

## The complaint

Miss B complains that under a hire-purchase agreement, Blue Motor Finance Ltd supplied her with a car that wasn't of satisfactory quality.

Miss B is assisted in bringing her complaint by a third party, Mr P. For ease of reading, I'll refer to all correspondence whether undertaken by Miss B or Mr P as being from Miss B.

## What happened

I recently issued a provisional decision setting out the background to this complaint and how I thought it best resolved. I've reproduced the complaint background and my provisional findings here, which form part of this decision.

*"On 17 August 2022, Miss B entered into a hire-purchase agreement with Blue Motor Finance to finance a car she'd seen at a dealer ("D"). Under the hire-purchase agreement, Blue Motor Finance acquired the car from D and supplied it to Miss B. The agreement gave the cash price of the car as £14,995, with Miss B paying a £1,500 deposit.*

*Miss B describes that shortly after she collected the car the engine management light ("EML") lit up. She contacted D who asked her to bring the car back for inspection. However, as Miss B lived some distance from D she instead took the car to a local garage. Miss B says the garage diagnosed a faulty oil sensor and that she paid to have the oil in the vehicle replaced. Miss B says she experienced further issues with the car since collecting it, having covered around 8,000 miles.*

*In June 2023 Miss B contacted Blue Motor Finance to report problems with the car. She'd been driving on the motorway when the car lost power, with the electronic power control ("EPC") displayed on the instrument panel. Blue Motor Finance told Miss B to get a diagnostic report, which she duly obtained from a specialist garage. The diagnostic report showed a number of error codes relating to different components, including – but not limited to – the engine control module, fuel delivery system and various electrics.*

*In light of the problems and the EPC display, Miss B hasn't driven the car other than for its MOT at the end of July. The car didn't pass its MOT with the examiner citing damaged shock absorbers and a badly distorted wheel as major defects. This caused Miss B further concern, as an MOT in 2021 had indicated a potential problem with the shock absorber. Miss B felt that the subsequent MOT failure indicated that D hadn't fixed an existing problem.*

*Because Miss B was unable to use the car, she says she had to buy a cheap replacement in order to stay mobile. She incurred costs for diagnostic testing and in running the replacement car while having to keep up the payments on the original vehicle. She sought to reject the car and obtain reimbursement from Blue Motor Finance.*

*Blue Motor Finance wasn't willing to agree to Miss B's request. In its final response letter, issued on 5 July 2023, it acknowledged that faults were present on the car. However, Blue Motor Finance said that the evidence Miss B had supplied didn't confirm whether those faults were present or developing at the point it supplied the car to her. As this was a core*

*aspect of Miss B's claim that the car was not of satisfactory quality, Blue Motor Finance declined to meet the claim, and she referred matters to us.*

*Our investigator felt Miss B had provided sufficient evidence to support – at least in part – her claim that the vehicle Blue Motor Finance supplied was not of satisfactory quality. The investigator considered the intermittent problems indicated by the dashboard warning lights were indicative that something was wrong and that this had been recurring over the course of Miss B's use of the car.*

*The investigator wasn't persuaded that all the issues Miss B had experienced were down to a lack of satisfactory quality. She found the items such as the shock absorbers and the distorted wheel were more likely matters of ordinary wear and tear that was to be expected on a vehicle of that age and mileage. Nor did she consider the fault codes to be sufficient evidence of the car's quality – they didn't, for example, show the cause of the fault code or any underlying problem or repair that might be necessary.*

*Overall, our investigator considered the fair way to resolve matters would be for Blue Motor Finance to refund – with interest – the payments Miss B had made under the agreement since she stopped using the car, reimburse what she'd paid for the diagnostic report, and compensate her for her distress and inconvenience. The investigator also proposed that Blue Motor Finance recover the car to investigate the reason for the warning light and carry out any repairs needed to rectify that problem. She said if the repairs were unsuccessful, Miss B should be entitled to reject the car.*

*Blue Motor Finance didn't agree with the investigator's proposal. But it said it would arrange for an independent inspection to establish any underlying issue. That report was carried out by a third party "S", who compiled a report on the vehicle's condition. Both parties have seen this report, which says in summary:*

