

## **The complaint**

Mrs H complains about the quality of car she acquired under a hire purchase agreement with Black Horse Limited ("BHL").

## **What happened**

Mrs H is represented in her complaint but to make this decision easier to read I'll refer to everything that was said or sent on her behalf as if Mrs H had done it herself.

In October 2019 Mrs H acquired a used car under a hire purchase agreement with BHL. At the time that BHL supplied the car to Mrs H it was 3 years old, and its mileage was 51,728 miles.

Prior to the current complaint, Mrs H had contacted BHL and expressed dissatisfaction with the car on two separate occasions. On these two occasions it appears that her complaints were upheld, and repairs were carried out. The current issues, raised in a complaint made by Mrs H in June 2022 concern the engine management light ("EML") coming on, a grinding noise in the engine, a smell of diesel, and a EGR fault. Mrs H considers the current issues, are a continuation of the previous issues (i.e. those raised in the first and second complaint) which, according to her, were never fixed despite attempts at repair including an engine replacement in May 2021.

BHL's stance is that there is no evidence to show that anything that might be wrong with the car now, is related to the previous faults. Neither is there any evidence to show that the current issues have arisen due to a fault or faults that were present at the time the car was supplied which would have made the car not of satisfactory quality. Moreover, Mrs H has provided no evidence to show that there is an EGR fault in any event. On this basis it declined to uphold Mrs H's current complaint.

Dissatisfied with BHL's response Mrs H complained to our service.

Once Mrs H's complaint was with us she gave us details about the use she has had of the car which she thinks is insufficient. She also made it clear that her expectation of a second-hand car is that it should have no faults at the point of supply including wear and tear. Moreover, Mrs H expressed dissatisfaction with BHL because it had gone back on promises it had made to her to look again at the car if she was not satisfied with its performance. Mrs H also raised new points about the previous service history of the car before it was supplied to her. She tells us she was not told about this service history prior to the contract. Therefore Mrs H considers that the car was misrepresented to her.

One of our investigators looked at what had happened. Our investigator did not recommend that Mrs H's complaint should be upheld.

BHL accepted our investigator's recommendation, Mrs H did not. In explaining her rejection of the recommendation Mrs H repeated her previous stance. She also told us that BHL should instruct an expert to look into the current issues with the car. Mrs H asked that an ombudsman take a fresh look at her complaint.

## **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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

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 to have been good industry practice at the relevant time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. BHL is also the supplier of the goods under this type of agreement, and therefore it is responsible for a complaint about their quality.

The relevant law includes the Consumer Credit Act 1974 and the Consumer Rights Act 2015. The Consumer Rights Act 2015, says, amongst other things, that under a contract, between a trader and a consumer to supply goods, there is an implied term that "*the quality of the goods is satisfactory*".

The Consumer Rights Act 2015 also says the quality of goods is 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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

Further, under the relevant law 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 can also be aspects of the quality of goods.

Furthermore, Mrs H and BHL disagree about whether the car had any faults at the point of supply, which made the car not of satisfactory quality. This is a key point because it is only faults that were present at the point of supply that are relevant here. Faults that developed afterwards are not relevant. Moreover even if a fault was present at point of supply this will not necessarily mean that the car was not of satisfactory quality. This is because a second-hand car might be expected to have faults, for example worn tyres or damage from wear and tear but this will not necessarily mean the car is not of satisfactory quality. They also disagree about whether the current issues are linked to the previous faults.

Where the evidence is incomplete, inconclusive or contradictory (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.

It follows from what I've said above that in order to uphold this complaint I would have to be persuaded the car was not of satisfactory quality at the point of supply by reason of the issues Mrs H complains about now, and so a breach of the contract has taken place. However, in this instance on balance, I find that no such breach of contract has taken place let me explain why I've come to this conclusion.

In this case the car supplied was used with around 51,728 miles on the clock and had a value of around £42,500 at the point when it was supplied. With a second-hand car I think a reasonable person would expect it to have some wear and tear which needs to be considered when I look at satisfactory quality. I also have to consider factors such as the

mileage, age and price paid at the point of sale. I recognise this is not how Mrs H sees it. But I think my expectations of satisfactory quality in the context of a second-hand car are in line with the expectations laid down in law.

The first question is what faults did the car have under the current complaint. I ask this because BHL suggests that it has not seen any information that suggests to it that there is a problem with the EGR valve. It seems that there was a problem because a replacement was ordered by the car dealership, and it does not seem likely to me that a replacement part would have been ordered just for the sake of it. The diesel smell is more problematic for Mrs H because she is the only person who appears to be aware of it, the car dealership did not accept it exists and neither I think by extension does BHL. I don't think it is likely that the car dealership would have ignored a diesel smell if it was there. Its past behaviour demonstrates a willingness to investigate problems rather than to deny them. It appears that BHL accepts that the EML was coming on, and that there was a grinding noise in the engine

That said, I note, that by the time Mrs H complained about the EGR valve, the diesel smell the EML issues and the grinding noise, the car was six years old, and the car had travelled 65,000 miles. Nothing I've seen suggests these faults are linked to any of the previous faults which BHL did accept were likely there at point of supply. Mrs H says that these points are linked but beyond that she gives no evidence to say why this is more likely than not to be so. Neither have I seen anything that persuades me that the EGR valve fault was something that was there at the point of supply because if it had been I would have expected it to have failed much sooner than it did.

The EML issue appears to have been resolved. Even if it has not been an EML can come on for many different problems. One fault may be resolved and the EML goes off and then a new and separate issue arises and then the EML comes on again (which is what appears to have happened here). That does not mean that all the current and past faults are connected. Mrs H has not demonstrated that there is a connection. Neither does what I've seen mean that most likely the current fault was there at the point of supply. Moreover if the EML was highlighting a fault that had been there from the point of supply which had not been repaired I'd have expected it to have remained on throughout.

No explanation has been given for the engine grinding sound by either party as far as I am aware, but it appears that that noise has gone now the EGR valve has been replaced. And again if the grinding sound had been there from the point of supply I'd have expected that fault to have been present consistently or intermittently (depending on its cause) from the point of supply and it does not appear that it was based on the information I've seen.

For all of these reasons, I find that it is more likely than not that the current faults were the result of wear and tear and BHL is not responsible for problems arising from wear and tear.

I acknowledge that Mrs H thinks BHL should have instructed an impartial expert to examine the car, but it was not obliged to do this. So I don't find she has been treated unfairly because it did not do this. Plus if Mrs H had thought this was necessary she could have instructed an impartial expert herself. If her complaint had been upheld I would have told BHL to refund her for any expert report she paid for.

Mrs H has talked about not being able to use the car while it was being repaired. She suggests this is unacceptable. But this point falls away because since I don't agree any of the current faults are BHL's responsibility I can't fairly or reasonably hold it to account for her not being able to use the car due to these faults.

I don't agree that BHL has misled her about being willing to look into her concerns about the car. It has looked into her concerns it just has not agreed it should do anything to put things right. But that does not mean it has broken its promise to her.

*New points*

Mrs H has now also raised a question about the service history of the car which she says she was unaware of before she contracted with BHL. She also suggests had she known about this service history she would not have contracted with BHL. This appears to be a new matter and has not been considered by BHL in its final response to Mrs H or investigated within this complaint. It follows that I am unable to look at this matter in this decision.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 31 July 2023.

Joyce Gordon  
**Ombudsman**