

The complaint

Miss E has complained that she is unhappy with the quality of a car she acquired in October 2018, using a hire purchase agreement with Black Horse Limited (“Black Horse”).

What happened

Miss E acquired a used Ford Focus in October 2018, using a hire-purchase agreement with Black Horse. The car was four and a half years old, with a mileage of 23,581 at that point. The cost of the car was just over £10,500, of which Miss E borrowed £9,023.40 over a term of 60 months with a monthly repayment of £199.05.

In November 2022, Miss E complained to Black Horse that car had had faults shortly after purchase, in that the car was cutting out and door seals were coming off, and the car had been sold with a one-month MOT. Four weeks before making the complaint, the head gasket went and the engine was replaced, albeit with Ford covering the cost. Miss E said she was unhappy that the car had been sold with a known fault and with recalls having been made. She also said that the seals were letting in water and the car was full of mould. Miss E wants to terminate the hire-purchase agreement and have her payments refunded.

Black Horse issued its final response letter to Miss E in December 2022, in summary saying that she had had the car for just over four years, and had driven over 36,000 miles, which she would not have been able to do if the car had not been of satisfactory quality at the point of supply. It said that the dealership had not had the vehicle in for maintenance or servicing between the date of supply and the date of the engine replacement, so it had no fault history for the car.

Miss E was unhappy with this response and brought her complaint to this service. Our investigator looked at Miss E’s complaint, but didn’t think it should be upheld. Miss E disagreed and asked for her complaint to be reviewed by an ombudsman.

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 decided not to uphold Miss E’s complaint. I’ll explain why.

Because Black Horse supplied the car under a hire purchase agreement, it’s responsible for a complaint about the quality, and there’s an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case of course, the car was around four and a half years old, with a mileage of 23,581 at the point of supply. And the price was lower than that of a new car. So it’s reasonable to

expect that parts of the car would have suffered a degree of wear and tear, and that a car of this age would likely need repair and maintenance sooner than a newer car.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality. Miss E has had the car for over four years, so the short term right to reject under the CRA doesn't apply here.

Black Horse sent in copies of the warranty invoice for the engine replacement and the document from Ford about covering the cost of the engine replacement, along with copies of the sales documents and information from the dealership.

Miss E said that she had no documentary evidence about the initial problems she mentioned, that is, problems with the seals and the engine cutting out. But she has provided several photographs of the interior of the car, showing the current problem with the mould. From what Miss E told us, the mould seems to have appeared quite recently, so we asked Miss E whether the cause had been determined by a garage or independent inspector. She sent in information from the dealership which said that a full water ingress test would be needed, but a visual inspection suggested that water was entering somewhere around the rear passenger quarter. The main areas to check were stated to be three types of seal, and a vent under the bumper which could be dislodged and cause water to enter. More recently Miss E sent in screenshots from social media which she said showed others having similar issues with Ford Focus cars.

I've carefully considered all of the evidence, and I've also searched online for information about recalls on this type of car. I can appreciate that it must be very distressing for Miss E to have mould in the car, and to have this happen following on from the recent engine replacement, but I have to consider whether the car was of satisfactory quality at the point of supply in 2018.

Black Horse said in its final response letter that two faults for which recalls were issued (and which are consistent with what I've found online) were dealt with before Miss E acquired the car. The replacement of the engine appears to have been caused by something else, for which, as far as I can see, a formal recall notice wasn't issued. However Black Horse said the dealership stated it was due to a manufacturing defect, and as I noted above, the cost was met by Ford. So, as a manufacturing defect, it would clearly have been present ever since the car was first made. That said, Miss E was able to drive the car for over 36,000 miles, and for four years, before the problem occurred, and the engine was replaced at no cost to her, so as the repair has been done I can't fairly say that Black Horse should do anything more.

With regard to the mould, this seems to have occurred since the engine replacement. As I noted above, the exact cause hasn't been determined, but it seems likely to be related to worn seals or a vent that may have been dislodged. I've looked at all of the information that Miss E sent in, and I appreciate that she mentioned problems with the seals occurring shortly after she acquired the car. But I don't have much detail about the early problems (and I can't see that they were reported to Black Horse at the time), and it seems to me that the mould would have shown up much sooner if there had been a fault present at the point of supply – as I said, Miss E had had the car for four years when it appeared, and by then the car was over eight years old. Seals do need replacing from time to time, and if the cause is the vent under the bumper having been dislodged, it seems likely that this would've been quite recent. So overall I think it's most likely that the problem that's causing the mould is due to wear and tear.

I appreciate that Miss E feels very strongly about this. But in summary, whilst, by definition, a manufacturing defect would've been present at the point of supply, it clearly wasn't evident, and when the engine had to be replaced it was done at no cost to Miss E, so she was not left out of pocket. And I'm not persuaded that the current issue with mould is due to a fault that was present at the point of supply. So overall I don't think Black Horse has done anything wrong, and therefore I am not upholding this complaint.

My final decision

For the reasons given above, I have decided not to uphold Miss E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 18 August 2023.

Jan Ferrari
Ombudsman