

The complaint

Mrs B complains about the quality of a used car that was supplied through a hire purchase agreement with Black Horse Limited (BHL).

What happened

In December 2017, Mrs B acquired a used car through a hire purchase agreement from BHL. The car was registered in September 2016, which means it was about a year old and had travelled 27,170 miles when it was supplied to Mrs B. The cash price of the car was £11,450.65.

In June 2022 Mrs B's car broke down and was recovered to a third-party garage. Mrs B said she was told the car's engine had failed, so raised a complaint to BHL. Mrs B said she didn't think the car was of satisfactory quality when it was supplied to her.

In July 2022 BHL issued their final response to her complaint. They didn't uphold it. BHL advised that the lack of servicing of the car contributed to the engine's failure. BHL said Mrs B confirmed she only had it serviced once since she acquired it.

Unhappy with their decision, Mrs B brought her complaint to our service for investigation. In her complaint form Mrs B said that she wanted BHL to arrange and cover the cost to have the car collected and assessed by the manufacturer. Our investigator recommended that Mrs B's complaint should not be upheld. They felt that the lack of servicing was likely to contribute to the failure of the engine.

Mrs B responded to our investigator to say she was told by a mechanic that the faults were not related to servicing, and were likely to be as a result of a known issue with that type of engine. As our investigator's view remained unchanged, Mrs B asked that her complaint be referred to an ombudsman for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The agreement in this case is a regulated hire purchase agreement. As such, this service is

able to consider complaints relating to it. BHL is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that “*the quality of the goods is satisfactory, fit for purpose and as described*”. To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that BHL supplied Mrs B with a used car that had travelled 28,170 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage.

From the information provided I think it's likely there was a fault with the car's engine. This is apparent from the breakdown recovery report issued on 26 June 2022, which stated that they were unable to fix the vehicle and had recovered it to a third-party garage.

Both parties refer to an issue with the car's engine, the breakdown report doesn't confirm the nature of the issue nor have I seen any other evidence of a specific fault; for example in the form of diagnostics or an investigation report. However, BHL have said they'd spoken with the third-party garage who confirmed to them there was an issue with the car's engine.

So, having considered the car had a fault with the engine, I've considered whether it was of satisfactory quality when it was supplied to Mrs B.

Having reviewed the terms and conditions of the hire purchase agreement, in section 4.2 it says: ‘*you must have the goods serviced in accordance with the manufacturer's recommendations and any applicable warranty. The servicing record and registration document must be kept up to date and in your possession*’.

Mrs B confirmed in her complaint form, and during a phone call to our investigator that she'd had the car serviced once since she acquired it. Mrs B said that was due to the restrictions around Covid-19. I recognise the unprecedented challenges that were faced by consumers during the Covid-19 pandemic.

However, in reference to the institute for government, the restrictions around Covid-19 in England, started in March 2020 and lasted, with varying levels of severity, for around 12 months. In consideration that Mrs B had use of the car for over four years before it broke down, I'm persuaded she would have had the opportunity to service her car more than once, and in line with the manufacturer's guidance.

According to the manufacturers servicing recommendations, Mrs B should have arranged for her car to be serviced on about four occasions.

BHL provided us with the service record for Mrs B's car. This shows the car was serviced on 29 September 2017 prior to being supplied to Mrs B, while it had 28,170 miles. It was serviced again on 14 August 2020 when it had 44,700 miles. So since being supplied the car it was serviced after about three years and after it had travelled 16,530 additional miles.

The breakdown report confirmed the car broke down in June 2022 with a mileage of 55,803. So up to the point of the breakdown, Mrs B had use of the car for 22 months and had travelled 11,103 miles since it was last serviced in August 2020.

As part of a car's service, essential checks are carried out on certain components to ensure they're working as well as they should be. In general, a car's service can impact engine performance and efficiency.

The manufacturers service recommendations for Mrs B's car is for a service to be carried out every twelve months or 10,000 miles whichever is sooner. This is confirmed on the manufacturer's website and also in BHL's final response.

BHL didn't uphold Mrs B's complaint as they felt the lack of servicing on the car had directly impacted the failure of the engine. From the evidence provided, and in consideration of how important servicing is for a car's performance and lifespan. I'm persuaded the engine failure was impacted by the lack of servicing.

I recognise Mrs B's strength of feeling that the failure was linked to a known issue with her brand and type of car. However, BHL advised the particular issue Mrs B raised concerns about, was only present in cars manufactured between 2012 and 2015. And having checked the manufacturers website, I couldn't see that Mrs B's car had a recall in relation to that issue.

In addition, Mrs B hasn't provided any specific evidence about why she believed the engine has failed, for example in the form of a diagnostics or inspection report confirming the cause of the engine's failure.

As I've concluded that the car was of satisfactory quality at the point it was supplied, I don't require BHL to take any action in respect of this complaint.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances, I don't uphold Mrs B's complaint against Black Horse Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 3 February 2023.

Benjamin John
Ombudsman