

The complaint

Mr O is unhappy with a car supplied under a hire purchase agreement provided by Black Horse Limited trading as Land Rover Financial Services. He says the car has had issues with a rattle since shortly after he got it

What happened

Mr O acquired a used car in September 2017. He paid a total deposit of £5,861.66 and the rest of the cost was funded by a hire purchase agreement with Black Horse taken over five years. The car was around 11 months old and had travelled around 23,128 miles when Mr O got it.

Mr O says he began to have problems with a “*rattling*” noise shortly after he got the car. The earliest record I’ve seen of the car being returned for repairs was January 2018 – but the job sheets from this time don’t mention a rattle. Mr O also says the car was returned in May 2018 for the same issue.

I won’t list the whole history and details of repairs I do have evidence for here as both Mr O and Black Horse are fully aware of this. But, I’ve seen job sheets from the following dates where a rattle or similar is mentioned and various repairs have been attempted:

- 18 September 2018 at 33,823 miles
- 23 October 2018 at 33,880 miles
- 18 October 2019 at 39,129 miles
- 31 October 2019 at 39,542 miles
- 31 July 2020 at 44,049 miles
- 25 September 2020 at 45,513 miles

Mr O complained to Black Horse. In December 2020 Mr O brought his complaint to our service. He said he heard the rattling in the first month he had the car and reported it at the time. He said the attempted repairs hadn’t worked. And he said the rattle was embarrassing and he’d had to sometimes hire a car.

Later in the same month Black Horse issued its final response and didn’t uphold his complaint. It said, in summary, that there was no evidence the rattle was present at the point of supply. And it said the car was reasonably durable given the mileage covered by Mr O.

While we were looking into things, in January 2021 Mr O told us the situation with the car had worsened and it was now becoming hot while running and he was feeling a vibration through the steering wheel.

Our investigator issued an opinion and upheld the complaint. He said, in summary, that he thought it was most likely Mr O did let the dealer know about the rattling earlier than September 2018 and thought it was most likely this was investigated by it in January 2018.

Our investigator said he thought the car wasn’t of satisfactory quality when it was supplied. He said Black Horse should end the agreement, refund Mr O’s deposit, refund 10% of

payments made towards the agreement from 25 January 2018 and pay him £200 to reflect the distress and inconvenience caused.

Black Horse agreed to go ahead with what our investigator said. Mr O remained unhappy. He said he wanted to swap the car for another one. Or he said he thought he should get back 80% of the payments he made towards the agreement. Our investigator said it wouldn't be practical to swap the car at this point. And he said he didn't think it would be reasonable for Mr O to get back more than what he'd recommended.

Mr O remained unhappy so the case was passed for an ombudsman's decision. While the case was waiting to be assigned, Mr O told us he'd settled the agreement as he needed to get another car and didn't want two agreements in his name. He told us that in April 2022 he'd taken the car for an MOT and was told it was the 'valves and actuators' causing the issues. In May 2022 he said the car was now a non-runner as it wasn't going into gear. In June 2022 he said he was only using the car very occasionally when it worked. Mr O provided a photo showing the mileage of the car was 61,000.

The case was passed to me to decide.

I sent Mr O and Black Horse a provisional decision on 28 June 2022. My findings from this decision were as follows:

Mr O complains about a car supplied under a hire purchase agreement. Entering into consumer credit contracts like this as a lender is a regulated activity, so I'm satisfied I can consider Mr O's complaint against Black Horse.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – Black Horse here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description.

So, here I'll consider that while Mr O's car was used, it was under a year old and had covered around 23,000 miles. I don't think a reasonable person would expect the car to be in the same condition as a brand new one. But, given the age of the car, and the fact Mr O paid over £28,500 for it, I still think they would have very high standards for the car and would've expected trouble free motoring for some time.

It seems here that, given Black Horse accepted what our investigator said and agreed to put things right in the way he recommended, that all parties are now in agreement that the car wasn't of satisfactory quality when it was supplied. So, I'll only very briefly comment here to quickly explain why I also think this was the case.

Firstly, I'm satisfied Mr O's car had an ongoing fault with a rattle. I say this as this is mentioned numerous times on the job sheets as set out in the background. Mr O has been consistent in his testimony here. And he's provided videos where I can hear a rattling or rasping sound.

Secondly, I'm in agreement with our investigator that the issue likely arose earlier than the first recorded entry on the job sheets. I say this as Mr O has given a significant amount of detail about what happened here – for instance he's provided specific dates where he says things happened and has provided full names of staff that he spoke to. I agree on balance

it's most likely the rattle was investigated when the car went to the dealer on 25 January 2018.

Thirdly, I'm satisfied the fault was most likely present or developing at the point of supply. I say this as Mr O has consistently told us he noticed the rattle early on. And, in January 2018 the car had only done around 5,000 miles since Mr O got it.

Considering all of this, I'm satisfied a reasonable person wouldn't have expected this issue to be present on a car of this age, mileage and cost. It follows that I'm satisfied this means the car was not of satisfactory quality when it was supplied to Mr O.

It's worth pointing out here that even if I accepted Black Horse's initial thoughts that the issue didn't arise until it was first mentioned on the job sheets from September 2018, I would still uphold the complaint. I say this as I'm satisfied a reasonable person wouldn't expect the car to develop what appears to be an underlying fault which could not be repaired at this point in time. It follows I'm satisfied this would mean the car wasn't reasonably durable and so still of unsatisfactory quality.

