

## **The complaint**

Mrs P complains about the quality of a car she acquired through a hire purchase agreement financed by Black Horse Limited.

Mrs P is being represented in this complaint by her daughter, Miss P. But for ease of reference I'll refer to Mrs P directly throughout my decision.

## **What happened**

In May 2018 Mrs P acquired a used car through a hire purchase agreement.

In September 2019 the clutch pedal was sticking, and repairs were completed by a manufacturer garage.

In November 2020 the clutch failed. Recovery agents told Mrs P that the previous repair work, done as part of a safety recall, wasn't up to standard. Additional repairs were undertaken by the manufacturer garage.

In December 2020 the car was juddering, and it cut out. The timing chain, VT valves and a camshaft sensor were replaced, along with an oil and filter change. Mrs P says she paid around £1200 for this work.

In January 2021 there were two sensors replaced.

In February 2021 the manufacturer garage undertook diagnostic work on the car because the engine management light was on and it wouldn't start. They diagnosed low pressure in cylinder 1. The cylinder head would need to be removed and additional tests carried out to determine the full extent of the fault, but they suspected that a new engine would be needed.

Mrs P complained to Black Horse about the quality of the vehicle. Black Horse sent Mrs P their final response in March 2021. They accepted that the clutch had needed to be repaired, but they said Mrs P had received a remedy for this fault. They offered £150 compensation for distress and inconvenience in needing to arrange these repairs. They didn't uphold Mrs P's complaint about the quality of the vehicle. They said Mrs P had been able to use the car for three years and travel approximately 20,000 miles, so they didn't think the car was of unsatisfactory quality at the time it was supplied. They also suggested that the vehicle hadn't been serviced in line with the manufacturer's guidelines which had impacted the fault.

Unhappy with this, Mrs P brought her complaint to this service. Our investigator looked into things for Mrs P. She felt that the car hadn't been serviced in line with manufacturer guidelines, and as the garage had been unable to confirm the fault, the car was likely of satisfactory quality at the time it was supplied to Mrs P.

Mrs P disagreed. She said the car had been taken for a yearly service, and as soon as it went wrong it was taken to a garage. She expected the car to last more than two years before it failed.

I issued a provisional decision on this complaint in January 2022 recommending that it was upheld. I made the following provisional findings:

*In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Black Horse as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.*

*The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the “quality of the goods is satisfactory” To be considered “satisfactory” the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car’s history.*

*The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.*

*Here, the car was acquired used with a cash price of around £12,000. It was two years old and had travelled approximately 15,000 miles at the time of supply. With this in mind, I think it’s fair to say that a reasonable person would expect the level of quality to be higher than an older, cheaper, higher mileage vehicle.*

*Black Horse have suggested that the vehicle hasn’t been serviced in line with manufacturer guidelines, which has impacted the fault. I haven’t seen any evidence that this is the case. The garage that inspected the vehicle haven’t said that the fault has been caused by poor maintenance.*

*I’ve seen evidence that Mrs P presented the car for an annual service, and these are recorded within the service book for this vehicle. So, I’m persuaded by this that the car has been serviced as it should’ve been.*

*I’m persuaded that there is a fault with the car. It won’t start, so there is evidence of a serious problem with it. The inspecting garage has identified low pressure in one of the cylinders. Further diagnostic work is needed to determine exactly what repairs are required, but the garage have told Mrs P that they believe the vehicle will require a new engine.*

*Mrs P has been able to travel around 20,000 miles over around three years in the vehicle, making it around five years old with approximately 35,000 miles travelled at the time the fault occurred.*

*Black Horse say that as Mrs P has had the car for so long, and has travelled so far, the fault couldn’t possibly have been present or developing at the time it was supplied to her. I accept that, but satisfactory quality also includes an element of durability. That is, the components of the car can be expected to function without any significant issue or problem for a reasonable period of time.*

*Mrs P’s car has suffered engine failure. The exact cause of this hasn’t been determined, but the car is not driveable, and the evidence suggests that it will require a new engine to bring it back to a satisfactory condition.*

*All things considered, I don’t think the reasonable person would expect the car to have suffered such catastrophic engine failure that results in the need for a new engine at this age and mileage. It seems that there was likely an overall issue with the vehicle which has led to a premature failure of parts. The issue doesn’t appear to be one of normal wear and tear,*

*nor have I seen any evidence that it was caused by not servicing the vehicle, or by driving style or third-party damage.*

