

The complaint

Mr L complains that a car he took under a finance agreement from Black Horse Limited didn't meet the specifications he'd been promised.

What happened

Mr L took a used car under a hire purchase agreement with Black Horse. There were however problems with it, and so the dealership agreed to source a replacement. Mr L says he wanted the replacement to have the same specification as the original car. In particular, the original car had extras including a refrigerated central console and digital TV connection.

The dealership prepared a new finance agreement for the replacement car and cancelled the old one. Mr L says he was told that the replacement car was identical to the old one – apart from the colour.

When he took the car home, Mr L says that he and his wife noticed that, unlike the original, it didn't have either a refrigerated central console or a TV connection. He complained to the dealership that he hadn't been provided with an identical replacement as he was told would be the case. The dealership offered him two tablets as a resolution, but Mr L was unhappy with that and complained to Black Horse.

Black Horse noted that the car had been supplied without any optional extras and that the specification for the original car hadn't included them either.

Mr L referred the matter to this service, where one of our investigators considered it. Having originally indicated that he was minded to require Black Horse to accept Mr L's rejection of the car, the investigator revised his view and said that Mr L had been treated fairly. Mr L asked that an ombudsman review the case.

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.

There's no issue here about the first car. Black Horse and the dealership accepted that it should be replaced because of the problems Mr L had experienced with it. The complaint is about the specifications of the second car and whether Mr L was either promised the extras I've mentioned or led to believe they were fitted. Mr L also says that the replacement car wasn't fit for purpose. I'll deal with that argument first.

Black Horse was obliged to supply a car that was fit for purpose. Goods are fit for purpose if they are fit for all the purposes for which goods of that kind are usually supplied. In addition, if the consumer makes known any particular purpose for which they intend to use the goods, they must be fit for that purpose as well. I don't believe that the lack of a refrigerated centre console or TV connection would make a car unfit for the usual purpose for which cars are supplied. And I haven't seen any indication from Mr L that he wanted to use the car for any particular purpose which would require the extras I've described. I'm not persuaded

therefore that the car wasn't fit for purpose.

I accept that Mr L's original car had the optional extras he's described and that he wanted the replacement to include them. What I have to consider though is whether it was part of the hire purchase agreement that they were included or that Mr L was misled into believing they were included.

There is no contractual documentation saying that the optional extras were included. The hire purchase agreement sets out the car's details – make and model, registration details and mileage. There is however nothing about any optional extras. In my view, therefore, it wasn't a term of the supply contract that they be included.

I must therefore consider whether Mr L was misled into believing they were included. He says he was told that the replacement car was in all respects identical to the original car, apart from the colour. That however couldn't have been the case. Both cars were used, so the chances of both having had the exact same combination of options would have been fairly small. Even the information on the respective finance agreements differed in terms of, for example, age and mileage.

Mr L has provided copies of his exchanges with the dealership, in which he discussed possible replacement cars. He appeared to be considering a number of options before settling on the car he took. Those discussions included comments about the specification he wanted, but I don't believe I can fairly conclude from them that the dealership agreed to provide a car with a refrigerated console and TV console or told Mr L that the replacement had either or those features.

I think it likely that Mr L was told that he was getting a like for like replacement, but don't believe that meant the cars would be identical in every respect. It was most unlikely that they could have been, and I don't believe Mr L could reasonably have thought they were. In the absence of any specific assurance about the extras on the car, I'm not persuaded Mr L was led to believe they were fitted.

Finally, I would note that, if particular optional extras had been essential to Mr L, I might have expected him to check they were indeed included.

My final decision

For these reasons, my final decision is that I don't require Black Horse Limited to do anything more to resolve Mr L's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 15 December 2020.

Mike Ingram

Ombudsman