

The complaint

Mr H complained to Black Horse Limited when he had problems with a car he acquired through a hire purchase agreement.

What happened

Black Horse entered into a hire purchase agreement for a car with Mr H in January 2020. He let the dealership know shortly afterwards that he had problems with the car. It was repaired at the dealership's expense, but Mr H still experienced issues with it and contacted the dealership in February. The car was scheduled for repair again in March but wasn't taken in for repair until June 2020 due to the general disruption caused by the pandemic. This time the dealership disputed some of the repair costs and Mr H complained to Black Horse in September 2020.

Black Horse upheld Mr H's complaint because it agreed that the car wasn't of satisfactory quality at the point of delivery. It gave Mr H the choice of returning the car with compensation, or having the car repaired at its expense plus compensation. Mr H chose the latter and by January 2021 the car had been repaired and returned to him. However, Mr H wasn't happy with the level of compensation offered by Black Horse in its final response to him (in October 2020) and so he brought his complaint to us.

One of our investigators looked into Mr H's complaint and recommended that Black Horse increase its compensation amount. Black Horse accepted this recommendation but Mr H didn't wholly agree with it and asked for his complaint to come to an ombudsman to resolve.

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.

It seems to me that both parties are in agreement about what happened, and Black Horse has accepted that the car was faulty when supplied. So I won't set out in any more detail what has happened with the car but will focus on the disputed compensation.

In response to Mr H's complaint in September 2020 Black Horse offered to cover the cost of the outstanding repairs and pay him £1,074.70. This was made up of his monthly hire purchase payments of £152.60 for June to October 2020 inclusive, along with 8% compensatory interest, plus £300 to acknowledge the distress and inconvenience the matter had caused him.

When Mr H brought his complaint to us he explained that he wanted Black Horse to reimburse him for the travel costs he incurred when he felt he couldn't use the car (March to May 2020) and for the time he was without it when it was in for repairs (June to December 2020). Mr H also wanted a refund of his car insurance payments, compensation for the depreciation of the car when he couldn't drive it and a greater award for distress and inconvenience.

Our investigator recommended that in addition to the compensation Black Horse offered, it should pay Mr H:

- a) a refund of rental payments of £152.60 for the months of November and December 2020; and
- b) a refund of car insurance premiums he paid for June to December 2020 inclusive at £75.98 per month; and
- c) a 10% refund of the payments made between 18 February 2020 and 10 June 2020 to cover any loss of use, or impaired use, of the car because of the inherent quality issues; and
- d) 8% simple yearly interest to all refunded amounts from the date of payment until the date of settlement.

The investigator didn't recommend that Black Horse reimburse any costs Mr H incurred in seeking alternative transport. This was because they had recommended that Mr H had some monthly payments returned for the time he didn't have the car (June to December 2020) and this refund could be used to offset costs that Mr H might have incurred to stay mobile. The investigator also pointed out that the mileage recorded during the car's MOT on 10 January 2020 was 58,340, rising to 61,208 by 18 June 2020. They concluded that Mr H had some use of the car from January to June.

Black Horse accepted these recommendations but Mr H didn't fully accept them. He said that he had a busy period in work in February and March 2020 and so had covered many miles in this time. He said that he didn't want to drive the car after it had been scheduled in for a service in March as he didn't think it was roadworthy given he'd been having issues with the speedometer and the brakes, amongst others. Mr H explained that he'd had to arrange alternative transport to get to work and, due to a diagnosed condition, he had no alternative but to pay for taxis.

Mr H said "For the initial lockdown, between 20 March and 1 May 2021 while businesses were closed including public transport and I was unable to get a hire car, the taxi receipts should still be fully covered... Between the months afterwards from 1 May until 31 December, instead of refunding the taxi receipts, as a compromise, I will be willing to accept the price of the daily cost of a return 'peak' train fare between the months of 1 May 2020 until 31 December 2020." Mr H has provided taxi receipts of approximately £900 for the dates listed and has estimated a train travel refund of approximately £1,740 based on a daily return fare of £7.10.

Let me start by saying that I acknowledge Mr H's strength of feeling regarding this matter and I am sorry that things have been so difficult for him. I want to reassure both parties that I have reviewed and carefully considered all the information available to me when making this decision. Having done so, I am not going to propose that Black Horse does anything beyond what our investigator proposed and it accepted.

Refund of rental payments and insurance costs

The car in question was provided to Mr H under a hire purchase agreement. This meant Black Horse was the owner of the car until all the payments had been made and Mr H was in essence paying for the use of it. Mr H left the car in for repair on 10 June 2020. I understand that the dealership asked him to collect it until the parts it needed to carry out the repairs had been delivered. Mr H said he didn't feel safe driving the car and so the car remained with the dealership until Mr H's complaint had been partly resolved with the car being repaired and returned to him.

Mr H didn't have access to the car from 10 June 2020 to when it was returned to him and Black Horse has agreed to refund his hire purchase payments from June to December 2020 inclusive. Following this logic, it seems to me that Mr H should also be compensated for any insurance payments he made, given he wasn't using the car and so didn't need financial protection in case something went wrong.