*On the balance of probabilities, I'm persuaded that the car was not reasonably durable, and therefore was not of satisfactory quality at the time of supply.*

*Having made that finding, I need to decide what, if anything, Black Horse should do to put things right.*

*The Consumer Rights Act sets out the remedies available where goods are considered not to be of satisfactory quality and one of the remedies is to allow an opportunity to repair the goods. That repair should be done in a reasonable time, and without significant inconvenience to the consumer.*

*Mrs P has not had use of her vehicle since February 2021. The cause of the problem with the car hasn't been identified, and it's not clear exactly what is required in order to affect a repair without further costly diagnostic work. It's not clear if a repair will be successful, will be long lasting, or how long it might take to complete. So, it's likely that Mrs P will be put to significant inconvenience, in addition to that which she's already experienced, in arranging a repair when it's not clear that it will be successful and further work and time might then be required to return the car to a satisfactory state. It would also mean that Mrs P has to wait for an unknown period of time before she is able to drive her car again.*

*All things considered, I don't think Mrs P should have to accept repair of the vehicle and should be allowed her final right to reject the car. This would mean the car is collected from Mrs P and the finance agreement is brought to an end. The agreement and any adverse information should be removed from Mrs P's credit file.*

*Mrs P has been unable to drive the car at all since February 2021 and hasn't had use of any replacement or courtesy car in the interim. So, I think it's fair that Black Horse refund 100% of her monthly payments relating to use of the car from 1 February 2021, plus interest.*

*Mrs P has paid for various repairs to the vehicle in an attempt to return it to a satisfactory condition, and I think these should be refunded, plus interest. Mrs P will need to provide a breakdown and evidence of payment for these repairs to Black Horse.*

*Mrs P has been put to distress and inconvenience in arranging for repairs and inspections, and alternative transport whilst the vehicle has been unavailable. Black Horse should pay Mrs P £150 compensation to reflect this.*

*Mrs P responded to my provisional decision. She said she has been unable to drive the car since December 2020 when it was taken to a local garage. It was transferred to the manufacturer garage in February 2021.*

*Black Horse accepted my provisional decision. They said they require documents confirming the cost of repairs in order to refund these to Mrs P.*

### **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.*

*As neither party has raised any new arguments or provided new evidence in relation to the satisfactory quality of the vehicle, for the reasons I've explained above, I think Mrs P should be allowed her final right to reject the vehicle.*

This would mean the car is collected from Mrs P and the finance agreement is brought to an end. The agreement and any adverse information should be removed from Mrs P's credit file.

Mrs P has said she was unable to drive the car from December 2020. I can see that when Mrs P brought her complaint to this service, she confirmed that the local garage diagnosed faults and attempted repairs, but when they tried to start the car it wouldn't start, and the car was sent to the manufacturer garage for inspection.

Mrs P's testimony has been consistent on this point, so I'm persuaded that she's been unable to drive the car since December 2020. Mrs P hasn't had use of any replacement or courtesy car in the interim. So, I think it's fair that Black Horse refund 100% of her monthly payments relating to use of the car from 1 December 2020, plus interest.

As I set out in my provisional decision, Mrs P has paid for various repairs to the vehicle in an attempt to return it to a satisfactory condition, and I think these should be refunded, plus interest. Mrs P will need to provide a breakdown and evidence of payment for these repairs to Black Horse.

Mrs P has been put to distress and inconvenience in arranging for repairs and inspections, and alternative transport whilst the vehicle has been unavailable. Black Horse should pay Mrs P £150 compensation to reflect this.

### **My final decision**

My final decision is that I uphold this complaint and I require Black Horse Limited to:

- End the finance agreement and collect the car at no further cost to Mrs P.
- Refund 100% of Mrs P's monthly rental payments that relate to use of the car from 1 December 2020 plus 8% simple yearly interest, calculated from the date of payment to the date of settlement.
- Refund Mrs P for the cost of repairs completed to try and rectify the fault, plus 8% simple yearly interest, calculated from the date of payment to the date of settlement, upon production of an invoice for this work by Mrs P.
- Pay Mrs P £150 compensation to reflect the distress and inconvenience caused.
- Remove the finance agreement from Mrs P's credit file.

If Black Horse considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mrs P how much it's taken off. It should also give Mrs P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 18 March 2022.

Zoe Merriman  
**Ombudsman**