

The complaint

Mr G has complained about the quality of a car provided on finance by Black Horse Limited (BH).

What happened

BH supplied Mr G with a used car on a hire purchase agreement in May 2022. The cash price of the car was around £23,500 and it had covered around 25,000 miles since first registration in October 2018. The hire purchase agreement required payments of around £360 for 48 months followed by a final payment of around £10,600. Mr G paid a deposit of £2,000.

Mr G said the car's check engine light came on when he was travelling back from a day out in September 2023. He took it to a service centre that he said was approved by BH to get a diagnostic. They suggested the Diesel Particulate Filter (DPF) was blocked and needed cleaning. Mr G said the manufacturer told him it would only replace the DPF at a cost of £1,200 so he found another company to clean it. Then he had the sensor replaced when that didn't work. He then found another garage that looked into the rest of the exhaust system and took photos of blockages. Parts were cleaned, but still didn't resolve things so he contacted BH in November 2023. The mileage by this point was around 39,000. He said repairs had cost about £3,000 since he'd been in possession of the car.

Mr G also had another complaint about faults with the car in 2022, but this was dealt with under another final response from BH and wasn't referred to us at the time. BH said the DPF faults weren't related to previous repairs and the onus was on Mr G to show that the fault was present or developing at the point of supply. They declined to help any further.

Mr G referred his complaint to this service, and it wasn't upheld by an investigator. The investigator said it wasn't clear what the actual fault was, and it was unlikely that it was present or developing at the point of supply, so BH didn't need to do anything further. Mr G did not agree, he says it is unfair that he should suffer the financial burden of paying for repairs, considering this isn't the first major fault that occurred. He said he expected the car to be more reliable.

Mr G said that nobody has been able to diagnose what the issue is, so it's unfair that he should have to continue to pay. He wants to end the agreement and hand the car back while also recovering the cost of repairs he paid for.

Mr G said he was going to take the car to the manufacturer to be diagnosed in January 2024, but we've not received a report. He asked for the complaint to be decided by an ombudsman, so the complaint has been passed to me.

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 read and considered the evidence submitted by both parties but I'll focus my comments on what I think is relevant. If I don't comment on a specific point it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. BH is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is of particular relevance 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".

The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of supply and the car's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

BH aren't required to supply a working car for the whole of the agreement. Unfortunately due to the nature of mechanical engineering sometimes things go wrong that can't be anticipated, and it is the consumer's responsibility to pay for maintenance and repairs. But the goods do need to be of satisfactory quality at the point of supply.

When Mr G acquired the car in May 2022 the mileage was around 25,000 and the cash price was around £23,500. The car was first registered in October 2018. The mileage at supply was relatively low considering its age, but it wouldn't be unreasonable to expect the car to be showing some signs of wear and tear, and that might include the underlying components such as the DPF. The DPF can suffer wear and tear as it acts like a filter and can become blocked. A DPF can be affected by the way a car is driven and the type of driving that occurs.

In May 2022 Mr G reported issues relating to a wiper blade, brakes squeaking, a parking brake fault and the ABS warning light illuminating. In October 2022 BH agreed the car was not of satisfactory quality and a repair was agreed. BH issued their final response in October 2022. This complaint was not referred to our service, however I mention it here for context about the fault that is now reported.

Mr G first reported the issue with the DPF to BH in November 2023. I can see from an invoice he provided that the mileage was around 39,000 in October 2023. By this point he had already had the DPF cleaned and serviced, and further work had been carried out by third parties.

Mr G hasn't been able to provide evidence such as an independent report which indicates that the problem with the DPF was present or developing at the point of supply. I understand he has yet to have the exact fault diagnosed. If the DPF had been defective when the car was supplied, I believe Mr G would have likely experienced problems with it much sooner. I

think it is unlikely that he would have been able to cover more than 14,000 miles before the problem arose.

BH is responsible for the quality of the car when it was supplied and not ongoing issues. The CRA states that where goods are found not to have conformed to the contract in the first six months, it is presumed the goods did not conform to the contract at the time of supply, unless the supplier can prove otherwise. In this case as around 16 months had elapsed since the goods were supplied to Mr G, given the age and mileage of the car, and that there is no evidence linking earlier faults, I find it unlikely the goods were not of satisfactory when supplied.

I appreciate that Mr G feels that the legislation is unfair because it imposes a burden on him to prove the fault was present or developing at the point of supply. The legislation doesn't specifically say that the burden is on Mr G, however as a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the car of unsatisfactory quality.

Mr G says that there were two significant faults in two years which is unfair. While not part of this complaint, the first fault was dealt with by a repair. So the car was brought back to conforming to the contract by the first repair, which is the requirement under the CRA. The second fault hasn't shown to be related.

Given the age and mileage of the car when it was supplied and taking into account how long Mr G has been in possession, and the mileage covered, I think it was for Mr G to show that the second fault was present or developing at the point of supply. Without that and having considered the available evidence, and what is most likely, I don't think BH's response to the complaint was unfair.

I appreciate my decision will be disappointing to Mr G, but I don't find I have the grounds to instruct BH to cover repair costs or allow him to leave the agreement at no further cost.

My final decision

For the reasons set out above my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 June 2024.

Caroline Kirby
Ombudsman