

The complaint

Mr C is unhappy that a car supplied to him under a hire purchase agreement with Black Horse Limited (Black Horse) was of an unsatisfactory quality.

What happened

In April 2023, Mr C was supplied with a brand new car through a hire purchase agreement with Black Horse. He paid an advance payment of £6,228.94, which included the equity from a car he part exchanged. The amount of credit was for £63,274.06 and the duration of the agreement was 49 months; with 48 monthly payments of £929.36 and a final payment of £36,275. The finance agreement confirmed the mileage as zero at the time of supply.

In August 2023, the car suffered a throttle failure while he was travelling at 70mph. Mr C described several near misses with the central reservation and other drivers, before he ended up stranded in the fast lane of a busy dual carriageway for over two hours, leaving him at further risk of harm.

The car was recovered and taken to the dealership, who found the throttle body required replacement. The dealership completed the repairs at no cost to Mr C in September 2023. While the car was being repaired, Mr C was left without a car for three days, before he was provided with a non like for like courtesy car.

Shortly after the car was returned to Mr C, he part exchanged it and settled the finance agreement with Black Horse.

Mr C contacted Black Horse in September 2023 to complain that the car wasn't of satisfactory quality and was unsafe when he acquired it. In their final response, Black Horse upheld Mr C's complaint. To put things right for Mr C, they offered to pay:

- £152.78 for five days loss of use without a courtesy car, plus 8% statutory interest;
- £226.10 for the loss of enjoyment over a 37-day period he was driving a courtesy car that wasn't a like for like replacement;
- £200 compensation for the distress and inconvenience caused.

Unhappy with their response, Mr C referred his complaint to this service. He said Black Horse had failed to recognise the serious nature of the defected car and supported the repair as an acceptable solution. Mr C says as this was not a minor defect, but a serious fault that put his safety at risk, full rejection of the car was justified. And so, to resolve the complaint, Mr C believes he should be put back into the position he would've been in had he not purchased the car.

Our Investigator reviewed matters and said what Black Horse had offered to do was fair. They said Black Horse were entitled to a chance to repair the car, and they kept Mr C mobile in the meantime. They also felt the compensation Black Horse had offered to pay Mr C fairly reflected the level of distress and inconvenience caused.

Mr C didn't agree with the Investigator. In summary, he said:

- The car he purchased was a luxury item so it's reasonable to expect a higher level of quality.
- His understanding is that a recall was present on the car, and therefore it was knowingly sold to him with an inherent fault.
- He has found several articles supporting the poor reliability of the car he purchased and this service has failed to acknowledge or correct the fact that the manufacturer continue to provide unreliable cars without consequence.
- The Investigators findings do not consider the inconvenience caused and the redress amount fails to recognise the grave danger the fault placed him in, and the psychological harm caused by the accident.

As no agreement has been reached, the matter has been passed to me to decide.

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 taken into account 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 C 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 C 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.

So, where it's found that a car was faulty at point of sale, 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 the finance provider, in this case Black Horse, to put this right.

In this instance, it's not disputed there was a problem with the throttle body, nor that the car wasn't sufficiently durable. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision because both parties agree that the car was of unsatisfactory quality at the point of supply. Instead, I'll focus on what I think Black Horse should do to put things right.

Single chance at repair

Where a car is deemed not to be of satisfactory quality, meaning there's a breach of contract, and it's outside the short term right to reject the car (30 days), the CRA allows for one opportunity for repair. I would expect this repair to be carried out at no cost to the

consumer and completed within a reasonable period and without significant inconvenience to the consumer.

In this case, the repair was carried out in September 2023. There is no evidence here to support the repairs carried out to Mr C's car failed. Mr C has also not disputed that the repairs carried out were unsuccessful. However, Mr C doesn't agree that repairing the car was a satisfactory resolution. He says given the serious nature of the fault, and the fact there was a recall notice on his car, he should've been able to reject it.

I've considered Mr C's point about a recall notice, but I've not been given specific information about the recall Mr C refers to. Even if Mr C was informed of a recall notice for his car's particular model by the dealership, I can't reasonably conclude that it's more likely than not that Mr C's car contained a defective part that would make the car of an unsatisfactory quality, solely on these grounds. This is because the manufacturers will sometimes issue a blanket recall when it's been established that some cars may have an inherent manufacturing issue. So even if a recall notice had been issued, this doesn't automatically mean that every single car, subject to the recall, definitely has the defective part in question. In any event, I've not been provided with enough evidence here to support there was a recall on Mr C's car which would render it of unsatisfactory quality.

