

The complaint

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

Miss G has been represented during the claim and complaint process by Mr G. For ease of reference, I will refer to any comments made, or any action taken, by either Miss G or Mr G as “Miss G” throughout the decision.

What happened

In October 2022, Miss G was supplied with a used car through a hire purchase agreement with Black Horse. She paid a £100 deposit, and the agreement was for £16,954.93 over 60 months, with monthly payments of £355.90. At the time of supply, the car was just over seven years old, and had done 56,600 miles according to the agreement (although the MOT record shows the car had already done 56,779 miles in May 2022, five months before the car was supplied to Miss G).

Miss G said that, before she was supplied with the car, she’d asked the supplying dealership if the car had a cam belt or a cam chain, and she was assured it was a cam chain. However, she later discovered this wasn’t the case, and the car had a cam belt, which has a shorter lifespan and would require replacement at shorter service intervals.

Shortly after being supplied with the car, Miss G took it back to the dealership as she wasn’t happy with the front tyres, and the infotainment system wasn’t working. She complained to them that the tyre wear had been flagged as an advisory on the MOT in May 2022, and the dealership agreed to replace them. They also replaced the infotainment system.

The car underwent an MOT in April 2023, where Miss G says work needed doing on the suspension, which cost her £450. In May 2023, when the car was being serviced, Miss G says she was told the cam belt was overdue for replacement. She also says that the cost of this service was £396.

Miss G has provided an undated vehicle health check document for the car, which she says was done at the time of the service in May 2023. This health check confirms “*cam belt overdue.*” Other required work identified on this document was the need to replace the front and rear brake pads, to replace the brake fluid and Haldex oil, that the gearbox oil change was overdue, that there was a grease leakage from a constant velocity (‘CV’) joint cover, and that suspension bushes were starting to perish.

Unhappy with what had happened, Miss G says she stopped using the car on 6 June 2023, and she complained to Black Horse. In their complaint response letter, dated 19 July 2023, Black Horse upheld the complaint regarding the issues with the infotainment system, and that the Haldex oil hadn’t been replaced as per the servicing schedule. They offered Miss G £450.43 compensation for this. However, Black Horse didn’t uphold Miss G’s complaints about the tyres, suspension, gearbox oil, CV joint, or cam belt.

Miss G wasn't happy with Black Horse's response, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said the evidence showed there was a fault with the car, which made it not of a satisfactory quality when supplied. He didn't think the cam belt had been changed, when it should've been, and he thought the evidence showed the original cam belt was removed and replaced in 2019, rather than a new cam belt fitted.

As attempts to repair the car had already taken place, the investigator said that Miss G should be able to reject the car. He recommended that Black Horse keep nine of the payments Miss G had made, as the car had travelled around 9,000 miles while it was in her possession, and refund the remainder; as well as refunding her deposit, refunding her repair costs, and paying her an additional £100 for the distress and inconvenience she'd suffered.

Black Horse didn't agree with the investigator's opinion. They said they believed the cam belt had been changed in 2019 and, given the existing cam belt had been removed and the nominal cost of a replacement (less than £40), it would be illogical for the existing (worn) cam belt to be put back on. They also said that they should have the chance at repair before Miss G is given the right to reject the car and would be prepared to replace the cam belt and pay the additional £100 recommended compensation.

I issued a provisional decision on 3 April 2024, where I explained my intention not to uphold the complaint. In that decision I said:

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. Miss G 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 Miss G to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss G 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.

Before I address any issues with the car, I'd like to address the issue of a possible mis-sale. For there to be a mis-sale, there needs to be a false statement of fact, and that false statement of fact needs to have induced, in this instance, Miss G to have specifically chosen this car.

Miss G has said that she asked the dealership if the car had a cam belt or a cam chain and, after going away and checking, she was told there was a cam chain. There is no evidence of

this conversation, but I don't think it would be an unreasonable question for a prospective purchaser to ask, and Miss G has been consistent in her view as to this is what happened. So, I'm satisfied on the balance of probabilities that Miss G asked this question.

Miss G's testimony has also been consistent that, after going away and checking, the dealership advised her the car was fitted with a cam chain. The make and model of car Miss G was supplied with comes with two types of engine, one of which has a cam belt, the other a cam chain. And, had the dealership checked this (as Miss G says they did) an internet search would've confirmed which type of engine used which type of timing mechanism. As such, I'm not satisfied that Miss G was given the wrong information, and there was therefore a false statement of fact.

