DRN-5446227

The complaint

Mr H believes a car supplied to him under a hire purchase agreement with Black Horse Limited (Black Horse) was of unsatisfactory quality.

When I refer to what Mr H or Black Horse have said or done, it should also be taken to include things said or done on their behalf.

What happened

In October 2023, Mr H acquired a used car through a hire purchase agreement with Black Horse. The car was first registered in September 2018 and the finance agreement confirmed it had travelled around 44,805 miles. The cash price of the car was £14,269 and he paid a deposit of £85. The amount of credit was for £14,184 and added warranty was £899. The duration of the agreement was 60 months; with 60 monthly payments of around £330.

Mr H said when he collected the car, he noticed the mileage on the odometer was higher than what was stated on the advert – but he didn't raise this at the time. And when purchasing new car mats, he found damage to the floor that was covered by paper sheets when he inspected and collected it.

In December 2023, Mr H returned the car to the dealership for repairs to the oil level sensor. He then complained to Black Horse as he believed the car was of unsatisfactory quality and wanted to reject it.

Shortly after the car was repaired and returned to Mr H, the Engine Management Light (EML) illuminated. Mr H reported this to the dealership and the repairs were completed in January 2024.

Black Horse partially upheld Mr H's complaint. They said it was Mr H's responsibility to check the car and ensure he was happy with the condition before agreeing to the sale. And the hole in the floor was wear from general use, which is normal for a used car. They also said there wasn't enough evidence to support the car's mileage at inception was greatly different to what was confirmed on the advert and finance agreement. However, Black Horse agreed the oil level sensor and EML required repairs after minimal use, which indicated the car was of unsatisfactory quality when it was supplied. Mr H had agreed to repairs, which they supported as a fair and reasonable outcome to his complaint. And they offered to refund some of his monthly payment to reflect loss of use while the car was being repaired, plus interest, and £150 compensation for the distress and inconvenience caused.

In April 2024, the car failed two MOT tests due to faulty repeater and an EML issue. Mr H asked Black Horse to reopen his complaint as the same fault had reoccurred, but Black Horse said the EML is indicative of a multitude of issues, so would require a diagnostic to ascertain the fault was linked to the previous repair.

After Mr H referred his complaint to the Financial Ombudsman Service in May 2024, Black Horse changed their position on the mileage discrepancy. They'd found the pre-sale

documentation confirmed the car had travelled 926 miles more than what was stated on the advert and credit agreement. They said they'd referred to trade and auction who confirmed the value difference would've been £100, so offered to pay this amount to Mr H plus a further £50 compensation for distress and inconvenience. Mr H didn't accept this offer.

Our Investigator reviewed matters and thought Black Horse's offer was fair. They said the valuations undertaken showed the price of the car was less than market value, and if the higher mileage was important to Mr H, they would've expected him not to go ahead with the sale. In addition, they thought the hole in the floor was a cosmetic issue that didn't make the car of unsatisfactory quality, and Mr H had the chance to inspect the car before entering the agreement. And there wasn't enough evidence to say the new EML issue was the same as the previous fault and therefore the repairs had failed.

Mr H arranged an independent inspection of the car. After reviewing the findings, the Investigator maintained there wasn't enough to say the latest faults were present or developing at point of supply, or linked to failed repairs – so didn't think Black Horse needed to do anymore than what they'd already offered.

Mr H didn't agree. In summary, he said he'd evidenced a fault was present and the diagnostic codes were linked to the repairs conducted in January 2024. He said the fault is intermittent and wasn't present when the independent inspection took place, so the engineer was unable to reach a finding on it. However, this doesn't mean there is no fault. And the engineer has since said had the fault codes presented as they did to his local garage, they would've considered there to have been a failed repair.

As no agreement has been reached, the matter 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.

I think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. 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 taken into account 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.

Was the car misrepresented?

