

The complaint

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

What happened

BH supplied Mr C with a used car on a hire purchase agreement in October 2022. The cash price of the car was around £18,000 and it had covered around 103,000 miles since first registration in March 2017. The hire purchase agreement required payments of around £370 for 58 months followed by a final payment of around £370. Mr C said he paid a deposit of £2,000.

Mr C said that the car was juddering within a couple of weeks and the dealer supplied a set of injector seals as they couldn't accommodate a repair.

Mr C said that the car had a number of faults:

- Smoke coming into the cabin from the engine bay
- Juddering
- Leak from the back window
- Noise from the rear left wheel while reversing

Mr C complained to BH in August 2023. He supplied a report which confirmed that the Diesel Particulate Filter (DPF) was blocked too much for a regeneration to be successful.

In October 2023 BH accepted liability for the car not being of satisfactory quality at the point of supply. In summary it said the blocked DPF caused exhaust gases to get trapped and force their way out through a faulty seal near the turbo. It advised that due to the levels of soot, it believed the leak has been present for some time, indicating that the DPF has been blocked for a significant amount of time. It said it was plausible the DPF fault had been developing since the point of sale due to the soot build up indicating it was not a new fault. It agreed to support repairs to the DPF. BH's final response said Mr C should send a quote for the cost of repairs, but if repairs were not successful, they would work directly with the garage to assist. BH offered to pay around £656.63 for loss of enjoyment of the car plus £100 compensation.

Mr C accepted the offer. But he said that he had difficulty in arranging repairs as all the garages he contacted wouldn't help. He said he contacted BH on multiple occasions begging for help but didn't get any assistance.

In June 2024 the car broke down again. Mr C complained to BH, he said it was off the road and he wanted to reject it. BH said that the car finally broke down due to damage caused by ongoing driving while a repair hadn't been made. It said that Mr C hadn't got the repair completed and was therefore responsible. It agreed to pay for the DPF repair but not any other faults.

Mr C referred his complaint to our service. An investigator here said that he'd brought his

complaint about the first final response too late, and also didn't uphold his complaint about the later faults.

Mr C didn't agree. He said that the car had been faulty since he got it, and although BH offered to pay for repairs he told it that he couldn't get a repair done and it didn't help. He said that he contacted it multiple times begging for someone to call him back but it never did.

He said that nobody told him to stop driving the car, and he needed to get to work.

In November 2024 Mr C asked to Voluntary Terminate (VT) the agreement and the car was collected.

The complaint was passed to me to make a final decision. I wrote to BH and said that although Mr C had contacted us more than six months after the first final response, its response didn't seem final, and invited him to return for assistance. I explained that both complaints were so closely connected that I would need to consider both. BH gave consent to our consideration of both complaints.

I issued a provisional decision which said:

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 having been good industry practice at the relevant time.

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.

Where the evidence is incomplete or inconclusive (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Firstly I'd like to say that Mr C has described in detail the impact on his life, and I have a lot of sympathy for the position he is in. I acknowledge this and I can't imagine how he must be feeling but thank him for bringing his complaint.

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 CRA is also 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 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.

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.

It doesn't seem to be in dispute that there were faults with the car in the early stages of the agreement. I've seen the report and BH accepted liability for the car not being of satisfactory quality.

In Mr C's case the car was used when it was supplied, it was around six years old and had travelled 103,000 miles. There would be very different expectations of it than if it was a brand-new car. The car cost around £18,000 which is significantly less than if it was new, although still a substantial amount.

The report indicates that due to the level of soot in the DPF the fault must have been present at the point of supply. BH also agreed with this, and they made an offer to resolve the problem. I'm not going to go into detail about that apart from to say that I agree the car wasn't of satisfactory quality. A reasonable person wouldn't expect such a significant problem within a short space of time. The DPF was diagnosed as not working at all, rather than just needing forced regeneration.

A repair would usually be a suitable remedy and in line with the requirements of the CRA, as it should bring the goods back to conform to the contract. I can see that BH also offered a payment for loss of enjoyment and some compensation, which seems broadly fair in the circumstances.

However it should have been clear to BH that Mr C was having difficulty getting a repair completed. Mr C has provided a copy of his emails. He contacted BH on at least seven occasions after the first final response asking for help as he wasn't able to arrange repairs. He's also let BH know that he felt that the fumes might be impacting his health, and he's also made it clear he was suffering from stress and anxiety. So it's clear that he was vulnerable and in need of assistance. BH initial final response invited him to return if he was having difficulties with repairs, which is exactly what he did.

I can't see that BH at any point told Mr C not to continue to drive the car, so I think it missed several opportunities to support him, and it could have done more to make arrangements for the repairs that were needed. BH have said he's never provided a quote for repairs, but I can see at least one email where that is discussed.

BH said that the later fault which meant the car needed a new engine, was caused by drive-on damage which it says is Mr C's responsibility.

I agree that the later fault was likely caused because the DPF hadn't been repaired. But I'm concerned about the level of support that was being provided to Mr C. BH were aware that the repair hadn't been completed so it was reasonably foreseeable that this might lead to further damage.

I've asked BH whether it told Mr C that he shouldn't drive the car, and it told me that it doesn't have any evidence of those discussions. It said that Mr C should have been aware that it might cause drive-on damage as this is common sense. But I've seen nothing which indicates that Mr C had knowledge of cars or what might happen if he kept driving the car. I think that BH were responsible for ensuring that a repair was made to the car, to make it conform to the contract. BH haven't done that in a reasonable amount of time and although we don't have any report on what caused the engine failure, on the balance of probabilities I think it more likely the failure to repair the DPF has led to the catastrophic engine damage.