- The car was in good general condition and started first time with no unusual noises and no evidence of excessive smoke from the exhaust that might have suggested an underlying mechanical issue*
- The engine control unit noted no fault codes but diagnostic testing showed the charging system wasn't fully charging*
- During a test drive the EPC warning light displayed and the car went into 'limp mode'. A further diagnostic report indicated a turbo boost pressure fault*
- The vehicle displayed symptoms that were similar in characteristics to a partially blocked diesel particulate filter. That could suggest the limp mode was caused by a blocked exhaust filter, which should be cleaned along with placing a fuel system cleaning fluid in the fuel tank*
- The issues with the shock absorbers and the wheel were not indicative of defects present at point of supply, being either commensurate with ordinary wear and tear or accidental damage such as striking a pothole*
- Overall, the issues highlighted required rectification as general maintenance rather than being premature or suggestive that the car was not of satisfactory standard when supplied*

*Our investigator felt that the evidence from Miss B outweighed the report compiled by S. She wasn't persuaded to change her initial assessment, but amended her recommendation to require Blue Motor Finance to collect and carry out repairs to the car based on the information in the report.*

Blue Motor Finance didn't agree with this outcome, and the case has been passed to me for review and determination.

### **What I provisionally decided – and why**

Blue Motor Finance supplied the car to Miss B, a consumer, under a hire-purchase agreement, a form of credit-related regulated activity. As such, a complaint relating to that activity is covered by our compulsory jurisdiction, to which Blue Motor Finance is subject. Hire-purchase agreements entered into by consumers are covered by legislation including the Consumer Credit Act 1974 ("CCA") and the Consumer Rights Act 2015 ("CRA"), which incorporates certain terms into the contract to supply the car, including that it should be of satisfactory quality.

The initial issue with the oil sensor was rectified and so I can't say it speaks to any failure to meet the CRA requirements. Miss B notified Blue Motor Finance of other problems with the car in June 2023, some 10 months after it was supplied to her. Where issues are raised within the first six months there is a rebuttable presumption under the CRA that they were present at point of sale or supply. But that presumption doesn't apply at the point Miss B raised her concerns.

I need to consider whether the issues Miss B describes amount to a lack of satisfactory quality such that this contractual requirement has been breached. If so, does the information Miss B has provided indicate the issues were present or developing when she got the car?

The CRA says that quality of goods includes aspects such as appearance and finish, freedom from minor defects, safety and durability. According to the CRA explanatory notes, "the test of whether or not the quality of the goods is satisfactory is determined by what a reasonable person would consider satisfactory for the goods in question, taking into consideration all relevant circumstances including any description, the price and any public statements by the trader or producer or their representatives, such as statements made in advertisements or on the labels of goods."

There are undoubtedly things that Miss B is dissatisfied with in relation to the car. It's clearly disconcerting for warning lights to illuminate and the vehicle diagnostics show numerous fault codes. And there are at least some indications of problems with the car's electrical systems. S's report notes the charging system wasn't fully charging when it inspected the car, and Miss B mentioned issues with the hybrid system. That might point to a fault, or it might just suggest the battery is reaching the end of its serviceable life.

I don't consider these aspects alone sufficient to determine that the car wasn't of satisfactory quality. Warning lights and diagnostics are intended to alert the driver to a possible problem with the car, rather than being a fault in themselves.

There are various explanations for why an engine warning light might illuminate or a fault code might report. In my view, when raising her claim Miss B needed to provide more evidence of the underlying reasons for these warnings to demonstrate that they were connected to faults present or developing when the car was supplied, or to have placed Blue Motor Finance under any obligation to accept that the car failed to meet the test of satisfactory quality. I'm not currently minded to conclude Blue Motor Finance acted unfairly in its response to Miss B.