Under section 56 of the Consumer Credit Act 1974, the finance provider can be held responsible for antecedent negotiations (meaning what was said or done) by the broker and/or supplier (the dealership) before the consumer enters into a finance agreement. So I've taken this relevant law into account when looking into this complaint.

For me to conclude there has been a misrepresentation in Mr H's case, I must first be satisfied that:

1. A false statement of fact has been made; and

2. That false statement induced Mr H to enter into the agreement to acquire the car.

In this instance, it's not disputed that the car had travelled around 926 miles more than was noted on the advert and credit agreement. I can therefore be satisfied there has been a false statement of fact here.

However, I don't consider the mileage discrepancy induced Mr H to enter the agreement to acquire the car. I say this because Mr H had the opportunity to inspect the car before he entered into the agreement, during which the actual mileage would've been visible to him on the dashboard. Mr H has confirmed he did notice it but didn't raise it with the dealership at the time. And if the mileage was particularly important to Mr H, and a key factor in his decision to proceed with the agreement, I would've expected him to have discussed this with the dealership at the point of supply.

The Consumer Rights Act 2015 also says goods should be sold as described. And as Mr H inspected the car before he went ahead, the car was sold as seen. I don't doubt the floor damage was covered when Mr H looked at the car. But I don't think it's unreasonable to have expected him to check under the covers, if any cosmetic damage to the floor would've impacted his decision to proceed.

So, based on the above, I'm satisfied the car wasn't mis-described. And I don't find the car was misrepresented.

Was the car of satisfactory quality?

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr H entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Mr H acquired a car that was nearly five years old and had covered around 45,731 miles. Its cash price was £14,269. So, what would be considered satisfactory quality would be considerably different to if Mr H had acquired the same car brand new and at a greater cost. As this was a used car with notable mileage and age, it's reasonable to expect parts may already have suffered wear and tear, and wouldn't be free from cosmetic defects, when compared to a new car or one that is less travelled. So Black Horse wouldn't be responsible for anything that wouldn't make the car of an unsatisfactory quality or was due to normal wear and tear while in Mr H's possession.

However, if I thought the car was faulty when Mr H took possession of it, or that the car wasn't sufficiently durable, and this made the car of unsatisfactory quality, it'd be fair and reasonable to ask Black Horse to put this right.

Hole in the floor

It's not disputed that there is wear and tear damage to the floor, which is most likely to be due to a previous driver not using floor mats underneath the clutch and accelerator. But it would be unreasonable to expect a used car to have no cosmetic defects, which I'd consider this to be. I consider this cosmetic defect to be reasonable wear and tear of a five-year-old car that had travelled around 45,731 miles – which would've been factored into the price

Mr H paid for it. I therefore don't find this would make the car unsatisfactory quality when it was supplied to Mr H, or would be considered as a breach of contract that would make Black Horse responsible for the repairs.

Sensor and EML

In this instance, it's not disputed there was a problem with the oil level sensor and EML, nor that the car wasn't sufficiently durable. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision because both parties agree that the car was of unsatisfactory quality at the point of supply.

The CRA sets out that Mr H had a short term right to reject the car within the first 30 days if the car was of unsatisfactory quality. Outside of the first 30 days, Mr H would not have been able to retrospectively exercise his short term right of rejection at a later date. Here, the fault occurred in December 2023, around two months from when Mr H took possession of the car. Even though it's accepted the car wasn't sufficiently durable, making the car of unsatisfactory quality, Mr H could only reject the car within the first 30 days, and only if he expressed his wish to do so. As he was unaware of the fault within the first 30 days, he couldn't have possibly expressed his wish to reject the car within that time.

The CRA says if the car acquired wasn't of satisfactory quality, or not as described, then Mr H would've been entitled to still return it after 30 days, but he wouldn't have had the right to reject the car until he'd exercised his right to repair. Following the single opportunity to repair, the right to reject may then only be exercised in certain circumstances, such as the one attempt at repair failing.

