DRN-5384402

The complaint

Ms H complains Black Horse Limited (Black Horse) supplied her with a car that she believes wasn't of satisfactory quality.

What happened

In March 2022, Ms H entered into a 49 month car finance agreement for a used car. The car's cash price was £24,500, it was around two years old and had travelled approximately 15,200 miles. Ms H paid a cash deposit of £99 and the rest was financed by a loan with Black Horse. The monthly instalments were £396 with a final payment of £11,920 should she decide to keep the car.

As part of the agreement, Ms H also purchased warranty and GAP (Guaranteed Asset Protection) policies at a total cost of £1051. The monthly payments were £21.

In October 2023, the car's engine caught fire and emergency services had to be called. It was reported a fire had started within the electrics of the engine compartment. The car was recovered to a manufacturer approved garage. They provided a repair estimate of £4,231 to replace the cambelt, timing cover and catalyst converter.

A claim was made under warranty but it was declined. A claim was also made to the insurer, their engineer said the catalytic converter had overheated which caused the fire. The insurer agreed to cover the cost of the surrounding components damaged by the fire but they wouldn't cover the mechanical failure.

Ms H complained to Black Horse. They didn't uphold the complaint. In summary they said Ms H had the car for around 18 months and covered in excess of 30,700 miles before the incident occurred. They said there was insufficient mechanical evidence the fault was present or developing at supply and the onus was on Ms H to provide the same.

Unhappy with their response, the complaint was referred to our service. The investigator recommended it was upheld. In summary he said he didn't believe the car was sufficiently durable and Black Horse should allow rejection. He also said Black Horse needed to do a number of other things to put things right such as refund the deposit, refund the monthly instalments paid since the fire as Ms H hasn't had use of the car, pay £300 compensation, etc.

Black Horse disagreed and maintained their position. They reiterated there was no evidence to confirm it was a manufacturing fault nor any evidence of what caused the fire. They stated it could've been caused by a number of reasons such as the mileage covered, a connected device causing a surge in electrics, the car not been correctly maintained or by any other external influence. They also commented if there was an underlying electrical fault when Ms H bought the car, the issue would've presented itself sooner than it did.

In February 2025, I issued a provisional decision outlining my intentions to uphold Ms H's complaint. I said:

"Ms H acquired a car under a regulated credit agreement. Black Horse was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

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. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage.
The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

In this case, Ms H acquired a car that was around two years old and had travelled over 15,000 miles. As this was a used car, it's reasonable to expect parts may already have suffered some wear and tear when compared to a new car or one that is less travelled. Meaning there's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn.

As referred to above, the CRA includes durability and safety as aspects of satisfactory quality. It's reasonable to expect goods to be safe to use and consumers are free to use them without fear of harm. When applying durability considerations, I think it's fair to consider the age and mileage of the car at the time it was supplied, when the fault occurred and the specific component that was faulty.

Here, after an inspection by the manufacturer, they've said the fire damage was due to an overheated catalytic converter and its internal parts have been destroyed (see attached). During the review of this complaint, the investigator contacted the insurer who also said they had determined the fire most likely started due to the catalytic converter overheating.

Although a catalytic converter isn't necessarily expected to last the lifetime of a car, I would expect it to last longer than 46,000 miles especially as it was less than four years old when the fire happened. In my opinion, it seems to have failed prematurely which is an indication the car wasn't sufficiently durable when it was supplied. While I accept components of a car fail and may stop working, in this case it's failed to the extent that it caught fire, engulfed the engine compartment and put Ms H in danger meaning emergency services had to be called.

Black Horse has suggested there may be other sources of the fault but has failed to provide enough evidence to support their claims. They've suggested it was due to the significant mileage covered by Ms H and the fact it failed its MOT in March 2023. However I'm not convinced by their arguments due to the lack of evidence. Moreover the reason why the MOT failed related to bodywork issues (the bumper), it had nothing to do with the electrics or the catalytic converter. Nonetheless the bumper was repaired and the car passed its MOT several months before this incident.
Ms H has provided evidence the car was serviced in September 2022 and no electrical faults were identified so there was nothing to suggest there was an underlying issue that needed to be rectified.

I think it's reasonable for Ms H to assume that as she had been maintaining the car, she should be able to cover the mileage she did without it catching fire. I find it's unfair for Black Horse to suggest the fault was caused by some wrong doing or lack of maintenance by Ms H.

In the absence of any other compelling evidence to contradict the above, I find it's more likely than not the overheating of the catalytic converter was the cause of the electrical fault. In light of the same including when the fault presented itself, the seriousness of it and the durability requirements as outlined in the CRA, I don't find the car was reasonably durable at supply meaning it wasn't of satisfactory quality, therefore a breach of contract.

Putting things right

In circumstances like this, the relevant law says there should be one opportunity of repair at no cost to the consumer and that repair should be carried out within a reasonable period of time.

