

## **The complaint**

Mr B complains about the quality of a used car he acquired using a hire purchase agreement with Black Horse Limited ('Black Horse'). Mr B complains that the vehicle he acquired isn't of satisfactory quality.

## **What happened**

Mr B acquired a used car in April 2023. The car was first registered in June 2014 and it had travelled 41,194 miles at the time of sale.

To acquire the car Mr B started a hire purchase agreement. The vehicle had a retail price of £18,730. Mr B paid a £2,851 deposit meaning £15,579 of the car price was financed. Mr B also purchased 'GAP' insurance and cosmetic protection which were also financed.

The hire purchase agreement was to be repaid through 60 monthly instalments of £373.20. If Mr B made repayments in line with the credit agreement, he would need to repay a total of £24,137.60 for the car and the other products.

Below is a summary of the issues complained about by Mr B and the investigation and repair work carried out by an independent garage and an independent reporting company.

I've noted that the car failed it's MOT just before it was due to be supplied to Mr B. This was due to worn tyres and a problem with the lights. The tyres and some of the bulbs were replaced before Mr B acquired the car. I don't think this had any impact on the faults that Mr B is now complaining about.

Mr B said that two weeks after he acquired the car, he noticed a loss of coolant. He said he contacted the dealership at this point but didn't receive any assistance from them. As far as I can see, there isn't any record of the contact that Mr B says took place at this time.

Mr B took the car to a local garage at the end of May 2023, and he paid for a number of repairs to it. It's not clear how far he had driven the car at this point. The repairs were:

- A repair to the fuel filter housing.
- A repair to the engine mount.
- The air conditioning was serviced, and the car was filled with anti-freeze.

The cost of these repairs was £743.80 and this is the amount that Mr B thinks Black Horse should provide him in compensation.

Mr B complained to Black Horse about these problems saying that he was still concerned about the coolant level in the car, and about the other problems that had led to the repairs. He was also concerned that he had found out that parts of the car body had been repaired, or resprayed, at some point in the past. Mr B said he has been caused a large amount of hassle and worry trying to get these issues resolved.

Black Horse asked an independent reporting company to look into the problems Mr B had said he was having with the car. The report was completed at the end of July 2023 and the car had covered 47,243 miles at this time. It noted that the car was likely to have covered 43,000 miles at the time of complaint in late June 2023. Although this appears to have been an estimate and Mr B says the distance he had driven was much lower than this.

The report said that the problems Mr B had noted, and had repaired, would largely be down to wear and tear. The conclusion to the report said that, in summary:

- The paintwork is acceptable for the age and mileage of the vehicle, the customer was not aware of any problems with this until it was noted to him by a garage.
- The engine mount oil leak was due to the car's age and mileage, and so is due to ordinary wear and tear.
- It could not be determined that the car was leaking coolant. But there could potentially be a very slow leak somewhere in the system, but this would also be due to ordinary wear and tear.

The report went on to say that: *'the vehicle is considered overall to be a fair and reasonable example of the type being in a generally reasonable condition and generally considered to be consistent with the type for the age and indicated recorded mileage in most areas.'*

Black Horse considered this complaint and it didn't uphold it. It said that the independent report had shown that the faults that Mr B had reported would be due to fair wear and tear and so they didn't mean that the car was of unsatisfactory quality.

Mr B didn't agree with this and brought his complaint to the Financial Ombudsman Service.

Our Investigator didn't uphold Mr B's complaint over a series of correspondences with Mr B. She said that it was established that there were likely to have been faults with the car, as the independent report did show this. But she wasn't persuaded that this meant the car was of unsatisfactory quality at the time of sale. This is because these issues were due to ordinary wear and tear. And the repairs to the bodywork had been done to a reasonable standard so the car wasn't mis-described at the time of sale. Mr B had also been able to drive the car a significant number of miles.

Mr B didn't agree with the Investigator. He said he hadn't used the car very much when the first faults had appeared, and the dealership had refused to deal with them. But he said he didn't have a record of when he contacted the dealership, and the dealership also had no information about this.

There was some further correspondence, but no new issues were raised. Because Mr B didn't agree, this matter has been passed to me to make 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 need to have regard to 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.

