

## **The complaint**

Mr A complained about the quality of a car supplied to him under a hire purchase agreement with Black Horse Ltd ('Black Horse').

When I refer to what Mr A or Black Horse have said or done, it should also be taken to include things said or done on their behalf.

## **What happened**

In November 2022, Mr A acquired a used car through a hire purchase agreement with Black Horse. The cash price of the car was £7,200. Mr A paid a cash deposit of £175. The total amount payable was £9,976, with a first monthly payment of £163.35, then 58 monthly payments of £163.35 and a final payment of £163.35. At the time of supply, the car was around six years old, and the hire purchase agreement shows the mileage as 68,751 miles.

In early May 2024 Mr A was driving the car on the motorway when the oil light illuminated, followed quickly by a bang after which the engine cut out completely. The car was recovered from the roadside and taken to a garage for inspection. At this point the mileage was recorded as 85,212.

When the garage inspected the car, they confirmed they couldn't start it and they told Mr A that the timing belt had failed, the crankshaft was broken, and the engine block was cracked. They said that a replacement engine and turbo would be required. They estimated the cost for this to be approximately £6,500. However, they also said the costs could be higher because there was a risk there could be damage to the gearbox due to the breakdown happening at speed on the motorway, but this couldn't be determined until the car was drivable.

Mr A complained to Black Horse in May 2024 and asked to reject the car because he said the fault that led to the breakdown is a known manufacturing/design defect that has been admitted to by the car's manufacturer. He also said that the car had been supplied without a recent service and with other issues which resulted in him having to spend money on it during the period between him taking possession of it and the breakdown.

In July 2024 Black Horse contacted Mr A to say they were not upholding his complaint because the car hadn't been serviced in line with the manufacturer's recommendations, which was a requirement of the hire purchase agreement, and that this could have caused the issues which led to the breakdown.

Black Horse also made some other comments:

- They acknowledged that there is a known issue with the timing belt failing, but they believed that lack of servicing could also be a factor. This is because the wet belt is constantly being dipped in oil and if the oil isn't replenished and replaced this could then dry up causing a failure of the part.
- The manufacturer's recommended service interval for the car is every 12 months or 12,500 miles, whichever comes first. The last recorded service in the car's service

book was 21 September 2021 at 57,178 miles, and the car hadn't been serviced while in Mr A's possession when the breakdown occurred on 1 May 2024, at which point the car had been driven around 28,034 miles without having had a service. Black Horse said this means the car was approximately 29 months without a service which could have been the cause of the issues.

- There is no evidence of a fault with the car until May 2024 and due to the time which elapsed between Mr A acquiring the car and it breaking down, along with the mileage of approximately 16,461 covered in that time, there is no evidence to suggest a fault was present or developing at the point the car was supplied.

Mr A was unhappy with this response, so he referred his complaint to our service for investigation in July 2024 and said:

- He wants to reject the car because it was faulty when supplied to him as it came with a known defect in the engine, which is accepted by the manufacturer and Black Horse, and this defect led to the breakdown.
- He would like a refund of the costs he has incurred due to being supplied with a faulty car he couldn't use, including: his finance payments, travel costs incurred from being without a usable car, insurance payments including cancellation charges, diagnostic costs, recovery costs, and the cost of replacing the battery six months after he acquired the car.
- He wants any adverse credit information arising from having been supplied with a faulty car to be removed from his credit file.

Our investigator concluded that she was not able to say that the car wasn't durable, and, taking into consideration all of the information, she thought the car wasn't of unsatisfactory quality when supplied to Mr A and, therefore, it's not fair to ask Black Horse to do anything further.

Mr A didn't agree with the investigator and provided some further information:

- Information regarding a recall of this engine type in another country.
- A copy of a memo issued in 2018 to all the car's manufacturer dealers in the UK regarding the same engine type, which refers to a process for making goodwill payments of up to 100% of the cost of repairs.
- Information showing that the recommended schedule for changing the timing belt on the car is 150,000 miles or ten years, whereas his car failed at 85,212 miles and eight years.

Black Horse didn't reply to our investigator's findings.

Because Mr A didn't agree with our investigator, 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 our 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 – in other words, 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 A was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr A entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

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

In this case I think there isn't sufficient evidence to determine that, most likely, the car wasn't reasonably durable. I also think there isn't sufficient evidence to say that, most likely, the car wasn't of satisfactory quality when supplied to Mr A. My reasons for this are broadly the same as our investigator's but I will summarise them briefly below.

The cash price of the car was £7,200 and, at the time Mr A acquired it, the car was around six years old and the mileage on the hire purchase agreement was noted as 68,751. So, I think a reasonable person would expect that there's a higher risk this car might need repairs and/or maintenance sooner than a more expensive car, or one which was newer, or had lower mileage when it was supplied.

I have reviewed the diagnostic report provided by the garage to which the car was recovered, including the photographs. Based on these and the other evidence provided, there doesn't seem to be a dispute between the parties that the car broke down because the timing belt failed, which led to a broken crankshaft and cracked engine block, plus other damage.

However, just because there are faults with the car, doesn't automatically mean that the car wasn't of satisfactory quality at the point of supply. So, I've gone on to consider if the car was of satisfactory quality when it was supplied to Mr A.

Black Horse say that due to the 18-month time period which elapsed between Mr A acquiring the car and the car breaking down, along with the mileage Mr A was able to cover during that period of approximately 16,461 miles, this supports their view that there wasn't an issue present or developing when they supplied the car to Mr A.

