Satisfactory quality also covers durability which means that the components within the van must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

The van was supplied to Mr A in January 2019. He contacted the dealer about issues with the van in January and February 2019 and the EGR valve and fuel filter were replaced. Mr A returned the van to the dealer in April 2019 because there was a noise coming from the van. No fault could be found but the dealer replaced the crank pulley at Mr A's request. Mr A then complained to Blue Motor Finance and it arranged for the van to be inspected by an independent expert in June 2019. The van's mileage was recorded as being 76,732 miles – so Mr A had driven less than 2,000 miles in the van in five months. The report concluded:

“The engine does display noise that would be consistent with the early stages of timing chain wear. The reported episode of “clatter” from the engine would also be consistent with intermittent impairment of the hydraulic chain tensioner. At this stage, serious problems have not been observed, however the timing chain and tensioners undoubtedly would benefit from replacement at the earliest opportunity to prevent consequential engine damage”; and said that:

“... this is a maintenance issue rather than a material defect, this would not impinge on the vehicle being fit for its intended purpose or being of satisfactory quality at the point of sale”.

Mr A had complained to the dealer about issues with the van within a month of it being supplied to him and the dealer replaced the EGR valve and fuel filter. But in April 2019 Mr A complained about a noise coming from the van and the crank pulley was replaced. The independent expert says that there is a noise coming from the van which is likely to be caused by timing chain wear. He says that he hasn't used the van since then and it's parked outside his house.

Blue Motor Finance hasn't paid for the timing chain to be replaced and I don't consider that it's reasonable to expect a van to have so many issues within three months of being supplied to Mr A when he's used it to drive less than 2,000 miles. So I consider that the van wasn't as durable as it was reasonable for him to expect it to be – and for that reason it wasn't of satisfactory quality when it was supplied to him.

So I consider that it would be fair and reasonable in these circumstances for Mr A to be allowed to reject the van. I find that Blue Motor Finance should end the agreement and collect the van from Mr A. Mr A paid a deposit of £500 for the van and Blue Motor Finance says that he also paid £246 for an extended warranty (and it's agreed to refund the warranty payment to him). I consider that it would be fair and reasonable for Blue Motor Finance to refund the £500 deposit and the £246 warranty payment to Mr A (with interest). Mr A hasn't used the van since April 2019 so I find that it would be fair and reasonable for it to also refund to him the monthly payments that he's made for the van since the beginning of April 2019 (with interest). I consider that it can keep the payments that he made before then as payment for the use that he's had from the van.

These events have caused distress and inconvenience to Mr A. And I find that it would be fair and reasonable for Blue Motor Finance to pay him £100 to compensate him for that distress and inconvenience.

Mr A says that he's paid for the van to be repaired and for MOT tests, tax and insurance and that he's put a personal registration plate on the van and will now have to pay for that to be removed. But repair and MOT test costs, tax and insurance are the ordinary costs of running a van. And I'm not persuaded that it would be fair or reasonable for me to require Blue Motor Finance to reimburse Mr A for those costs. It was Mr A's decision to put a personal registration plate on the van. And I'm not persuaded that it would be fair or reasonable for me to require Blue Motor Finance to reimburse him for the costs of doing so – or the costs of removing that plate before the van is collected.

my final decision

For these reasons, my decision is that I uphold Mr A's complaint. And I order Blue Motor Finance Limited to:

1. End the hire purchase agreement and arrange for the van to be collected from Mr A – both at no cost to him.
2. Refund to Mr A the deposit of £500 that he paid for the van and the £246 that he paid for the extended warranty.
3. Refund to Mr A the monthly payments that he's made under the agreement since the beginning of April 2019.
4. Pay interest on the amounts at 2 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
5. Remove any information about the agreement from Mr A's credit file.
6. Pay £100 to Mr A to compensate him for the distress and inconvenience that he's been caused.

HM Revenue & Customs requires Blue Motor Finance to deduct tax from the interest payment referred to at 4 above. Blue Motor Finance must give Mr A a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 April 2020.

Jarrold Hastings
ombudsman