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 ('CRA') 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 all the other relevant circumstances. So, it seems likely that 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 sale and the car's history.

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 can be aspects of the quality of goods.

This car was a few months under nine years old when Mr B acquired it and it had travelled around 41,000 miles. The cash price was about £19,000 at that time. I think a reasonable person would accept that such a vehicle would probably have some parts that are worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a new vehicle.

But there's also a reasonable expectation that a vehicle will be relatively durable - taking into account its age, price and mileage at the outset. So even though the vehicle wasn't new Mr B should have been able to use it for a reasonable period of time before it needed significant work.

### **Has the car Mr B acquired needed some repairs**

I agree that there have been some faults with the car. Mr B has had the car repaired and the independent report did identify that the engine mounts had a (minor) oil leak at some point. I don't think there is any dispute that the car has needed some work in the time that Mr B has had it.

### **Was the car of satisfactory quality bearing in mind these repairs**

The maintenance to the car happened a relatively short time after Mr B acquired it, so, I need to consider whether it was durable. If parts or systems of the car fail prematurely, this might indicate there was already a problem with the car when it was supplied.

The crux of this complaint is whether it is reasonable to say that the car Mr B acquired did have significant faults when he purchased it, and that this meant it wasn't of satisfactory quality. Or is it fair to say that the issues with the car were the result of ordinary wear and tear that would be expected of a car that was nearly nine years old at the time of purchase and had already travelled over 41,000 miles.

The starting point is the independent report which does clearly say there was possibly a minor problem with the cooling system, which would be due to wear and tear. And the earlier oil leak would also be due to normal wear and tear. And that the paintwork had been repaired to an acceptable standard. So, I think it's fair to say that the report didn't say that the car wasn't of satisfactory quality.

I appreciate that Mr B has said that he didn't think some of the tests the independent reporting company performed went far enough. I'm not persuaded that this is the case. For example, the report is specific in that it said that the car was driven far enough to have

allowed the coolant to expand and allow the engineer to judge whether the car had a coolant leak. And the business that did the report found that no leak was present.

The car had travelled a significant distance before Mr B had acquired it and, where this is the case, it is to be expected that some parts will need repair and or maintenance and sometimes sooner rather than later. Looking at everything I've been provided, I think this is the case here. The car needed some maintenance rather than having a significant faults.

And, as far as I have been made aware, Mr B has been able to use the car as normal. And when he acquired the car in April 2023 it had travelled 41,194 miles. But by the end of July 2023 Mr B had driven the car 47,243 miles. An increase of just over 6000 miles. I would have expected the car to have needed some work given this usage. And even though the repairs were needed early on, I don't think they fall outside of what I think is reasonable to expect.

So, overall, I think the issues that Mr B has had with the car are more likely to be maintenance that will occur from time to time with the normal use of a car and aren't indicative of systematic problems or poor quality that was present at the time he acquired it.

Mr B has said that the car has been resprayed at some point, and it doesn't seem to be in dispute that parts of the paintwork have been repaired. But I understand that Mr B was made aware of this by a garage and didn't notice it himself. And it is the case that used cars can have bodywork repairs in the past, but this doesn't mean they aren't of satisfactory quality. And I don't think this is the case here.

And I don't see why Black Horse would need to declare any earlier repairs that were made to the car bodywork if it was aware of them. In the same way it wouldn't normally do this for any other ordinary repairs or maintenance the car may have had.

Mr B has referred to other decisions the Financial Ombudsman Service has made. A crucial part of our service and the way we consider complaints is that we consider each complaint on its own merits and its own individual circumstances. So, my decision won't be impacted by a decision made on a different complaint, no matter how similar Mr B feels the situation is.

Mr B has outlined some later issues with the car that have come about because of a recall. As far as I can see Black Horse hasn't investigated these issues and it's not clear if Mr B has complained about them. If Mr B thinks it's the right thing to do, he should complain to Black Horse in the first instance.

Overall, given all of the above, I'm not persuaded that the car Mr B acquired wasn't of satisfactory quality. And I don't think Mr B's complaint should be upheld.

### **My final decision**

For the reasons set out above, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 January 2025.

Andy Burlinson  
**Ombudsman**