Based on the repair estimate as provided in December 2023, the first stage of repair will cost around £4,230 - the cambelt, timing cover and catalytic converter would need to be replaced. I also note the estimate states that would be the first stage of repair which suggests further repairs may be needed. Additionally, from my understanding the surrounding areas will also need to be repaired as mentioned by the insurer. This means the cost of repair will at least be around £4,230 but it's likely to cost more.

On balance, I believe it's most likely the overall repair cost will be significant and disproportionate to the value of the car. I've also taken into consideration the time that has passed since the incident and the fact that Ms H has lost complete confidence in the car and its safety and in the circumstances I can understand why. So all things considered, I believe the most fair resolution is for Black Horse to allow Ms H to reject the car. That means ending the agreement, collecting the car and refunding the deposit paid.

As Ms H was able to cover a considerable amount of miles before the fault occurred (around 30,000), it's fair she pays for that use. So I won't be saying she should be refunded all the monthly instalments paid. However since the fire incident, she hasn't been able to use the car as it's remained at the garage. Therefore for any monthly instalments paid since October 2023 for both the car and the policies, these should be refunded by Black Horse.

Ms H has provided evidence of costs incurred for alternative transport during the time she has been without the car but as I'm already saying the instalments should be refunded from October 2023, I won't be saying Black Horse needs to refund this. I say this because that would mean Ms H would've had the benefit of driving a car for a number of months at no charge. If any monthly payments have not been made since October 2023, Black Horse shouldn't hold Ms H liable for the same. Any adverse information reported to Ms H's credit file about this agreement should be removed.

Ms H has made our service aware that since the incident, the car has remained at the garage in an undriveable condition – no repairs have been carried out whether by the garage or arranged by the insurer. The garage has charged a diagnostic fee of £70 – I find Black Horse should cover this cost. The garage has also charged storage fees (see attached). I consider this to be a cost incurred as a result of Ms H being supplied with a car that wasn't of satisfactory quality. So in my opinion in would be unfair for Ms H to be held entirely liable for it. Black Horse should arrange to collect the car, as ultimately it's their asset, the car belongs to them.
In the interest of both parties and to ensure these storage costs are kept to a minimum (if any at all), I would expect Black Horse to discuss the same with the garage and provide any further comments they want me to consider before I reach a final decision.

Lastly, I've thought about the impact of this situation on Ms H. She was driving the car when the fire started and I'm sure this would've been a very upsetting and stressful experience to

go through. She's been without the car for a significant period of time meaning she's had to seek alternative transport, etc. Given the overall circumstances, I find Black Horse should pay £300 compensation for the trouble and upset caused".

Response to the provisional findings

Broadly speaking, Ms H accepted the provisional findings however she didn't believe £300 compensation was enough given the trouble and upset (physical and mental impact) caused by this situation over a significant amount of time.

Black Horse disagreed with the findings. In summary, they said:

- The service manager at the dealership confirmed the cause of the overheating catalytic converter was found to be a broken lambda sensor (oxygen sensor);
- If the converter receives an excessive amount of unburned fuel, it will overheat. This overheating can melt the internal components of the converter, leading to its failure;
- The most common cause of catalytic converter overheating is the vehicle running rich on fuel, unburned fuel can cause the converter to overheat and eventually ignite it. The oxygen senor prevents such occurrences;
- When the oxygen sensor fails, it causes the air-to-fuel ration to become incorrect leading to an increased amount of unburned fuel entering the converter, causing it to overheat
- The typical lifespan of an oxygen sensor is between 30,000 to 50,000 miles but can vary significantly depending on several factors e.g. use of the car, external factors like weather, the type of fuel used, the type of sensor, etc. Here, the oxygen sensor had reached the end of its serviceable life;
- At the time of the fault, the car had travelled around 46,000 miles so it would not be unreasonable to expect the oxygen sensor needed to be replaced;
- Ms H had significant use of the car and this would've contributed to the overheating, the catalytic converter was subject to a high level of use;
- The fault wasn't due to a manufacturing fault but as a result of normal wear and tear and the eventual failure of the oxygen sensor;
- It's unreasonable for Black Horse to be held liable for the storage fees- the first time they were made aware of the same was in the provisional decision;
- Ms H was first told about the storage fees in April 2024 and on other occasions thereafter. She was advised the car needed to be removed from the garage. Ms H had a duty to mitigate this cost;
- If Black Horse had been told about these storage costs, they could've assisted in removing the car to prevent any further storage charges.

Second provisional decision

In my second provision decision, I said:

"Concerning Black Horse's comments, I thank them for their explanation of the functions of the catalytic converter and the oxygen sensor. However I find the explanations to be somewhat generic without compelling nor strong evidence of what exactly happened in this specific case.

I've read the comments by the garage's service manager, it says:
"The fire damage has been caused by an overheated / melted down catalyst, the top lambda sensor was removed and with a torch can see the internal structure is destroyed, so the cause of the fire damage is due to an overheated exhaust, oil level is correct, tank is just over half full. Clearly the timing belt needs replacing and the catalyst before further

investigations can be undertaken into the engine running fault and the car is outside of warranty".

