

The complaint

Mr S is unhappy that a car supplied to him under a hire purchase agreement with Blue Motor Finance Ltd ('BMF') was of an unsatisfactory quality, and the repairs to the car weren't covered by the warranty he was sold.

What happened

In March 2023, Mr S was supplied with a used car through a hire purchase agreement with BMF. He paid a £4,600 deposit and the agreement was for £14,595 over 60 months, with monthly payments of £356.75. At the time of supply, the car was around six years old, and had done 49,596 miles (according to the MOT record for 22 February 2023).

Alongside the agreement, Mr S also purchased a warranty from the supplying dealership that covered the car for six months and up to 6,000 miles. This was not financed by BMF.

In late April 2023, Mr S raised a claim against the warranty for a leak in the thermostat housing. The warranty company declined the claim, so Mr S complained to BMF. Mr S also paid to have the car repaired at a local garage. BMF didn't uphold the complaint as Mr S had undertaken unauthorised repairs they said the dealership was unaware of.

Mr S wasn't happy with what'd happened, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that, as the warranty didn't form part of the finance agreement, it wasn't something we could hold BMF responsible for, and Mr S would need to raise his issues with the warranty company direct. However, the investigator also said there was a fault with the car that made it not of a satisfactory quality when it was supplied – the car wasn't sufficiently durable. So, she thought BMF needed to do something to put things right.

As the repair to the car had fixed the fault, and as there was no evidence the fault had reoccurred, the investigator said BMF should refund Mr S the repair costs he'd paid, as well as pay him an additional £200 for the distress and inconvenience he'd been caused.

BMF said that the issue with the car was an electrical fault, not a leaking water pump, and that he'd failed to return the car back to the supplying dealership for inspection and potential repair when asked to do so. Because of this, they disagreed the car was defective when it was supplied, and they thought the *"works and modifications"* Mr S had done to the car *"may have attributed to any premature failure of the part [that] had failed."*

Mr S disagreed with this, and said the fault was a cracked thermostat housing that happened within two weeks of the car being supplied to him. He said the dealership weren't interested in helping him, were very rude to him on the phone, and ignored his emails. Mr S provided a series of emails he'd exchanged with the dealership where, after being advised of the cost of the repair and that the warranty wouldn't cover this, the dealership said they would try and get Mr S a preferential rate for the cost of the repair, then told him there was nothing they could do, and to contact BMF.

After reviewing these messages, and speaking to the dealership, BMF said that Mr S had contacted the dealership after the repair had been done, so there was nothing they could do.

Given these comments, this matter has been passed to me to make a final decision.

What I've decided – and why

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

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BMF are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMF can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr S to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr S took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMF to put this right.

I've seen that Mr S initially contacted the warranty company about the fault with the car, and they asked Mr S to take the car to an approved garage for diagnosis. He did this and the warranty company confirmed that the thermostat housing needed to be replaced, but this wasn't covered by the warranty.

I've also seen that Mr S paid to have the thermostat housing and associated belt and coolant replaced on 18 May 2023, at the cost of £709.25 plus VAT (£851.10). The mileage at the time of this repair was 53,324, so Mr S had done around 3,700 miles in the two months between the car being supplied and it being repaired. The repair was done on the same day the dealership told Mr S in writing "*there is nothing I can do.*"

Given what I've seen, I'm satisfied the fault with the car was a cracked thermostat housing that resulted in a coolant leak - this was not an electrical fault as BMF have subsequently said. What's more, I've seen nothing to show me that the dealership asked Mr S to bring the

car back to them for diagnosis and potential repair, but instead Mr S only had the car repaired after he'd been advised by the dealership that they weren't prepared to assist him.

It is the case that Mr S could have waited for BMF to consider his complaint and inspect the car before any repairs were completed, but the car was already stripped down awaiting repair on the instructions of the warranty company. And with no guarantee that BMF would cover the repair costs, and the potential for storage charges if the car remained at the garage awaiting repair for any period of time, I'm satisfied that Mr S mitigated any losses by approving the repair when he did.

It's also the case that BMF could've instructed an independent engineer to assess the evidence – the repaired car, the damaged parts, and the invoice/testimony from the repairing garage – to determine whether the fault was present or developing when the car was supplied to Mr S. However, they chose not to do this.

Mr S was supplied with a car that had done almost 50,000 miles and was about six years old. While it's not reasonable for him to expect the car will be in the same condition as a brand-new car; any reasonable person would expect a period of trouble-free motoring without major mechanical breakdown. And I don't consider the thermostat housing breaking, resulting in a coolant leak, within a few months and less than 4,000 miles to fit this definition. As such, and in the absence of any evidence from BMF to the contrary, I'm satisfied the car wasn't sufficiently durable and this made it of an unsatisfactory quality when supplied.

Given this, I'm satisfied that BMF should do something to put things right.

Putting things right

Mr S has provided evidence of the costs he's incurred in repairing the car. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that BMF reimburse these costs.

It's also clear that Mr S has been inconvenienced by having to arrange for the car to be repaired under warranty and by the dealership, and then by having to arrange for the car to be repaired himself. And he was further inconvenienced by not having access to the car, or a courtesy car, during this period. So, I think BMF should compensate him for this. The investigator had recommended BMF pay him £200, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, BMF should:

- upon receipt of proof of payment, reimburse Mr S the full cost of the repair to the car in May 2023;
- apply 8% simple yearly interest on the reimbursement, calculated from the date Mr S made the payment to the date of the refund[†]; and
- pay Mr S an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires BMF to take off tax from this interest, BMF must give Mr S a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr S's complaint about Blue Motor Finance Ltd. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 April 2024.

Andrew Burford
Ombudsman