

The complaint

Mr G is unhappy that a car supplied to him under a personal contract purchase ('PCP') agreement with Black Horse Limited was of an unsatisfactory quality.

What happened

In September 2022, Mr G was supplied with a used car through a PCP agreement with Black Horse. He paid a £270.78 deposit, and the agreement was for £17,429.22 over 49 months, with 48 monthly payments of £290.54 and a final payment of £8009. At the time of supply, the car was almost three and a half years old and had done 31,675 miles.

Mr G started to have problems with the car shortly after it was supplied to him. He raised an issue about the ad-blue tank, which was covered by the warranty. However, the repair didn't take place until May 2023. But Mr B was able to drive the car unimpeded during this time.

In July 2023, Mr G started to have problems with the gearbox. As the warranty had expired, Mr G paid £1,147.06 for a gear selector repair on 15 July 2023. At the time of this repair the car had travelled 40,033 miles – around 8,350 miles since it was supplied to Mr G.

In December 2023 the car developed an electrical fault, and the battery kept discharging. In April 2024 (while this complaint was under investigation) Mr G had the battery replaced at a cost of £331.41. This fixed the electrical fault.

Mr G wasn't happy with the faults with the car, and he complained to Black Horse. While they didn't uphold the complaints about the gearbox and electrics, they did offer Mr G £100 compensation for the delays in the ad-blue fault being fixed. Unhappy with this response, Mr G brought his complaint to us for investigation.

Our investigator thought Black Horse's offer for the ad-blue repairs was reasonable, as Mr G had been able to use the car while the repairs were outstanding. However, they thought the gearbox wasn't reasonably durable, and shouldn't have failed so soon. Because of this, they said Black Horse should reimburse Mr G the cost of the gearbox repair, plus interest, as well as paying him an additional £150 compensation.

Finally, the investigator didn't think the fault with the electrics/battery was present or developing at the point the car was supplied to Mr G, and it was reasonable to expect to have to replace the battery given the age of the car. So, they didn't think Black Horse needed to do anything about this issue.

Mr G accepted the investigator's opinion, but he said Black Horse hadn't paid him the £100 compensation they'd offered in their final complaint response.

Black Horse didn't agree with the investigator. They felt that Mr G should've had the gearbox serviced at the manufacturer's recommended interval of 4-years/40,000 miles, and this failure to service the car may have contributed to the gearbox failure. They also said that, as the gearbox failed more than six-months after the car was supplied to Mr G, it was for him to

prove that the gearbox fault was present or developing at the point of supply – and he hadn't done this.

Black Horse didn't think there was an inherent defect with the gearbox when the car was supplied to Mr G, nor was there a manufacturer's defect. As such, they felt the gearbox had failed due to normal in-service wear and tear.

As Black Horse didn't agree with the investigator's opinion, 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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. Mr G was supplied with a car under a PCP 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 Mr G to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr 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.

As it's not disputed the ad-blue issue happened shortly after the car was supplied to Mr G and was repaired under warranty, nor that the battery failure wasn't as a result of either a fault that was present when the car was supplied, or because it failed prematurely; my decision will focus on the remaining area of dispute – the gearbox failure.

The evidence shows that the gearbox failed in July 2023, after the car had travelled 40,033 miles. As Black Horse have pointed out, there's no evidence the gearbox failed due to a fault that was present or developing at the point of sale. However, as I've said above, I also need to consider whether the gearbox was sufficiently durable. And I don't think it was.

I say this because no reasonable person would expect a gearbox to fail at 40,000 miles, and although the manufacturer doesn't give a specific lifespan for this part, it's reasonable to expect a gearbox to last in the region of 70,000 to 100,000 miles. Given this, I'm satisfied the gearbox failed prematurely.

I've gone on to consider whether the missed gearbox service was a major contributory factor to the gearbox failure, and I don't think it was. Although the manufacturer recommends a specific gearbox service after 4-years, the car was only 4 years and three months old when the gearbox failed. It's also the case that the manufacturer says the gearbox should be serviced at 40,000 miles, and the car had travelled 40,033 miles when the gearbox failed. So, while the gearbox service was missed, I don't think that the car travelling 3-months / 33 miles past the recommended service interval is sufficient to say that the gearbox failed *because* the service was missed.

So, for the reasons given, I'm satisfied the premature gearbox failure made the car of an unsatisfactory quality, and Black Horse need to do something to put things right.

Putting things right

[this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract." This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Black Horse – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

I'm satisfied that the ad-blue repair classifies as the single chance of repair. So, the second issue with the gearbox, under section 24(5) of the CRA, would normally allow Mr G the right of rejection. However, in this instance, Mr G has had the car repaired, and there's no evidence this repair failed. So, I don't think it would be fair for me to say that Black Horse should accept rejection of the car. Instead, I'm satisfied they should reimburse Mr G for the cost of the gearbox repair.

It's also clear that Mr G has been inconvenienced by having to arrange for the car to be repaired, and by having to approach his employer for a rental car in order to work while the car was being repaired. So, I think Black Horse should compensate him for this. The investigator had recommended Black Horse pay him a total of £250, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, if they haven't already, Black Horse should:

- upon receipt of proof of payment, reimburse Mr G the £1,147.06 he paid for the gearbox repair;
- apply 8% simple yearly interest on the reimbursement, calculated from the date Mr G made the payment to the date of the reimbursement[†]; and
- pay Mr G a total of £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Black Horse to take off tax from this interest, Black Horse must give Mr G a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr G's complaint about Black Horse Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 28 August 2024.

Andrew Burford
Ombudsman