

## **The complaint**

Miss M complains about the quality of a used car she acquired through a hire purchase agreement with Black Horse Limited ('Black Horse'). Miss M says that the car was sold to her with a faulty gearbox and so she thinks it isn't of satisfactory quality.

## **What happened**

Miss M's complaint is about the quality of a car she acquired in June 2023 using a finance agreement. The car was used, and it was first registered in October 2020. So, it was just under three years old when Miss M received it. It had covered 15,480 miles at the time of sale.

Miss M acquired the car using a hire purchase agreement that was started in June 2023. The vehicle had a retail price of £12,999. Miss M paid a £1,096.68 deposit after her part exchange and existing finance was settled. Meaning £11,902.32 was financed.

This agreement was to be repaid through 49 monthly instalments, the first 48 instalments were for £219.36 and then the final instalment was £5,479. If Miss M made repayments in line with the credit agreement, she would need to repay a total of £17,104.98.

Miss M has complained about the quality of the car. Below is a summary of the issues complained of by Miss M and the investigation and repair work that has been carried out by a garage, alongside what has happened in respect of the complaint.

In August 2023, Miss M says she was having problems selecting reverse gear on the car and she raised this with the dealership. She had driven the car around 2,000 miles at this point.

The car was then taken into a garage under the warranty and the gearbox was stripped down to determine what the problem was. In October 2023, Miss M was advised that the clutch was high meaning it could be wearing out, but that further investigation was needed to fully determine the problems. The cost of this investigation would be just under £1,000.

Both the dealership and the garage didn't feel they should pay for this work. And Miss M also didn't think she should pay as she thought the car was faulty and shouldn't have been sold to her.

Miss M complained to Black Horse, as the finance provider, saying that she was having problems with the gears and didn't feel that she should pay for the diagnostic work as the car was faulty.

Black Horse has paid for this investigation work, and it took place in February 2024, the garage found that the reverse gear synchro hub was damaged. The car required a new hub and gears which would cost about £1,750.

Black Horse says that it has contacted the garage that did the investigation work. The garage has said that the fault was likely caused by the driver selecting reverse gear when

the car was in motion. Black Horse says that the garage has advised that Miss M would not have been able to drive the car for 2,000 miles, before making the complaint, if this fault was present at the time of sale.

Black Horse didn't uphold the complaint. It said that as the fault wasn't likely present or developing at the time of sale then it wasn't liable to repair the car. Miss M didn't agree with this and brought her complaint to the Financial Ombudsman Service.

Our Investigator didn't uphold Miss M's complaint. She said that it wasn't certain that the fault with the car was present or developing at the time of sale and it could have been caused by how the car was driven. So Black Horse didn't need to put it right even though it had paid for the diagnostics. Our Investigator thought that Black Horse had handled Miss M's complaint reasonably.

Miss M didn't agree with the Investigator. She said that a gearbox failure on a car that had travelled a lower number of miles, and was relatively new, was unreasonable. And she did report the fault seven weeks after she took ownership of the car.

There was some further correspondence, but no new issues were raised. Because Miss M didn't agree, 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.

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 agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Black Horse as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that 'the quality of the goods is satisfactory'.

To be considered 'satisfactory', the goods would need to meet the standard that a reasonable person would consider satisfactory – considering 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 car's history.

The CRA 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 be aspects of the quality of goods.

This car was just under three years old when Miss M acquired it and it had travelled around 15,500 miles. The cash price was about £13,000 at that time. I think a reasonable person would accept that such a vehicle would probably have some parts that are worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a new vehicle.

But there's also a reasonable expectation that the vehicle will be relatively durable - taking into account its age, price and mileage at the outset. So even though the vehicle wasn't new Miss M should have been able to use it for a reasonable period of time before it needed significant work.

It has been established that the car had a fault with the gearbox. And this needed an investigation to determine it, and a repair. I don't think there is any dispute about this, and Miss M noticed it after a relatively short period of ownership, and it was then confirmed by an investigating garage.

As the problems with the car were noticed around seven weeks after Ms M got the car, and after she had driven it around 2000 miles, I need to consider whether the car was durable. If parts or systems of the car fail prematurely, this might indicate there was already a problem with the car when it was supplied.

The garage that did the diagnostic work on the car said that '*we have seen this type of damage before caused by selecting reverse gear while the vehicle is in forward motion*'. And Black Horse contacted the garage about the fault with the car and it has confirmed that it doesn't think that the fault would have been present at the time of sale. This is because if it was present then Ms M wouldn't have been able to drive the car for 2000 miles before noticing the problem.

In order to uphold this complaint, I need to be able to say that it is likely that the fault the car has was present or developing at the time of sale. But the evidence I have doesn't support this. This is because the garage that has worked on the car has said that it's likely that the fault with the gearbox wasn't present at the time of sale and developed after Ms M acquired the car.

Ms M has said that as she reported the fault relatively soon after she acquired it then it should be assumed that the car was faulty at the time of sale. Whilst I understand what she is saying here, the information from the garage doesn't support this and is evidence that the car wasn't defective at the time it was supplied to her.

Ms M has said that the fault was intermittent and so she didn't notice it sooner. But this doesn't necessarily mean that the fault was present or developing at the time of sale. It could be that the fault wasn't present when she acquired the car. And this is what the garage has said, it has confirmed that it is likely that Ms M would have noticed this fault, and she wouldn't have been able to drive the car as far as she did, if it was present at the time of sale.

So, I can't say it's likely that the gearbox problems were apparent or developing at the time the car was supplied to Miss M. It follows that, having looked at everything, I don't think there is enough for me to say that the car was not of satisfactory quality when it was supplied to Miss M.

And so, whilst the car having the problems it did was unfortunate, I don't think that Black Horse should be responsible for putting the faults with the car right or paying any compensation.

Miss M is also unhappy about how Black Horse has considered her complaint. But Black Horse has looked at it in full and did keep in contact with her. It did consider the issues with the car and pay for the investigation work. And I think Miss M's dissatisfaction with this aspect of what Black Horse did is more about the conclusions it reached rather than how it handled the complaint. So, I'm not upholding Miss M's complaint about how Black Horse has considered this complaint.

Overall, I'm not upholding Miss M's complaint.

**My final decision**

For the reasons set out above, I don't uphold Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 5 February 2025.

Andy Burlinson  
**Ombudsman**