This says the source of the fault was due to an overheated exhaust. Although it makes reference to the oxygen sensor, it doesn't explicitly say this caused the fault. While I accept the oxygen sensor was damaged, it's not entirely clear whether that damage was a result of the fire itself or it failed before as a result of wear and tear as Black Horse has alleged. Equally, there's also not enough evidence to suggest the fault was caused due to the unburned fuel or the type of fuel used. In my opinion, there isn't enough evidence that the fault was caused by what Black Horse considers to be significant use of the car (bearing in mind it had travelled less than 46,000 miles at the point of failure). I believe a reasonable person would expect to be able to cover this amount of mileage without the catalytic converter overheating to the extent a fire is caused. For these reasons, I remain of the opinion the car wasn't sufficiently durable at the point of supply so it wasn't of satisfactory quality.

Turning to the storage costs. I acknowledge Ms H was told about the storage fees some time ago. She said she didn't let Black Horse know because they had rejected the complaint. While I accept what she's said, I do agree she had a duty to mitigate her losses and to not act in a way which increases that loss. I find it would've been reasonable for her to let Black Horse know about the storage charges sooner than she did especially given the high costs involved. I can't say with any certainty what they would've done but they may have agreed to recover the car and return it to her address or another safe location where such a charge wouldn't be incurred while this dispute was ongoing. Similarly it appears Black Horse knew the car was being kept at the garage (hence the service manager's comments) so they could've also clarified whether storage fees were being incurred but I can't see that's happened. After all, it is their asset, the car belongs to them.

For these reasons, I won't be saying Black Horse need to cover the entire storage cost, Ms H should also be held jointly responsible on a 50/50 basis. I believe Black Horse should end the agreement, collect the car, refund the amounts as outlined above but deduct 50% of the storage costs from the same.

Lastly in regards the level of compensation, I've thought about the impact Ms H has outlined. I appreciate this matter has been going on for some time and its impact on her but I find £300 compensation for the trouble and upset caused is fair in the circumstances".

Responses to the second provisional decision

In summary, Ms H said:

- She would like a breakdown of the compensation calculations;
- She doesn't believe it's fair she's been held liable for 50% of the storage costs. She believes Black Horse should be responsible for paying it in full;
- When Black Horse didn't uphold the complaint, they said any further complaints should be brought to the ombudsman service which she says indicates she wasn't required to update Black Horse directly with new information;
- She told our service in August 2024 that storage fees were being incurred and asked the investigator to speak to the garage directly about it;
- She told Black Horse about the storage fees in February 2025 and received no response from them;
- She has made every effort to mitigate losses and minimise charges but Black Horse haven't done the same.

Black Horse accepted the second provisional decision. Regarding the collection of the car and storage charges, they said either:

a) Black Horse would pay the storage cost in full, collect the car then reduce the refunds to be paid to Ms H by 50% to represent their contribution of the storage costs; OR

b) Ms H pays 50% of the storage costs directly to the garage. However Black Horse will only be able to collect the car once she's paid her contribution of the storage costs.

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.

Regarding Ms H's comments, I'm afraid our service can't provide a detailed breakdown of the refund calculations. Having determined the complaint should be upheld, it's my role to determine how Black Horse should put things right to resolve the complaint. If the decision is accepted by Ms H, it's then Black Horse's responsibility to do so, that is, to calculate the relevant refunds as I've outlined. This is because Black Horse holds the relevant financial records. If Ms H accepts this decision, she can ask Black Horse directly for a detailed breakdown and pose any questions about it with them.

I acknowledge what Ms H has said about Black Horse saying any further complaint points should be directed to our service. However I don't find informing them about incurring storage costs is a complaint point. It's important and relevant information about the car which I believe was reasonable for her to have made them aware of. Although she told our service about, ultimately it's her responsibility to do the same. I appreciate Ms H will be disappointed but I remain of the opinion both parties should be held jointly liable for the storage costs.

In the event Ms H accepts this decision, I believe Black Horse's option A as outlined above is best in regards to the collection of the car. By doing so, I agree that this would facilitate Black Horse putting things right as I've outlined in a reasonable timeframe without significant delay.

On the basis I haven't been provided with any further information to change my decision I still consider my provisional findings to be fair and reasonable in the circumstances.

My final decision

For the reasons set out above, I've decided to uphold Ms H's complaint.

To put things right, Black Horse Limited must:

- End the agreement;
- Collect the car and pay the storage cost;
- Refund the cash deposit*;
- Cover the cost of the diagnosis (£70)*;
- Refund any monthly instalments paid from October 2023 onwards to reflect the loss of use of the car*;
- Pay 8% simple interest on the above refunds from the date of payment to the date of settlement;
- Deduct 50% of the storage costs from the above refunds to reflect Ms H's contribution of the same;
- Remove any adverse information about this agreement from Ms H's credit file;
- Pay £300 compensation to Ms H for the trouble and upset caused.

*If Black Horse Limited considers tax should be deducted from the interest part of my award it should provide Ms H with a certificate showing how much it has taken off, so Ms H can reclaim that amount if she is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 7 April 2025.

Simona Reese
Ombudsman