

The complaint

Mrs T is unhappy that a car supplied to her under a hire purchase agreement with Black Horse Limited was of an unsatisfactory quality.

What happened

In September 2022, Mrs T was supplied with a used car through a hire purchase agreement with Black Horse. She paid a £5,884 deposit and the agreement was for £7,893 over 49 months, with 48 monthly payments of £143.31 and a final payment of £3,646. At the time of supply, the car was almost three and a half years old and had done 22,047 miles.

In early 2023, Mrs T started having problems with the car and the head gasket was replaced under warranty. In December 2023, Mrs T had further problems with the car – there was a coolant leak and a thermostat issue.

The car was independently inspected, and the engineer who carried out this inspection said that, as Mrs T had been able to drive around 16,000 miles since the head gasket replacement, the current issues weren't present or developing at the point the car was supplied to her. Given this, the warranty company didn't agree to repair the car and Black Horse didn't think they needed to do anything more.

However, the warranty company subsequently changed their view and accepted liability for the repairs as they thought the current issues were likely linked to the initial problem with the car. Given this, Black Horse offered to compensate Mrs T £328.21 - £250 for the trouble and upset she'd been caused and £78.21 (equivalent to 20% of the payments made) for the period Mrs T had been supplied with a courtesy car that wasn't suitable for her needs. Black Horse subsequently increased this offer by another £214.91, taking the total compensation to £543.12.

Mrs T wasn't happy, and she brought her matter to the Financial Ombudsman Service for investigation. She said they'd failed to support her in the right way as a customer due to their "*horrendous*" communication, and by taking the warranty company's word. So, she thought that Black Horse hadn't treated her fairly regarding their consumer duty obligations. Mrs T also said that she'd spent £320 in taxi costs to and from an airport, as the courtesy car wasn't suitable for this journey.

Our investigator said that the car wasn't of a satisfactory quality when it was supplied, as it wasn't reasonable for the head gasket to fail as soon as it did – the car wasn't sufficiently durable. However, Black Horse had the right to repair, and this repair was carried out. So, the investigator thought this was a fair outcome for the initial issues with the car.

With regards to the second issue with the car, the investigator said that both the warranty company and Black Horse accepted this could possibly be linked to the previous head gasket failure. However, the investigator thought the repairs and compensation were in line with what we'd expect Black Horse to do.

Finally, the investigator didn't think Black Horse should compensate Mrs T for the airport taxi costs because, had she driven to the airport herself, she would've incurred fuel and parking costs; and, while there may have been areas of consumer duty where Black Horse didn't always meet their obligations, the compensation provided reflects this, and no further payment is required.

Mrs T didn't agree with the investigator's opinion. She said that the head gasket failed "*weeks after purchasing*" and the subsequent faults were related to this. She also said that Black Horse had failed to pay her all the compensation they'd offered, as this was put on hold while the complaint was being investigated.

Finally, Mrs T said that she was without a car between December 2023 and April 2024, as well as being without it for four months in 2022. And this meant that she almost lost her job. So, she's asked for an ombudsman 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs T was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Black Horse are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

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 T to show it was present when the car was supplied.

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

In her comments on the investigator's opinion, Mrs T has said that they hadn't properly considered the head gasket failure with the car. However, as explained in the investigator's opinion, it wasn't disputed that the head gasket failed, and this made the car of an unsatisfactory quality at the point of supply. Section 24(5) of the CRA allows Black Horse the

right of repair, which is what happened. As such, I can't agree with Mrs T that the initial failure with the car hasn't been considered.

I haven't seen any evidence, for example a report from an independent engineer, that confirms the issues with the coolant leak and thermostat were directly related to the head gasket issue. However, both Black Horse and the warranty company have accepted this was a possibility, and repairs were undertaken on this basis. I haven't seen anything to show me that these repairs were unsuccessful. As such, under the CRA, Mrs T doesn't have a right to reject the car.

Mrs T was supplied with the car on 30 September 2022, and the evidence shows that the head gasket likely failed in early 2023. As such, I can't agree with Mrs T's assertion that she was without use of the car for four months in 2022. However, it's not disputed that she was without use of the car from 1 December 2023 (when it failed due to the coolant/thermostat issue) and 20 March 2024 (when the car was repaired) – a period of almost four months. Mrs T was also provided with a courtesy car from 11 December 2023 to 4 March 2024.

When looking at this, as Mrs T was paying for a car she wasn't able to use, and was without a courtesy car for 11 days in December 2023 and for 16 days in March 2024, I'd expect Black Horse to refund Mrs T the equivalent of the payments she made for this period. This would be approximately a monthly payment of £143.31.

Mrs T has said that the courtesy car wasn't fit for purpose as it had a high mileage, and the windscreen wipers didn't work. As such, she's said she rarely used it. I don't consider the high mileage to make a courtesy car unsuitable, and I haven't seen anything that shows me Mrs T raised the windscreen wiper issue before 8 March 2024. However, Black Horse have also offered to refund 20% of the payments Mrs T made while the courtesy car was in her possession, to reflect the impaired usage she had. This is also in line with what I would expect and, given the circumstances, I won't be asking them to pay any further compensation for the courtesy car, which includes any reimbursement of the airport taxi costs as it was Mrs T's choice not to use the courtesy car for this journey.

Finally, Mrs T has raised the issue of consumer duty. Black Horse have an overarching requirement to deliver a good outcome for their customers. However, this doesn't mean that delivering a good outcome means that Black Horse are obligated to provide Mrs T with exactly what she's looking for.

I've considered the service Black Horse have provided as a whole, and I'm in agreement with the investigator that there may have been areas where they could've done better, especially around consumer understanding and support. I've also considered the overall compensation offered by Black Horse, compared to what I would've directed had no offer been made. Given this, and while I appreciate that Mrs T will be disappointed by this outcome, I won't be asking Black Horse to increase their offer of compensation. However, I will be expecting them to now pay Mrs T the full amount they offered, given that this hadn't been done pending the outcome of her complaint.

My final decision

For the reasons explained, I don't uphold Mrs T's complaint about Black Horse Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 21 August 2024.

Andrew Burford

Ombudsman