There are other issues with the car that are more readily identifiable. The problems of the shock absorbers and the wheel damage, for example. And the inspection by S highlighted an issue with the turbo boost pressure that caused the car to operate in limp mode. But I'm not satisfied there's persuasive evidence that those problems were present or developing

*when the car was supplied to Miss B. It's for Miss B to demonstrate that this is more likely than that they are attributable to events after the car was supplied to her.*

*Noting the comments in S's report about general wear and tear through ordinary use, taking account of the age and mileage of the car, I think as a minimum Miss B would need to provide a report of equivalent status by a suitably qualified engineer in order to be able to overcome that evidence. If she is able to do so, I would expect Blue Motor Finance to review its position in light of such evidence.*

*I'm conscious that Miss B has made alternative transport arrangements at no little cost to her, and I'm further aware of her comments about having lost faith in the car. The vehicle has been off-road for some time and I can see from the photographs Miss B has supplied that its general condition is deteriorating.*

*Given my findings, I'm not proposing to make any award or require Blue Motor Finance to take any action to resolve Miss B's complaint. However, I would observe that while the car remains in Miss B's possession, she might well be under an obligation to ensure it's kept in a reasonable condition. This could be a relevant factor in the event of any future claim she might make."*

I invited both parties to let me have any further comments they wished to make in response to my intended conclusions.

### **Response to my provisional decision**

Blue Motor Finance hasn't responded to my provisional decision. But Miss B has done so. She's submitted photos and other evidence in support of her position, along with a summary of her reasons for seeking to pursue her claim.

Miss B says she's not willing to pay to have the car to be taken to a garage for work to be carried out, although she has indicated she would be prepared to arrange for an inspection by a qualified engineer at her property.

### **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.

I've thought about what Miss B has said in response to my provisional findings, and the material she's provided. I'm aware that in the course of her response she has again made reference to the issue with the shock absorbers, and to the report compiled by S. I don't find there's anything new that's been said; I addressed the question of whether the issues Miss B currently reports with the shock absorbers should be treated as a fault present when the car was supplied. I've not seen anything that leads me to a different conclusion.

Miss B has queried the extent to which S's report can be relied upon. I'm satisfied that the engineer that carried out the inspection was suitably qualified to do so, and that it is reasonable to place reliance on the content of their report. There does seem to have been some confusion that has arisen due to the way in which the report was worded, which has led to the wrong impression that the car is a diesel variant.

The report does make clear the car is multi-fuel, consistent with the car being petrol/electric hybrid. The reference to diesel is in the context of the symptoms found during the inspection having "...all the characteristics of a partially blocked DPF (diesel particulate filter)...", rather

than saying the car is diesel-powered. But even if I set aside the report, it wouldn't result in being any closer to establishing the core issue of whether the car was of satisfactory quality.

As I've previously observed, the warning lights and diagnostics suggest that there's something occurring with the car that needs to be looked into. But that isn't enough to demonstrate that the car was not of satisfactory quality when Blue Motor Finance supplied it to her. The question of the root cause of any problem remains open.

Noting the point at which Miss B notified Blue Motor Finance of the problems with the car it falls to her to show both that the current problem amounts to a lack of satisfactory quality and that this was present or developing at the point the car was supplied. In my view, to make a successful claim Miss B would need to provide stronger evidence that the underlying reason for the failure is attributable to the car being defective or insufficiently durable.

I can quite understand why Miss B isn't keen to incur additional expense by having the car taken to a garage, and if she wants to engage a third party to examine the car at its current location, it remains open to her to do so. Blue Motor Finance should be alive to the possibility that if Miss B does subsequently obtain and present it with further evidence in this regard, it might need to review its position.

I sympathise with Miss B, as the current circumstances suggest she is going to have to pay someone to establish the root cause in order to pursue her claim. It's possible that she might be able to recover any reasonable outlay on this work, if it produces the evidence necessary to prove her claim. But as things currently stand, I can't reasonably expect Blue Motor Finance to pay for the work or to agree that Miss B be permitted to reject the vehicle.

After careful consideration, for the reasons I've set out here and in my provisional decision, I'm not minded to reach a different conclusion. I find that Blue Motor Finance has not treated Miss B unfairly by declining to accept her claim that the car it supplied to her was not of satisfactory quality.

But for the sake of completeness, I should add that nothing I've said here should be taken as preventing Miss B in future from obtaining and providing additional evidence to Blue Motor Finance that might ultimately lead to a successful claim.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 5 August 2024.

Niall Taylor  
**Ombudsman**