BH have indicated that Mr C might have got a relative to do some sort of minor repair, but I

don't have any information about that. In any case I think it more likely that the ultimate failure came about because the car was not of satisfactory quality when it was supplied.

Had BH supported Mr C with the repair, also giving him clear and consistent information about what he needed to do to assist with this – I think it would have resulted in a better experience and less overall distress and inconvenience. I think Consumer Duty is relevant here and sets a higher standard for firms in its interactions with its customers. However, I consider that even if BH were to argue that it met the required standard as set out by the Consumer Duty – I consider that my findings here would not differ in any event, based on the customer service it provided and what is overall fair and reasonable in the circumstances.

Considering what had happened I think BH should have ensured that repairs were carried out. I think it acted unfairly in not taking any responsibility for ensuring that repairs were made in a reasonable amount of time and without significant inconvenience to Mr C. I think this ultimately led to the failure of the car. So, I think that BH need to do something to put things right.

It's not clear what the mileage of the car was when it was collected. The breakdown report from June 2024 said it was 123,236 but the collection report that I've seen doesn't mention the final mileage. It's reasonable to assume it hadn't changed due to the nature of the breakdown. But I haven't been told that the car was off the road for significant amounts of time before it ultimately failed. It's only fair that Mr C pays for his use, so I think BH can keep the payments that were made up until June 2024.

Mr C has been without use of the car since June 2024, and I understand that he asked to VT the agreement. The car has been recovered but it isn't completely clear what liability was left for him to pay. As he hasn't had use of the car since June 2024 it's fair that he gets a refund of all of his payments since the date the car broke down, and BH should remove any liability to pay the VT amount.

Mr C has described the inconvenience and distress he has suffered from the issues with the car. I am very sorry to hear about this. I need to point out that I am unable to award for long term health issues as a consequential loss. These are known as claims for loss of amenity. If Mr C considers there is a wider claim in relation to his health here, then before accepting any decision by me he might wish to take appropriate legal advice as to how my award (and his acceptance of it) might impact any other claims he might be considering.

I am able to make a more general award for the distress and inconvenience caused by the issues with the car. I also have to take into account the payment that he already received when he made his initial complaint.

Deciding compensation is not a science here. And issues and problems in everyday life are expected. However, here Mr C suffered more than the usual problems you might expect in everyday life and it went on sometime. I have thought about our website guidance on such awards. I do think from what Mr C has said that the issues with the car and his claims for reimbursement have caused considerable upset and worry. Therefore, I think an award of a further £300 is fair and reasonable here. I know Mr C has claimed health impacts – however, as I have said I can't make awards for loss of amenity. If Mr C wants to pursue this and a more substantial award, he should note my prior comments.

I understand that the car has now been recovered under Voluntary Termination, so the agreement has ended. Mr C has forwarded an invoice for charges, which include a charge for a replacement engine. I'm not looking at a complaint about charges applied for damage in excess of fair wear and tear at the end of the agreement here, so if Mr C is unhappy with other items he's been asked to pay for he'll need to make a further complaint about that. But

for the avoidance of doubt my decision includes a direction to remove any charges which relate to the fault with the car, such as the charge for a replacement engine.

BH agreed with the provisional decision. Mr C broadly agreed but made some comments. In summary he said:

- He had made payments to BH through a debt management plan
- BH had reported missed payments to his credit file
- He'd paid a higher deposit to the dealer
- The way he had been treated had triggered anxiety and depression and increased his debt because he had to get another car
- He said he should have been given the help he needed instead of crying on the phone
- He hadn't received the information he requested under a subject access request

I'll now go on to make my 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.

I'd like to thank both parties for responding promptly to my provisional decision.

I'm aware that Mr C has entered an informal debt repayment plan, and the hire purchase agreement has been included in it. Mr C can give a copy of the decision to the third-party debt support agency, and once the agreement is settled, he'll get confirmation in writing from BH, which he can also pass on.

Mr C has told me that he paid a higher amount as deposit. But he's said that he part exchanged another car, and there was an outstanding balance on another finance agreement. Based on what I've seen, only £2,000 formed part of this agreement so that is the amount BH need to refund.

I'm very sorry to hear of the impact this has had on Mr C. I had factored this into deciding how much compensation to award, and I had taken into account the earlier amount that was paid. As I said in the provisional decision, I can't make an award for long term health issues. So, if Mr C intends to make a further claim for that he should seek legal advice as appropriate before accepting my decision. I still think that given the circumstances, and thinking about our website guidance on such awards, that £300 is fair and reasonable.

Mr C said that he hasn't received the information that he asked for under a subject access request. This didn't form part of the complaint here so I'm not dealing with that in my decision. If Mr C is unhappy and still wants personal data released to him, he'll need to contact BH again.

As I haven't been provided with any further information to change my decision, I still consider my findings to be fair and reasonable in the circumstances. I'm making a final decision to afford Mr C the protection of a legally binding decision.

My final decision is the same for the reasons set out in my provisional decision.

My final decision

My final decision is that I uphold this complaint and direct Black Horse Limited to do the following:

- End the agreement with nothing further to pay in relation to future payments, or Voluntary Termination.
- Remove any adverse information about the agreement which has been reported to the credit reference agencies.
- Refund Mr C his deposit of £2,000
- Refund Mr C any payments he made from June 2024
- Refund the cost of the report £79, to the extent that it hasn't already been refunded.
- Pay 8% simple annual interest* from the date of each payment above until the date of settlement.
- Pay £300 compensation.

* If Black Horse Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much tax it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 July 2025.

Caroline Kirby
Ombudsman