Refund of alternative travel costs

Mr H says he couldn't use the car prior to June 2020 because he felt it wasn't roadworthy. He explained his concerns in a number of emails to Black Horse which he's shared with us and I've reviewed. I've set out below some examples of what Mr H said to the dealership in various emails:

On 24 March:

"As from my previous emails my car has a long list of problems still after already been sent in for repairs. Although the car drives, I was told I could temporarily continue to drive the car as it was only the screen behind the steering that was the known problem at the time. However while driving the car I have found another list of problems with the car and the condition worsening. The brakes are now sporadically being even more less effective and I feel the car is now deemed dangerous to drive."

15 April:

"I am currently driving to work in a car that is faulty and dangerous as you have not supplied me with a courtesy car... If a breakdown, a crash or something else occurs while I have to drive the car to work, I put sole responsibility on yourselves and for you to accept any damages, payment or any liability...The car is also currently at higher risk of been broken into and/or stolen as the door handles are hanging off as previously described."

And also 15 April:

"I appreciate someone giving me a call, but unfortunately that doesn't fix the problem. I still have to get to work and driving the in roadworthy car you provided is a danger not only to myself but to other drivers."

5 May:

"I'm still having all the same troubles with the car as previously mentioned and I still don't feel safe driving it while the brakes are faulty."

6 June:

"I would like the car to be completely fixed of any problems (listed below), faults or advisories located while completing the work below, or known about faults and advisories, This also includes all the brakes replacing as per previous MOT advisories)... A check of the gear box and clutch as it's sometimes misses when switching to gear 5 or reverse... Wheel bearings to be changed as it currently sounds as though 1 has gone...The radiator looking at as the car has been driving at a very hot temperature and also looks to be using a lot of water and oil...The screen behind the steering wheel has completely gone...The service light is displaying again...The brakes work sporadically and aren't very effective at times, these all need replacing as this is very dangerous...The steering in the car is 'very light' and feels like the car is going to slide at any point when the smallest amount of power is applied into the corners. This also shows when driving on the motorway or above 60...It was leaking some fluid, the 5th gear and reverse sometimes miss so I would also like the gearbox and clutch looking at...The driver's side door handle has nearly detached and the one the replaced has started to also come loose. The boot handle has also started to come loose...The car also loses power sometimes and feels like it's going to cut outs...Please can you also look into the turbo as sometimes putting it into sport mode doesn't actually work."

I appreciate that Mr H had strong concerns about the car until it went in for repair in June 2020 but it seems to me from the above exchange that he continued to use it, even if he also made use of alternative transport. As mentioned, the mileage on the car had increased by almost 2,900 from January to June and, while I can see that the matter was clearly very stressful for Mr H, I can't conclude that he was unable to make use of the car prior to June. And so I am not going to ask Black Horse to make a further refund for this time period beyond what our investigator proposed and it accepted, namely 10% of rental costs to reflect Mr H's loss of use or impaired use of the car.

As our investigator explained, and I agree, refunding Mr H's rental and insurance costs for the time he was without the car (June to December 2020) provides him with a level of refund per month which seems to me to be a fair amount with which to offset the costs of alternative transport. And so I am not going to suggest Black Horse needs to offer any further refund for this time period.

Compensation for depreciation and distress and inconvenience

Mr H requested we consider compensation to reflect the car's depreciation in 2020. I've borne in mind that the car was over five years old when the agreement started, has been repaired since then and driven less than it might have been. I've also considered that there was a general uplift in used car prices due to various impacts of the pandemic, and that this was a time of disruption for car markets. Altogether, I don't think compensation for depreciation is appropriate in this case.

Finally, I've thought about Mr H's request for a larger payment for the distress and inconvenience this matter caused to him. We can consider awards to compensate for the practical and emotional impact a business's mistake had, in addition to compensation for a financial loss. As set out on our website, an award of up to £300 might be fair where there have been repeated small errors, or a larger single mistake, requiring a reasonable effort to sort out. These typically result in an impact that lasts a few days, or even weeks, and cause either some distress, inconvenience, disappointment, or loss of expectation.

I appreciate that Mr H's experience lasted for most of 2020 but I have borne in mind that this was a year of disruption. I can see that there was much communication between Mr H and the dealership throughout March to June – the dealership told Mr H it had prioritised his repairs and it seems to me it booked the car in as soon as was possible. I also appreciate that there were further delays in sourcing the parts for the repairs, and that Mr H could have collected the car while the parts were being sourced but he chose not to. While I am sympathetic to Mr H's concerns about the car, I can also see that the availability of car parts was likely to have been outside the dealership's control. And so in this case I think the award of £300 for distress and inconvenience reflects the circumstances of this case and is appropriate here.

Putting things right

In summary, in order to put things right for Mr H, Black Horse offered to refund his monthly payments for June to October 2020 inclusive and pay him £300 compensation. It set out these figures and its calculations in its final response to him.

In addition to the above, Black Horse needs to pay Mr H:

- a) a refund of rental payments of £152.60 for the months of November and December 2020; and
- b) a refund of car insurance premiums he paid for June to December 2020 inclusive at £75.98 per month; and

- c) a 10% refund of the payments made between 18 February 2020 and 10 June 2020 to cover any loss of use, or impaired use, of the car because of the inherent quality issues; and
- d) 8% simple yearly interest* to all refunded amounts from the date of payment until the date of settlement.

*HM Revenue & Customs requires Black Horse to deduct tax from this interest. It should give Mr H a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons I've set out above, I am upholding Mr H's complaint about Black Horse Limited in part and require it to put things right for him as outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 July 2022.

Michelle Boundy
Ombudsman