

## **The complaint**

Mrs G complains that a car acquired under a hire purchase agreement with Black Horse Limited ('Black Horse') wasn't of satisfactory quality.

Mrs G is represented in this complaint by Mr G, but for ease of reference I have referred to Mrs G throughout this decision.

## **What happened**

In February 2023, Mrs G was supplied with a car through a hire purchase agreement with Black Horse. The car was nine years old and had covered approximately 77,000 miles when the agreement started. The agreement was for 60 months, and the cash price was £10,198.

In June 2023 Mrs G got in touch with the dealership and explained there was a fault with the air conditioning, she was told to make an enquiry under the warranty. Mrs G says no one informed her when the repairs were likely to take place and so she booked the car into a local garage, the vehicle was repaired for £114.

But the repair didn't correct the fault. So, Mrs G contacted the dealership again and complained about the amount of time she would've to wait for the repairs to be carried out. When she said she didn't hear back, she decided to drop the vehicle off at the dealership. Mrs G said she informed it that she didn't want the vehicle back and wanted a refund of the money already paid.

On 4 July 2023, the dealership got in touch with Black Horse and confirmed it was in possession of the car and was awaiting investigation into the fault. And that the car had been scheduled in for a repair on 14 August 2023. On 15 August 2023 the dealership confirmed the repairs had been carried out and this was communicated to Mrs G. Black Horse upheld Mrs G's complaint confirming that the repairs were necessary and also offered £100 in compensation.

Mrs G remained unhappy and so referred her complaint to this Service. Our Investigator looked into things and upheld the complaint. She explained in her opinion that the car wasn't of satisfactory quality. To put things right, she suggested Black Horse pay a refund to cover the cost of any loss of use whilst the car was being repaired by the dealership, a refund of £114 which Mrs G incurred in getting the car initially repaired.

Mrs G remained unhappy, so the complaint has been passed to me to decide.

## **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.

The hire purchase agreement entered by Mrs G is a regulated consumer credit agreement and this Service is able to consider complaints relating to it. Black Horse is also the supplier of the goods under this type of agreement and responsible for a complaint about its quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mrs G entered. Because Black Horse supplied the car under a hire purchase agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes the general state and condition, and other things such as its fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

Satisfactory quality also covers durability. For cars, this means the components must last a reasonable amount of time. Of course, durability will depend on various factors. In Mrs G's case the car was used and covered approximately 77,000 miles when she acquired it. So, I'd have different expectations of it compared to a brand-new car. Having said that, the car's condition should have met the standard a reasonable person would consider satisfactory, given its age, mileage, and price.

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 Black Horse can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mrs G to show it was present when the car was supplied.

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

Mrs G has said she doesn't want the car back and decided to leave it at the dealership. The CRA sets out that Mrs G has a short term right to reject the car within the first 30 days if the car is of unsatisfactory quality, however, she would need to ask for rejection within that time. Mrs G would not be able to retrospectively exercise her short term right of rejection at a later date.

Mrs G purchased the car in February 2023. Months later, in June 2023 she complained she started to experience problems with the car. After getting in touch with the dealership and not receiving a response, she said she lost faith in the car and decided to leave the vehicle with it. Mrs G may have spotted faults with the car within the first 30 days. But even if I accept there were faults which made the car of unsatisfactory quality, Mrs G only had a short term to reject the car within the first 30 days, and only if she expressed her wish to do so. I've not seen any evidence which shows that she expressed her wish to reject the car within that time and later she did exercise her right to repair.

The CRA says that, if the car acquired wasn't of satisfactory quality, or not as described, then Mrs G would still be entitled to return it after 30 days, but she wouldn't have the right to reject the car until she has exercised her right to repair – this is called her final right to reject. Mrs G doesn't have an automatic right to return the car if there's a fault. For me to conclude that Mrs G can now exercise her right to reject the car, I would need to see that the car wasn't of satisfactory quality and that Black Horse's one attempt at the repair has failed.

Black Horse acknowledged it had a potential liability in respect of the quality of goods it supplied and so it liaised with the dealership to have the repairs carried out. It's generally accepted there was a fault with the air conditioning unit, the supplying dealer confirmed the interior temperature sensor needed to be recalibrated. I do think this fault was present when the vehicle was supplied so I don't consider the vehicle was of satisfactory quality.

In August 2023 the dealership diagnosed the car, and said the fault was fixed, at the time this was communicated with Mrs G. As the car was ready for collection it was Mrs G's choice not to do so I have nothing to suggest the repair has not been successful and so I don't think it would be fair and reasonable for Mrs G to be able to now exercise her right to reject the car.

If Mrs G now chooses to collect the car and finds there are faults with the car, I would remind her that Black Horse would only be liable for faults that were present or developing at the point of supply. And it might be considered that any faults may have come about because the car essentially has been abandoned for more than a year, which would mean Black Horse wouldn't be liable for these.

It is now for both Mrs G and Black Horse to iron out how to move forward and satisfy the agreement.

As I said above, most likely the car was not of satisfactory quality at the time of supply and this matter caused Mrs G distress and inconvenience to resolve it. I'm aware she wasn't informed when and if the repairs were going to be carried out, and there was a lot of uncertainty. She also took the car to an independent garage and paid for the repair. I don't think she would've needed to do that had Black Horse supplied her with a car that was of a satisfactory quality at the point of supply.

But I think Black Horse's offer of £100 in compensation fairly reflects the distress and inconvenience caused to Mrs G. And it has also agreed to refund the costs of the initial repair.

Furthermore, whilst the car was being fixed Mrs G would've been without the use of the car for some weeks. Although I'm aware she has ceased making payments towards the car, if these were to resume then she shouldn't be expected to pay one monthly instalment to account for the time when she couldn't use the car.

### **My final decision**

I uphold this complaint against Black Horse Limited and require it to do the following:

- Waive one monthly installment to account for the car being repaired and out of use.
- Reimburse Mrs G £114 for the cost of repairs she incurred.
- Pay 8% simple yearly interest\* on the reimbursement from the date of payment to the date of settlement.
- Pay Mrs G £100 in compensation for the distress and inconvenience caused if this has not yet been paid.

\*If Black Horse Limited consider tax should be deducted from the interest element of my award it should provide Mrs G a certificate showing how it's taken off so that Mrs G can reclaim the amount, assuming she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 4 December 2024.

Rajvinder Pnaiser  
**Ombudsman**