

The complaint

Mr W complains that a car acquired with finance from Black Horse Limited wasn't of satisfactory quality.

What happened

In November 2021 Mr W was supplied with a car and entered into a hire purchase agreement with Black Horse. At the point of supply the car was around 9 years old and had covered around 76,351 miles.

In August 2022 Mr W complained to Black Horse. He said the engine had been remapped, there was a hissing noise from under the bonnet, the engine kept cutting out when the car was in cruise control and the steering wheel kept locking.

Black Horse issued a final response in October 2022. It said it wasn't upholding the complaint but offered £300 (without admission of liability) relating to the remapping of the engine.

In November 2022 Mr W raised a second complaint. He said the car had no diesel particulate filter (DPF).

Black Horse issued a final response in December 2022. It upheld the complaint and offered to pay for the cost of repairs.

In April 2023 Mr W raised a third complaint. He said the engine had seized.

Black Horse issued a final response in April 2023. It said it wasn't upholding the complaint because there was no evidence to show that the fault was present or developing at the point of supply.

Mr W was unhappy with the response and brought his complaint to this service. He said he hadn't had the DPF replaced because there had been a delay in getting the car booked in at the garage and the engine had seized before the repairs could be carried out. Mr W said he thought the engine had seized due to a lack of lubrication caused by engine oil which had become contaminated because of the DPF not being present.

Our investigator explained that this service couldn't consider a complaint if it was referred more than 6 months after the date of the final response from the business. The investigator said that this rule meant that we couldn't look into the part of the complaint which led to the final response letter in October 2022. The investigator said that this service could look into the subject matter of the complaint which was addressed in the final response letters dated December 2022 and April 2023.

Our investigator didn't uphold the complaint. He said there wasn't any evidence that the DPF was missing when the car was supplied. He also said there wasn't any evidence to link the engine seizure with any of the previous issues.

Mr W didn't agree. He said the job sheet dated December 2022 stated that the DPF was

knocked out and that this meant that it was missing. Mr W said that the original DPF pipe would be present, so the fact that the DPF was missing wouldn't necessarily be picked up at a MOT. Mr W said that a car with a missing DPF would still pass an MOT unless the soot emissions were high. Mr W said he understood that a second hand car would have wear and tear but he didn't think it was reasonable that a car should suffer catastrophic engine failure before the finance agreement was over.

Mr W also said that the reason he hadn't referred his complaint to this service in relation to his first complaint was because he was still within the warranty period, and he thought the car would be repaired.

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've taken into consideration the explanation provided by Mr W about why he didn't refer his complaint to this service within 6 months of the final response letter dated October 2022. I appreciate that Mr W had a warranty and that he hoped the car would be repaired. This service can only look at a late complaint if there are exceptional circumstances which meant that it couldn't be referred in time. I'm not persuaded that the explanation provided by Mr W meets this requirement. So I won't be commenting on the part of Mr W's complaint which was addressed in the final response letter dated October 2022, but I will comment on the parts of Mr W's complaint which were addressed in the final response letters dated December 2022 and April 2023.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of the car includes its general state and condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr W was around 9 years old and had covered around 76,000 miles. So it's reasonable to expect that the car already had a degree of wear and tear and that it was likely to require repairs sooner than a brand new car.

Under the Consumer Rights Act 2015, where a fault occurs with a car within the first 6 months of the point of supply, it's assumed that the fault was present or developing at the point of supply and it's generally up to the business to put things right.

After 6 months the burden of proof is reversed and it's up to the consumer to show that the fault was present or developing at the point of supply.

I've reviewed the available information about the issue which Mr W experienced with the car. Based on what I've seen, I'm satisfied that there was a fault with the car. I say this because the AA breakdown report dated February 2023 states that the engine has seized.

I've gone on to consider whether the car was of satisfactory quality when it was supplied.

As I've said above, because the fault occurred more than 6 months after the point of supply, it's up to Mr W to show that the fault was present or developing at the point of supply.

It isn't clear, from the information provided by Mr W, what has caused the engine to seize. This is important, because although Mr W has said that he thinks the missing DPF has

caused the engine to seize, there's no independent mechanical evidence to support this.

I've had regard to the previous issues with the car. I can see that repairs were carried out in August 2022. These weren't related to the DPF or the engine. The car has covered 6000 miles since then, and there's no evidence that these issues have occurred again. I'm therefore treating those repairs as having been successful, and not related to the current fault.

I've reviewed the available information about the DPF. A job sheet dated December 2022 refers to the DPF as being knocked out. It isn't clear from the job sheet whether this means that the DPF is missing or not.

I can see that the car passed an MOT in October 2021 just before it was supplied to Mr W. It also passed an MOT in November 2022. There's nothing in the MOT information to suggest that the DPF is missing. If the DPF was missing, I would have expected this to be identified at the MOT. I appreciate that Mr W has said that a car can pass an MOT without a DPF if the emissions are low. However, I haven't seen any independent engineering evidence to support this assertion and I'm unable to treat what Mr W says as independent or expert evidence.

Based on the evidence I've seen, I'm unable to say that there's enough evidence to show that the fault with the car was present or developing at the point of supply. So I'm unable to say that the car wasn't of satisfactory quality when it was supplied. I'm therefore unable to uphold the complaint.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 December 2023.

Emma Davy
Ombudsman