

The complaint

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

What happened

On 10 October 2022, Mrs C was supplied with a used car through a hire purchase agreement with Black Horse. The agreement was for £12,900 over 60 months, with monthly payments of £335.11. At the time of supply, the car was just over six years old, and had done 69,695 miles.

Mrs C started to have problems with the car from shortly after supply. On 15 October 2022 she reported that the engine management light ('EML') had come on, the car was overheating, and there was a vibration from one of the wheels. The supplying dealership asked her to take the car to a service centre to be checked out. However, on 25 October 2022, Mrs C advised the dealership that the EML had gone off.

On 11 November 2022 Mrs C reported that the glow plug warning light had been on for three days. She contacted the warranty company who agreed the car could be taken to a local garage for diagnosis. The dealership agreed to contribute £60 plus VAT towards the diagnostic costs, but Mrs C says she was quoted £200. So, the car wasn't inspected.

On 21 February 2023, Mrs C contacted the dealership about the glow plug warning light being on, and she also said she was having problems with the windscreen fogging up and a wind noise coming from the rear window. She didn't attend an agreed appointment on 8 March 2023 to have the car inspected, and the car wasn't taken for inspection until 3 May 2023. The dealership inspected the car and found an issue with the cooling system, and they instructed an independent engineer to inspect the car and produce a report.

This inspection took place on 16 May 2023, at which point the car had done 76,717 miles – around 7,000 more miles than when it was supplied to Mrs C. The report said the car was *in a below average and unkempt condition* and confirmed *"the cooling system was excessively contaminated with engine oil, and no engine oil was present in the system."* The report also stated that *"the NSF tyre was almost completely devoid of tread [and] the NSR window seal was evidently displaced and, as such, the rear window is no longer seated within the seal correctly ... this would result in increased road noise when travelling at speed and could also allow water into the cabin causing condensation."*

The engineer who inspected the car concluded that *"there are multiple defects present with on vehicle [sic], which are generally deterioration related. The vehicle did appear to be in an unkempt and neglected state, and when consider the condition of the tyre, along with being driven with low oil level, we consider that operator neglect is an influencing factor."*

We consider that the contamination in the coolant vessel is likely deterioration of the air cooler ... taking into consideration the time and mileage elapsed since inception, we do not consider the conditions to have been developing at that point."

Mrs C raised a complaint about the quality of the car on 12 June 2023. However, based on the independent engineer's report, they didn't uphold the complaint. Unhappy with this response, Mrs C brought her complaint to us for investigation.

Our investigator was satisfied there was a fault with the car. But they said Mrs C had ignored warning lights, failed to take the car for an inspection when asked, and failed to take the car to an agreed inspection. Given this, and that the independent engineer's report said the faults developed due to wear and tear and weren't present when the car was supplied, the investigator didn't think Black Horse needed to do anything more.

Mrs C didn't agree with the investigator. She said she'd been told the car had been serviced before it was supplied to her, and she provided evidence that this had taken place on 26 September 2022. This shows the car had been subject to a multi-point check, which included replacement brakes, engine oil, and oil filter. She says she reported the initial fault with the car (the EML having illuminated) five days after being supplied with the car, and she reported the issue with the glow plug in November 2022.

Mrs C said she didn't have the car inspected when asked, due to the cost and *"I didn't feel it was my place as a customer who has just purchased a vehicle, this should be covered."* She also says that she didn't take the car in for inspection on 8 March 2023, as she would have to travel around an hour to get there and there was no courtesy car available until 3 May 2023.

Mrs C feels that a car *"that would have had a recent service, mot and multipoint checks new oil change and oil filter change is of satisfactory quality"* and that she's been mis-sold both the car and warranty. Because Mrs C didn't agree with the investigator's opinion, 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.

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

So, if I thought the car was faulty when Mrs C 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.

I've seen a copy of the independent engineer's report, dated 16 May 2023. The key findings of this report are detailed above, so I won't repeat them here. However, the engineer concluded that the current faults with the car weren't present or developing at the point of supply.

The engineer also 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.

Mrs C has provided the evidence that she reported the EML fault on 15 October 2022, and the glow plug fault on 11 November 2022. I've also seen the emails she exchanged with the dealership. Mrs C has referred to returning the car within the cooling-off period, and I've seen this was discussed on 24 October 2022. She was asked the same day to arrange to return the car, but she advised the dealership the following day that the EML had gone off and that she wanted to keep the car.

Once Mrs C advised the dealership about the glow plug light, they gave her the opportunity for this to be taken back to their service centre for investigation or repair, or for the warranty company to arrange this at a garage more local to her. Mrs C spoke to the warranty company, who approved that the car could be inspected by a local garage on 14 November 2022 – three days after Mrs C had first raised the glow plug issue.

It's not disputed that the local garage diagnostic cost was £200, of which the dealership was prepared to contribute £72. While I've noted Mrs C's comments that she shouldn't have to pay anything towards this, the dealership had offered her the option to take the car to their service centre for diagnosis and repair at no cost to her. I think this was a reasonable offer, and it was Mrs C's choice to refuse this. It was also her choice not to speak to the warranty company about taking her car to a different local garage when she found out the diagnostic cost was more than the dealership would pay.

Mrs C booked to have the car inspected by the service centre on 8 March 2023. I appreciate that Mrs C didn't attend this appointment as no courtesy car was provided. However, I have seen that an alternative date of 25 April 2023 was booked, when a courtesy car would be available, but the car wasn't taken to the service centre until 3 May 2023.

Based on what I've seen, I'm satisfied that Mrs C was given the option to return the car within the cooling off period but chose not to do so. Once the glow plug issue arose, Mrs C was given options without any undue delay but as stated, the car wasn't taken in for diagnosis until May 2023. During this six-month period, Mrs C continued to drive the car, and did around 6,500 miles in this period.

The service record for 26 September 2022 shows that the brakes, oil, and oil filter were all changed, along with a tyre. And the service report confirms all the other tyres were above the legal limit for tread wear. So, if there was an issue with the oil contaminating the coolant, I'm satisfied this would've been picked up at the service. Also, if one tyre was almost bald, I'm also satisfied that this would've been picked up at the service.

As such, and taking everything into consideration, I'm satisfied that the current faults with the car weren't present when it was supplied to Mrs C. While additional damage may've been done to the car due to Mrs C driving with a warning light on, I haven't seen anything to show me this was the case. What's more, the current faults with the car are unlikely to have been caused by a glow plug issue, which isn't linked to either the cooling system, the tyres, or the window seals. Given this, and while I appreciate this will come as a disappointment to Mrs C, I'm satisfied the current faults are as a result of normal in-service wear and tear, and I won't be asking Black Horse to do anything more.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 16 May 2024.

Andrew Burford
Ombudsman