The CRA sets out that Mr C had a short term right to reject the car within the first 30 days if the car was of unsatisfactory quality. Outside of the first 30 days, Mr C would not have been able to retrospectively exercise his short term right of rejection at a later date.

Here, the fault occurred in August 2023, just over three months from when Mr C took possession of the car. Even though it's accepted the car wasn't sufficiently durable, making the car of unsatisfactory quality, Mr C could only reject the car within the first 30 days, and only if he expressed his wish to do so. As he was unaware of the fault within the first 30 days, he couldn't have possibly expressed his wish to reject the car within that time.

The CRA says that, if the car acquired wasn't of satisfactory quality, or not as described, then Mr C would've been entitled to still return it after 30 days, but Mr C wouldn't have had the right to reject the car until he'd exercised his right to repair. So, for me to conclude that Mr C should've been able exercise his right to rejection, I would need to see that the car wasn't of satisfactory quality, because the faults he complains about were likely to have been present or developing at the point of sale, and that Black Horse's one attempt at a repair failed.

As I can't say the repair failed in this case, I'm unable to reasonably agree that Black Horse should've allowed Mr C to reject the car, or that they should be responsible for any financial loss Mr C feels he has incurred after the car was returned to him already repaired.

Payment refund

While the car was awaiting and undergoing repairs, it was off the road and undrivable for 30 days, from 6 August to 5 September 2023. The dealership explained the part required was on back order, which was the cause of the delay.

Following the throttle failure, Mr C was left without a car for three days. So, between 6-9 August 2023, he was paying for goods he was unable to use. As the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Black Horse failed to keep Mr C mobile; I agree it should refund the payments he made during this period. Black Horse offered to refund Mr C's payments for loss of use for five days, which exceeds the time period he was left without a car.

Furthermore, while the car was being fixed, he was provided a courtesy car from 9 August 2023. Black Horse offered to refund Mr C 20% of his payments for a 37-day period; worth a total of £226.10, for loss of enjoyment as the courtesy car he had was of a lower specification.

I've thought about Mr C's comments about the courtesy car he was supplied with. I accept it wasn't like for like, but I don't have enough evidence to suggest, that most likely, the courtesy car's specification differed significantly, and/or that it was valued considerably less than Mr C's car, enough to merit a higher refund. So, I think Black Horse's offer is fair and reasonable. It's also worth noting that the offer reflects loss of enjoyment over a longer period of time than the 27 days Mr C had the courtesy car.

Black Horse has agreed to pay 8% interest on the refund amount for loss of use. I've thought about whether Black Horse should also pay the 8% interest on the amount that reflects loss of enjoyment. However, considering they've already refunded 20% of the payments for 10 additional days, I'm satisfied the overall offer is fair and reasonable.

Distress and Inconvenience

It's clear the serious nature and timing of the fault caused Mr C considerable distress. And I can understand how the incident would've left Mr C shaken and seriously concerned about the safety of the car.

Mr C was also inconvenienced by having to arrange for the car to be repaired and being provided with a courtesy car that wasn't suited to all of his needs. So, I agree Black Horse should pay him compensation to reflect the distress and inconvenience caused by being supplied with a car that was not of a satisfactory quality.

Having carefully considered the overall offer made by Black Horse to put things right, including the refund of payments that included the extra days as mentioned above, I'm satisfied the offer of £200 compensation in addition is reasonable - and within our award ranges for situations such as this.

My final decision

For the reasons set out above, my final decision is that I uphold Mr C's complaint.

Black Horse has already made an offer to put things right that I think is fair and reasonable in the circumstances.

So, my decision is that Black Horse should pay: Mr C

- £152.78 for loss of use;
- 8% simple yearly interest on the refund, calculated from the date Mr C made the payment to the date of the refund[†]; and
- £226.10 for loss of enjoyment;
- An additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If Black Horse considers that tax should be deducted from the interest element of my award, they should provide Mr C with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or

reject my decision before 30 December 2024.

Nicola Bastin
Ombudsman