Here, it's not disputed that the EML issue made the car of unsatisfactory quality. And as Black Horse had already had one opportunity to repair the car, he could've exercised his right to reject the car at this point. However, Mr H agreed to the car being repaired by the dealership, so he could only exercise his right to reject if, following that repair, the car remained of an unsatisfactory quality.

The car underwent an MOT test in April 2024, at which point the car had travelled around 50,747 miles. This failed due to an EML issue, which Mr H believes to be a recurrence of the same fault that was repaired in January 2024. He's provided evidence of the fault codes, which indicate an underlying issue. But these are generic codes that require a diagnostic process to establish the exact cause. Without this, a fault code alone isn't enough to evidence a previous repair had failed, so I find it was reasonable for Black Horse to request this.

An independent inspection of the car was carried out in September 2024 and the engineer was unable to replicate the concerns Mr H reported. They found the car to be in overall good condition for its age and mileage, that undoubtedly meets minimum MOT standards and is road legal. They explained the fault Mr H reported is not uncommon on modern cars and can often be caused by a sticky fuel valve that can be alleviated by placing a fuel system cleaner in the fuel tank. There is no mention or finding made within the report that the fault codes provided by Mr H were linked to the previous faults or that the repairs had failed.

The engineer confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon. I've also not been presented with any persuasive evidence that contradicts the findings of the independent engineer and demonstrates the faults were likely present or developing at the point the car was supplied to Mr H, or linked to failed repairs.

So, having considered the independent engineer's findings, the age of the car, how far it

had already travelled before Mr H purchased it, and the amount of mileage Mr H was able to cover after repairs were carried out, I'm satisfied there is insufficient evidence to demonstrate the later intermittent EML fault would make the car of an unsatisfactory quality when it was supplied, or the result of failed repairs.

Putting things right

Having determined the car wasn't of satisfactory quality due to the sensor and EML fault, I've thought about whether Black Horse has done enough to put things right for Mr H.

The car was with the garage for repairs from 1 to 8 December 2023 and 15 to 17 January 2024. During this time, Mr H was paying for goods that he couldn't use. As the car was off the road due to it being of an unsatisfactory quality, and Black Horse failed to keep Mr H mobile with a courtesy car; they should refund payments to reflect loss of use. Black Horse has paid Mr H a refund of payments, totalling £119.41, to reflect the time he was without the car, plus 8% interest - which I think is fair.

Mr H was inconvenienced by having to take the car to a garage to be repaired twice and not being kept mobile with a courtesy car while repairs were carried out. So, I agree Black Horse should pay compensation to reflect the distress and inconvenience caused. And having considered Black Horse's offer of £200 in total, I think this fairly reflects the impact caused to Mr H.

As there isn't enough evidence to say it's more likely than not the later EML issues were present or developing at point of supply, or linked to failed repairs, I don't agree Black Horse are responsible for any cost incurred or impact caused by those faults. And I won't be asking Black Horse to agree to rejection.

In addition to the above, Black Horse have offered to pay Mr H £100 to reflect the price difference between the advertised and actual mileage figures. Having conducted my own valuation checks, I found the difference in value to be between £55-£70. And the price Mr H paid for the car to be less than market value. I therefore think Black Horse's offer is fair and reasonable.

I realise this will come as a disappointment to Mr H, but for the reasons I've explained, I don't think Black Horse need to do anything more than what I've set out above.

My final decision

For the reasons set out above, my decision is that I uphold Mr H's complaint and direct Black Horse Limited to pay:

- £119.41 for loss of use;
- 8% simple yearly interest on the refund, calculated from the date Mr H made the payments to the date of the refund†;
- £100 to reflect the difference in value for the additional mileage; and
- £200 compensation for the distress and inconvenience caused.

†If Black Horse considers that tax should be deducted from the interest element of my award, they should provide Mr H with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 April 2025.

Nicola Bastin
Ombudsman