So, I now need to decide what would be fair and reasonable to put things right. I'll consider what rights Mr O has under the CRA given I'm satisfied the car wasn't of satisfactory quality.

I'll start by saying I'm satisfied the car wasn't repaired despite several attempts. So, I agree with our investigator and Mr O here that it wouldn't be reasonable to ask Black Horse to repair the car as I'm not convinced this would have a reasonable chance of success.

I've considered the right to a replacement that Mr O says is his preferred method of putting things right. But, at this point, Mr O's car is several years old. Finding a like for like replacement of the same age, model, specification and mileage isn't practical. So, I don't think this would be a reasonable thing to ask Black Horse to do.

I've considered whether it would be reasonable to give Mr O a price reduction and for him to keep the car. But, given the issues with it, and that around seven attempts at repair haven't put this right, I also don't think this would be a fair and reasonable option.

So, it follows this that I think the fairest way to put things right would have been to allow Mr O to reject the car.

I have considered if this would still be reasonable, given Mr O has now repaid the finance and taken ownership of the car. But, I don't think fundamentally this changes the situation. So, I still think this would be fair – but Black Horse will need to take back ownership to allow this.

I've also considered if this would be reasonable as Mr O says the car isn't running. There's limited information here – for instance he says a garage has told him this is linked to the rattle he experienced, but he hasn't provided evidence of this. Part of the issue now appears to be with the gears. And, despite him saying the car isn't running he has said he uses it occasionally.

I've carefully thought about whether it would be reasonable to instruct Black Horse to take the car back given these problems. But, in this case, I think it is. I say this as I'm satisfied it's most likely on balance that the issues are linked to the problems Mr O had with the rattle given what he's said. I appreciate this is finely balanced and there isn't much evidence here. But, whatever happened, had Mr O been supplied with a car of satisfactory quality, I'm satisfied this overall situation wouldn't have arisen.

I've considered what else would be fair to put things right. Our investigator said he thought it would be fair for Mr O to be reimbursed 10% of his payments from when the car was looked at in January 2018. Mr O said he should be reimbursed 80% of the repayments, as otherwise he would be in a worse financial position than if he didn't acquire the car.

I've carefully thought about this. And I understand Mr O's point. But, I don't think it would be reasonable to put him in the exact financial position he would've been in had he not taken the car, as I need to consider his use of it.

I appreciate Mr O's car wasn't working as he could've expected it to given the rattle. But, he has still covered not far off 40,000 miles in it. It's reasonable that he should pay for this usage. And effectively only paying 20% of the monthly payments due under the agreement wouldn't reflect this.

Thinking about everything, I appreciate the rattle must have been annoying when driving. But, it doesn't appear to have affected the overall use of the car. I'm satisfied on balance that 10% is a reasonable amount to reflect the impaired usage of the car Mr O had.

I've considered that Mr O says he mostly stopped driving the car towards the end of the time the agreement was in place. There's limited information about the mileage available here, so I've had to use what evidence I do have to try to put together what likely happened. I have evidence of the mileage at the finance inception, the last time the car was inspected and most recently from when Mr O provided a photo of the dash. These stand at 23,128 on 9 September 2017, 45,577 on 25 September 2020 and 61,000 on 16 June 2022.

I appreciate this doesn't tell the whole story. But, it appears the usage of the car, on average, actually increased since the last time it was inspected. So, I haven't seen enough to make me think it's likely the usage of the car dropped. It follows, I think it's reasonable that Mr O is reimbursed 10% for the whole time the agreement was in place, rather than a higher amount at the end.

That being said, I don't think, given the overall picture here, that it would be fair and reasonable to allow Black horse to retain any further payments to cover any usage of the car Mr O had since the finance was repaid.

Finally, I also agree with our investigator that Mr O has suffered distress and inconvenience here. It must have been stressful and frustrating to have to keep taking the car for repairs.

So, I think it's fair Black Horse should pay Mr O £200 to reflect this.

I gave both parties two weeks to come back with any additional evidence or information.

Black Horse didn't come back with anything further for me to consider.

Mr O replied and was very unhappy with the decision. He said it wasn't logical for Black Horse to take ownership of the car when it was rightfully his. And he asked to clarify what should happen to the money he used to clear the outstanding finance when he repaid the agreement.

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.

I've carefully thought about what Mr O said in response to my provisional decision. I can appreciate his frustration with the situation. But, I still think, considering what's fair and

reasonable along with his rights under the CRA, that rejection would be the fairest outcome for both parties here. I'm happy I explained the reasons for this in my provisional decision. And I still don't think it would be fair to Mr O to leave him with the car, given what he's said about its current state.

In relation to the money Mr O used to pay off the agreement, thinking about the fact he decided to take ownership of the car, and given I think on balance the car was still being used after this point, I think it's fair Black Horse retain this to reflect the usage of the car.

I've carefully considered everything else in relation to this case again. I still think the complaint should be upheld, for the same reasons I explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint. I instruct Black Horse Limited trading as Land Rover Financial Services to put things right by doing the following:

- Take ownership of the car back from Mr O
- Collect the car at no cost to Mr O
- Reimburse Mr O 10% of all repayments made towards the agreement from 25 January 2018 to when the agreement was settled*
- Reimburse Mr O his deposit from 9 September 2017 - £5,861.66*
- Pay Mr O £200 to reflect the distress and inconvenience caused
- Remove any adverse information from Mr O's credit file in relation to this agreement

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Black Horse considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr O how much it's taken off. It should also give Mr O a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 5 September 2022.

John Bower
Ombudsman