However, even if I'm wrong about this, a false statement of fact isn't enough – Miss G needs to have been induced to take this car because of the false statement of fact, which I don't think was the case. I say this because I haven't seen anything to show me that Miss G wasn't looking for any car without a cam belt, or that the presence of a cam chain was the only reason she wanted this specific car. Instead, based on what I've seen, I'm satisfied Miss G more likely asked this question in relation to future maintenance requirements and, had she been told the car has a cam belt, would most likely have asked about when it was last replaced and when it was due for replacement. And the answer to this question would've been taken into consideration as part of her overall decision making process.

So, for the reasons given. I'm not satisfied there was a mis-sale.

Turning to the cam belt itself, I've seen that the service book shows service records for May 2016, April 2017, January 2018, May 2019, March 2020, May 2022, and May 2023. On all these records, the change of a toothed belt box is either ticked as 'No' or is unchecked. As the toothed belt would most likely refer to the cam belt, I'm satisfied this wasn't replaced as part of any regular service.

However, I have seen an invoice dated April 2019 showing the following work was done on the car – "Crankshaft seal remove+reinstall ... Engine carrier remove+reinstall ... Bonded rubber mounting remove+reinstall ... toothed belt remove+reinstall." The toothed belt (which, given the other work done, would be the cam belt) isn't listed on the invoice as one of the parts that were replaced. However, it's also clear that this is just page one of a multi-part invoice, as there are no costs detailed at the end of the invoice. As such, the absence of the cam belt on the list of parts used doesn't mean that it wasn't replaced.

Both Miss G and the investigator believe "toothed belt remove+reinstall" means the original can belt wasn't replaced and was put back on the car, whereas Black Horse say this would be illogical, especially given the low cost of the replacement part. If I were to accept that 'remove and replace' means the original part was put back on the car, then this would also mean the original crankshaft seal and bonded rubber mounting were taken off and put back on. And the invoice clearly shows a part number for a crankshaft oil seal being used.

As such, on the balance of probabilities, and without sight of the full multi-page invoice, I'm satisfied it's more likely than not that the cam belt was replaced in April 2019, when the car had done 38,985 miles. What's more, when questioned, the garage who undertook this work have said the cam belt was changed.

So, had Miss G been told the car had a cam belt, and that this had been changed around 3 years and 16,000 miles earlier, I don't think this would've adversely influenced her decision to choose this car.

I've also seen a copy of the service that was done on the car on 15 May 2021, where it's recommended that the cam belt is changed. This need to change the cam belt was also confirmed in the vehicle health check Miss G says she had done in May 2023.

Having looked at the vehicle manufacturer's recommendations for a cam belt, they say the part should last around 80,000 miles, but that it's also recommended this part is changed every 4 to 5 years. So, with a cam belt having been replaced in April 2019, I would expect a vehicle health check in May 2023 to flag the need to replace the cam belt. However, as the service record for 27 May 2023 shows the car has only done 64,380 miles, it means the replaced cam belt would've done around 25,400 miles. Which is within the 80,000 miles recommended replacement window. And even if the cam belt hadn't been replaced (which, as I've said, I'm satisfied it was), the mileage of the car was still well within this window.

As such, I'm satisfied the need to replace the cam belt is regular maintenance, and not something that makes the car of an unsatisfactory quality.

I've also considered the other issues with the car, and in doing so noted that Black Horse have accepted the issue with the infotainment system and Haldex oil, which have already been fixed, or Black Horse have offered to fix. The other issues with the car are worn tyres, worn suspension components, worn brake pads, a leak from a CV joint cover, and the need to replace the gearbox oil. I consider these to be normal wear and tear / maintenance items that are associated with a car of this age and mileage. I've not seen anything i.e., a report from an independent engineer, to show me that these issues were present when the car was supplied to Miss G, so making it of an unsatisfactory quality. As such, I won't be asking Black Horse to do anything more.

I've seen that, in addition to agreeing to cover the costs of replacing the Haldex oil and the cam belt, Black Horse have offered to pay Miss G £147.43 for the impaired usage she's had, refund the £99 cost of the vehicle health check, and pay Miss G a total of £300 for the distress and inconvenience she'd suffered. I consider this is a fair offer given the circumstances, and I don't intend to ask them to do anything more.

Responses

Miss G didn't agree with my provisional decision. She confirmed that she'd asked about the cam belt from a future maintenance perspective, and she didn't want to have to bear the costs of a replacement soon after being supplied with the car. However, with regards to the work that was done in April 2019, she says the cam belt was removed to replace the crank shaft oil seal. So, while a new oil seal was put on the car, the existing cambelt was refitted.

Miss G has also said that the cambelt and Haldex oil weren't replaced by the previous owner in March 2021, when this was recommended during a minor service. She believed that, if the cambelt had been changed in April 2019, this would've been highlighted on the March 2021 invoice. What's more, Miss G believes that the recommendation on the health check in May 2022 that the cambelt needed to be changed wouldn't have been made if a new cambelt had been fitted in April 2019.