Mr A maintains that the car has an inherent manufacturing and/or design defect due to the timing belt being of a particular design. The timing belt in the car is a type known as a 'wet belt' which is inside the engine and needs to be continually lubricated with oil. Mr A has provided information which he says shows that the design of the belt has led in some cases to premature disintegration of the belt, and he has also said that in some of these cases this happened even though the car had been serviced in line with the manufacturer's

instructions. He also provided links to a class action lawsuit in another country and to a number of media sources which relate to other customers in the UK having similar problems with this engine type. Mr A says the car's manufacturer has admitted to these issues and he thinks that he should be eligible to reject the car because this is the same design fault that led to the breakdown of his car, and that design fault was present when the car was supplied to him.

As mentioned above, whilst Black Horse acknowledge the existence of a known issue with some engines of this type, they think that in this case poor service history could be the cause of the timing belt failing, because if the oil needed to lubricate the wet belt isn't replenished this could lead to a failure of the part. They said that they weren't upholding Mr A's complaint because he has failed to maintain the car in line with the manufacturer's service recommendations, as required by the terms and conditions of the hire purchase agreement and because they think this could have been a cause of the timing belt failing in this case.

I have looked at the service history for the car. At the time Mr A acquired the car in November 2022 the most recent prior service recorded in the service book was on 21 September 2021, around 14 months earlier, and at that time the mileage was noted as 57,178. When Mr A acquired the car, the mileage was around 68,751. When the car broke down in May 2024 it had not had a service for 28,034 miles and approximately 32 months. At that point the mileage was 85,212. The recommended manufacturer service schedule is every 12 months or 12,500 miles.

I have considered that the car was due for a service around the time Mr A acquired it, and it would have been good if the business had carried out a service before supplying the car to Mr A, but they didn't. So, I considered if the car was advertised or sold as being serviced. I can see that Mr A said that when Black Horse asked him this question, he initially said that he can't remember but that he doesn't think so. He also told us that after speaking with two family members who were with him when he was purchasing the car, neither of them were aware of him being told this either. Also, Mr A said that based on the documents he was given, at the time of sale, there are no records to suggest that the car was advertised or sold as being serviced. So, most likely, the car was not advertised or sold as having a full service. I have also considered that Mr A, knowing that the car was due for a service, then goes on to drive the car for a further 18 months, and around 16,461 miles, without arranging a service himself. As such, I don't think it's unreasonable for Black Horse to say that lack of maintenance could be the cause of the timing belt failing.

I know that Mr A says that the car's manufacturer recommendation is to have the timing belt replaced at either 150,000 miles or 10 years and he points out that this car's timing belt failed at only 85,212 miles and eight years. However, the manufacturer's recommendations regarding the timing belt are based on intervals for a car which has been serviced according to the manufacturer's recommended service intervals, and in this case that these haven't been adhered to.

I should also note that all complaints to our service are considered on their individual facts and merits and, therefore, here I am making my decision based on what I think is fair and reasonable considering all the circumstances of this specific case. Even if there is a design fault with some engines of this type, this does not automatically mean that this is the case for Mr A's car. And, overall, I haven't seen enough evidence to say that most likely there is a design fault with this specific car.

Having considered all of the above, including the age and price of the car, the lack of servicing, and how long Mr A had the car before the fault occurred, I can't say I have seen enough to be able to conclude that, most likely, the car wasn't sufficiently durable, or that a fault was present or developing at that point of supply which would make the car of unsatisfactory quality.

In his complaint Mr A also mentions other problems arising with the car after he acquired it and prior to the breakdown. He says he had to replace the battery around six months after acquiring the car. The engine had failed to start and the garage he consulted said the battery was completely dead and some of the cells inside it weren't working. The battery health was found to be significantly low, meaning it couldn't retain any charge, which Mr A says means that the car was sold to him knowingly with a faulty or poor-quality battery or that it wasn't actually checked.

I know that Mr A said that the contents of that dispute aren't relevant to this case directly as he already raised this with Black Horse previously, but I have considered this for completeness and note that the car was supplied to Mr A in November 2022 with a 99-point check list which indicates that at the point of supply the battery was checked and found to be acceptable at that point. The fact that the battery failed six months later does not mean that the car was not of satisfactory when supplied. The car had covered around 68,751 miles when supplied, so it is reasonable to expect there to be some wear to it. And batteries are a wear and tear item, so I think most likely a battery would need changing due to normal wear and tear process and not because there was an issue with it at the point of supply.

Mr A also says that when he took the car for its first MOT a year after acquiring it, the car failed the MOT and needed £541.11 worth of repairs to pass. Mr A also said the contents of that dispute aren't relevant to this case directly, however he wanted to emphasize the condition of the car he was sold and the repairs undertaken in just 17 months. So, for completeness I've looked at what repairs were needed at the time of this MOT. I considered that the car had been driven around 11,252 at that point since Mr A acquired it, and that it was then around seven years old. I think it's not unreasonable to conclude that the car would have been subject to some wear and tear during that period, and that a reasonable person would expect that a car of this age and price might need some work to pass the MOT, especially considering the mileage done in the intervening period, even if, as Mr A points out, it had passed previous MOTs.

Therefore, based on all the circumstances and information provided in this particular case, it is my conclusion that there isn't sufficient evidence to show that most likely this car wasn't sufficiently durable, or that a fault was present or developing at the point of supply which would make the car of unsatisfactory quality.

### **My final decision**

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

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

Liz Feeney  
**Ombudsman**