

The complaint

Mr P complains about the quality of a used car he acquired through a personal contract purchase with Black Horse Limited ('Black Horse'). Mr P says that following a safety recall he hasn't been able to use the car properly. This is because he cannot charge the battery beyond 72%.

What happened

Mr P's complaint is about the quality of a car he acquired in July 2022. The car was used, and it was first registered in March 2020. So, it was two years old when Mr P received it. It had covered 21,000 miles.

Mr P acquired the car using a personal contract purchase that was started in July 2022. The vehicle had a retail price of £48,092. Mr P paid a £14,625 deposit meaning £33,466 was financed. This agreement was to be repaid through 37 monthly instalments. There were 36 instalments for £362.46 followed by a final instalment of £28,103.00. If Mr P made repayments in line with the credit agreement, he would need to repay a total of £55,777.56.

Below is a summary of the issues complained of by Mr P and the investigation and repair work that has been carried out by the dealership, alongside what has happened in respect of the complaint.

In September 2023, Mr P's car was subject to a safety recall. The manufacturer had identified a problem with thermal overload in the car's battery which could result in a fire. Because of this problem Mr P's car received a software update that provided enhanced monitoring of the battery. Where the software determined there was a risk of thermal overload it limited the battery charging to 75%. And this applied in Mr P's case.

There is a jobsheet from March 2024 that shows the affected battery module was replaced. But Mr P is still unable to charge his car higher than 75%. Black Horse says that the manufacturer has confirmed that the battery will run at 72% of the maximum charge until new software is formulated.

In March 2024, Mr P complained to Black Horse about the issue he was having with the car. Black Horse didn't uphold his complaint as it said that it wasn't evident that the problem with the car was present or developing at the time of sale. And this was shown by the fact that he had been able to use the car as normal before the safety recall.

Mr P didn't agree with this and brought his complaint to the Financial Ombudsman Service.

Our Investigator upheld Mr P's complaint. She said that the fault with the battery was likely present or developing at the time of sale and so the car wasn't of satisfactory quality. Added to this the car has had the battery restricted for a long period of time. She thought that compensation should be based on Mr P being able to reject the car.

Black Horse didn't agree with the Investigator. They did note that the manufacturer was prepared to pay compensation in some cases like Mr P's. But they maintained that the

limiting of the battery to 75% was a safety feature added to detect irregular activity and not a fault. And that Mr P was able to drive the car normally before the recall.

There was some further correspondence, but our Investigator didn't change their opinion about the complaint.

And I can see that Mr P has recently taken the car to a dealership for the battery problems to be further investigated. Mr P has said that he wasn't provided with a report, he thinks that Black Horse may receive this in time, but the battery was confirmed to only charge to 75%. This investigation hasn't resolved the complaint and Mr P has said that he would like his complaint to be considered by an Ombudsman.

Because Mr P and Black Horse haven't reached agreement, 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 was good industry practice at the relevant time.

The agreement in this case is a regulated personal contract purchase – 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 – 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 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 two years old when Mr P acquired it and it had travelled around 21,000 miles. 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 a vehicle will be relatively durable - taking into account its age, price and mileage at the outset. So even though the vehicle wasn't new Mr P should have been able to use it for a significant period of time before it needed anything more than routine repair and maintenance, and it shouldn't have any more significant problems for a longer period of time.

Was there a fault with the car

I've seen the safety recall notice and the related work undertaken by a garage in respect of this. It's established that the car has a problem with the battery or the charging system. This could cause 'thermal overload' which in turn could result in the car catching fire. As a result of this the car's charging capacity has been restricted. There doesn't seem to be a reasonable prospect of this being rectified soon and so it's reasonable to say the car is faulty.

Was the car of satisfactory quality bearing in mind the fault

Black Horse has said this is a safety recall and that manufacturers will periodically perform these actions as a precautionary measure. These are expected in a vehicle's life and are not regarded as evidence of a fault. A recall doesn't show that the overall quality or fitness of purpose of the vehicle was impacted from the sale, or that these faults were present or developing at the time of supply.

I appreciate that this can be the case, but I don't think it applies here. The recall notice concerns cars of a certain manufacture date which implies this is a manufacturing fault. And the recall was made about what seems to be a potentially serious (albeit rare) fire risk with the car and I have noted the recall notice says that:

'A vehicle thermal overload condition such as fire or smoke can result in increased risk of occupant injury and or injury to persons outside the vehicle, as well as property damage.'

'In line with recommendations made by manufacturers who have had similar issues, customers should park away from structures for 30 days after the recall has been completed. Where possible charge outside.'

I think all of this shows that the car was faulty, or the fault was developing, from the time of manufacture. And so, it would have been faulty when the car was supplied to Mr P. And given the nature of this fault the car wasn't of satisfactory quality.

I don't think this is altered by the fact that Mr P was able to drive the car for around 14 months before the problem was discovered. In this case I think the length of time he was able to drive the car doesn't alter that it was likely to be faulty when supplied.

It's worth noting that Black Horse has said that the manufacturer is paying compensation in this type of situation, and so I think it's reasonable to say that the manufacturer agrees that there is a significant problem here. Mr P has had his use of the car restricted for some time now, and so I don't think it's reasonable to wait for any compensation he may receive from this source in the future.

And whilst Mr P has been able to use the car, the restriction on how much he can use it has impaired his use of it to some degree. And I can see he is very concerned that he won't be able to sell, or part exchange, the car when the finance has ended due to the problems with the battery. So, I agree that Mr P should be able to now reject the car as it wasn't of satisfactory quality.

Mr P was inconvenienced on several occasions by having to take the car back and forth to a garage due to the safety recalls and the software updates. He's not always been provided with a courtesy car. I can also imagine it would have been very frustrating and stressful for the problem to be not resolved over a significant period of time. So, I think the £150 distress and inconvenience payment, plus a refund of one month's payment is fair.

I do accept that the manufacturer should be able to issue recall notices, and this is a reasonable thing to do. But the recall and related issues seem to have caused specific problems for Mr P that persuade me that rejection of the car is the right thing to do in this case.

Overall, I uphold this complaint and Black Horse should now put this right.

Putting things right

I uphold this complaint and direct Black Horse to:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Mr P.
- Refund Mr P's deposit/part exchange contribution.
- Refund one month's payment to acknowledge that while Mr P has had use of the car it has been at a reduced capacity, with the need to charge more frequently.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay a further amount of £150 for any distress or inconvenience that's been caused.
- Remove any adverse information from Mr P's credit file in relation to the agreement.

If Black Horse considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Mr P's complaint.

Black Horse Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 May 2025.

Andy Burlinson
Ombudsman