In respect of the Haldex oil, Miss G has said this wasn't changed as per the service schedule, which she believes caused damage to the driveshaft. She also feels that the tyres, suspension arms, and air filter should've been changed before the car was supplied to her.

Black Horse didn't respond to my provisional 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.

As Black Horse haven't said anything to the contrary, I'm taking their comments to mean they don't object to my provisional decision.

Miss G's comments about why she asked about the cam belt have been noted. As she's confirmed the question was asked for maintenance purposes only, and therefore by extension confirmed that she wasn't only prepared to accept a car with a cam chain, I remain satisfied there was no mis-sale.

With regards to whether the cambelt was replaced or refitted in April 2019, I've noted Miss G's comments about why she considered it was refitted. However, as I've said above, the garage who carried out the work say the cambelt was replaced. In my provisional decision I explained that I'd only seen a partial invoice, and from this it wasn't possible to determine if a new cambelt was supplied. As part of her comments Miss G has again provided the partial copy of the invoice, so page two (which would include any additional parts used and detail the overall cost of the work) has still not been submitted.

Given this, my provisional view remains unaltered – if “*remove+reinstall*” for the oil seal means a new oil seal was fitted (which is not disputed) then it's more likely than not that “*remove+replace*” also means a new cambelt was fitted. What's more, I don't agree that the service invoice for 15 March 2021 means that the cambelt wasn't replaced in April 2019. I say this because the invoice of 15 March 2021 doesn't indicate that the condition of the cambelt (or indeed the Haldex oil) was inspected. Instead, the recommendation for change was based entirely on the fact that the manufacturer recommends a replacement cambelt every four to five years. What's more, this recommendation doesn't take into consideration that the manufacturer also says that a cambelt should last 80,000 miles, and the car had done slightly more than 50,000 miles at the point of this recommendation.

Turning to the health check that took place in May 2022, again there's nothing to indicate the recommendation to replace the cambelt was based on a visual inspection of the belt itself. Instead, it was flagged as overdue based entirely on the age of the car, and not the mileage. As I said in my provisional decision, if the cambelt had been changed in 2019, then the manufacturers recommended replacement schedule would flag this for replacement in 2022. And, again, this recommendation was made well within the mileage lifespan of the cambelt.

However, regardless of the above, I've noted that Black Horse have offered to replace the cambelt, at no cost to Miss G, to allay any concerns she may have over the cambelt potentially not being changed before the car was supplied to her.

It's also not disputed that the previous owner of the car didn't change the Haldex oil when it should've been changed, and I've noted Miss G's concern about the damage that spent oil can do. The car was supplied to Miss G in October 2022, when it had done around 56,000 to 57,000 miles. In her comments on my provisional decision, Miss G has said that the Haldex oil should've been changed every 20,000 miles, which, based on the mileage evidence I've seen, would've been in January 2023.

As such, regardless of whether the Haldex oil had been changed at 40,000 miles (around April / May 2019 based on the mileage information I've seen), it should've been changed by Miss G in January 2023. But I've seen nothing to show me that this change took place. What's more, when the vehicle health check and service took place in May 2023, the Haldex oil wasn't changed.

Miss G has provided an invoice dated 7 July 2023, for issues she was having with the drive shaft. While the invoice indicated the driveshaft issues were down to the leaking CV joint, it also shows that the Haldex oil required replacing. It also shows the mileage on the car as 65,278 miles – over 5,000 miles since the Haldex oil should've been replaced.

As such, I can't agree with Miss G that the current issues she's having with the driveshaft are solely down to the Haldex oil not being replaced at 40,000 miles. But again, regardless of this, in July 2023 Black Horse offered to replace the Haldex oil at no cost to Miss G, although I've not seen anything to show me she accepted this offer.

Finally, Miss G was buying a used vehicle, and any reasonable person would expect this to be in a road worn condition, based on its age and mileage. As such, it's reasonable to expect that items such as the suspension arms, tyres, and air filter would need changing sooner than would be expected on a brand new car. While I appreciate Miss G's comments that she paid a "*premium price*" for the car, I don't agree that all worn parts should therefore have been changed, and the car supplied with tyres that weren't worn i.e., brand new tyres. Miss G had the opportunity to inspect the car before purchase, and the MOT record is publicly available, so I'm satisfied she ought to have been reasonably aware of the general condition of the car before it was supplied to her. And I remain satisfied these are issues of general in-service wear and tear, and not something Black Horse should be responsible for.

As such, and while I appreciate this will come as a disappointment to Miss G, I won't be asking Black Horse to do anything more. It's now her choice whether or not to accept Black Horse's offer.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 21 May 2024.

Andrew Burford
Ombudsman